



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Ruairi Dominican-Byrne,
c/o Robert White,
Coolea,
Macroom,
Co. Cork.

25/04/2023

RE: Section 5 Declaration R771/23, Ground Floor, No . 17 High Street, Turners Cross, Cork City T12 X750.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 29th March 2023, I wish to advise as follows:

The Planning Authority, having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),

It is considered that the proposed *change of use at ground floor level from post office to retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on premises*, **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 25th April 2023.

Is mise le meas,

Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R771.23
Description:	Is the change of use at ground floor level from an existing post office to retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on premises, development and if so, is it exempted development.
Applicant:	Ruairi Domican-Byrne
Location:	Ground floor, No. 17 High Street, Turners Cross, Cork City
Site inspection:	24/04/2023

1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

2. Site Location

The site is located at Ground floor, No. 17 High Street, Turners Cross, Cork City, at the junction of High Street, Capwell Road and southern Road. The subject site is a former post office at ground floor level.

3. The Question before the Planning Authority

Is the change of use at ground floor level from an existing post office to retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on premises, development and if so, is it exempted development.

Scaled drawings/floor plans were not submitted showing the existing and proposed use.

4. Planning History

21371/97 – involving (a) change of use of retail unit to a separate residential unit at ground floor No. 16 High Street; (b) remove 1 number WC extension to rear of Post Office at 17 High Street and (c) relocate external stair from rear of No. 16 to rear of No. 17 High Street.

20569/96 – to (a) demolish No. 16 High Street and garage attached to No.17; (b) reconstruct no. 16 High Street with a shop unit at ground floor and with living accommodation at first floor incorporating living accommodation at first floor at no.17 as existing and access via external stair and first floor terrace (c) provide WC extension and replace windows at the Post Office no. 17, High Street.

5. Planning Legislation

5.1 Planning and Development Act, 2000 as amended

Section 2(1)

"exempted development" has the meaning specified in section 4.

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

5.2 Planning and Development Regulations, 2001 as amended

PART 2 EXEMPTED DEVELOPMENT

Article 5(1) Interpretation for this Part

In this Part—

***'shop' means** a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—*

- (a) for the retail sale of goods,*
- (b) **as a post office,***
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*
- (e) for hairdressing,*
- (f) for the display of goods for sale,*
- (g) for the hiring out of domestic or personal goods or articles,*
- (h) as a launderette or dry cleaners,*
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the*

sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Article 6(1) Exempted development

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 Restrictions on exemption

This sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including

(a) if the carrying out of such development would:-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Article 10 Changes of Use

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

(b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—

(i) as an amusement arcade,

(ii) as a motor service station,

(iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,

(iv) for a taxi or hackney business or for the hire of motor vehicles,

(v) as a scrap yard, or a yard for the breaking of motor vehicles,

(vi) for the storage or distribution of minerals,

(vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,

(viii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or

(ix) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.

CLASS 1 of Schedule 2 Part 4, Classes of Use, refers to Use as a shop.

(Article 6) Schedule 2, Part 1, Class 14

Exempted Development — General

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>Change of use</i> CLASS 14 Development consisting of a change of use— <i>[d] from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,....</i>	[NONE]

6. Development Plan

The development plan is the Cork City Development Plan 2022.

Under this plan, the subject site, and surrounding area are zoned for sustainable residential use, ZO 01. The objective is *to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.*

The site is not affected by any recorded monuments or protected structures.

The site is not within a designated Architectural Conservation Area.

7. Assessment

7.1 Development

The first issue for consideration is whether or not the matter at hand is development, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

No scaled drawings were submitted with the referral and as such no works are set out in the referral.

Notwithstanding this,

A ‘shop’ is defined under Article 5(1) of the Regulations as being, amongst others, a post office, and, a place for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is **subsidiary to the main retail use**, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,.

The definition of a shop does include ‘post office’ and ‘the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is **subsidiary to the main retail use...**’.

Therefore, as the proposed sale of other food and hot drinks for consumption off the premises is the main retail use and not a subsidiary use, I am satisfied that the proposed change of use would be material in planning terms and would constitute ‘development’ within the meaning of Section 3(1) of the Act.

CONCLUSION — is development

7.2 Exempted Development

The next issue for consideration is whether the proposed change of use is or is not exempted development.

Article 6 provides that development of a class specified in Part 1 of Schedule 2 shall be exempted development. Class 14(d) provides 'from use to which class 2 of Part 4 of this Schedule applies, to use a shop'.

PART 2 EXEMPTED DEVELOPMENT

Article 5(1) Interpretation for this Part

In this Part—

'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public – ...

b) as a post office,

*d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is **subsidiary** to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*

Class 14 as amended by article 4 of S.I. 208/2021 Planning and Development Act 2000 (Exempted Development) (No.3) Regulations 2021.

(a) the premises may be used for the sale of food for consumption on the premises in accordance with the permission that applied in respect of that premises immediately before the commencement of the relevant period, and

(b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development.

Having consideration for PART 2 EXEMPTED DEVELOPMENT Article 5(1) *d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is **subsidiary** to the main retail use,*

and,

Class 14 Planning and Development Act 2000 (Exempted Development) (No.3) Regulations 2021, (b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development.

It is considered that the proposed change of use at ground floor level from an existing post office to a retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on the premises, is **not exempted development** as the proposed sale of food will be the primary use and not subsidiary to the main retail use.

I note, the planning history for the subject site outlined in the submitted Section 5 application form is not readily available and it could not be determined if any condition attached to any previous grant of permission would restrict the proposed use, as per Article 9.

No scaled drawings were submitted with the referral and as such no works are set out in the referral.

CONCLUSION — is not exempted development.

7.3 Environmental Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that environmental impact assessment is not required.

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly, it is considered that appropriate assessment is not required.

8. Recommendation

In view of the above and having regard to –

- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended),

It is considered that the proposed *change of use at ground floor level from post office to retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on premises* **Is Development and Is Not Exempted Development.**

Signature



Alan Swanwick
Assistant Planner
Community, Culture & Placemaking

24/04/2023.

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Ruairi Domican-Byrne

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Ground Floor, No. 17 High Street, Turners Cross, Cork City T12X750

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question:

Is the change of use at ground floor level from an existing post office to a retail use for the preparation and sale of confectionaries and hot drinks, not for consumption on premises, development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

DEVELOPMENT MANAGEMENT
CCP
29 MAR 2023
CORK CITY COUNCIL

4. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

No

5. Is this a Protected Structure or within the curtilage of a Protected Structure? No

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

6. Was there previous relevant planning application/s on this site?

If so please supply details:

21371/97 involving (a) change of use of retail unit to a separate residential unit at ground floor No.16 High Street; (b) remove 1 number WC extension to rear of Post Office at 17 High Street and (c) relocate external stair from rear of No. 16 to rear of No. 17 High Street.

20569/96 to (a) demolish No. 16 High Street and garage attached to No. 17; (b) reconstruct no. 16 High Street with a shop unit at ground floor and with living accommodation at first floor incorporating living accommodation at first floor at No. 17 as existing and access via external stair and first floor terrace (c) provide w.c extension and replace windows at the Post Office no. 17, High Street.

7. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	40
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) Post Office	Proposed/existing use (please circle) Retail unit for preparation and sale of confectionaries and hot drinks for consumption off premises

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	Leaseholder	
If you are not the legal owner, please state the name of the owner if available	John Damien Moriarty and Breda Moriarty	

8.1 / We confirm that the information contained in the application is true and accurate:

Signature: Robert White

Date: 28/3/2023

Tel. No.

Mobile No.

Email Address:

For Office Use Only:

File Ref. No. _____

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>

We request that you read these as they contain important information about how we process personal data.

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The Development Management Section,
Community, Culture and Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork

Engenuiti Consulting Engineers,
Main Street,
Macroom,
Co.Cork,
P12 WN82

Date: 28/03/2023

Section 5 Declaration Application for ground floor no. 17 High Street, Turners Cross, Cork City

Dear Sir / Madam,

On behalf of applicant Ruairi Domican-Byrne, we submit a Section 5 Declaration Application for the ground floor of No. 17 High Street, Turners Cross, Cork City T12 X750.

In support of this application please find enclosed the following documents:

1. Section 5 Declaration Application Form
2. Section 5 Declaration Application Fee of €80
3. OS-01 – Site Location Map @ 1:1000

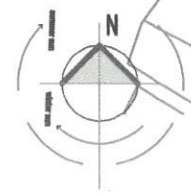
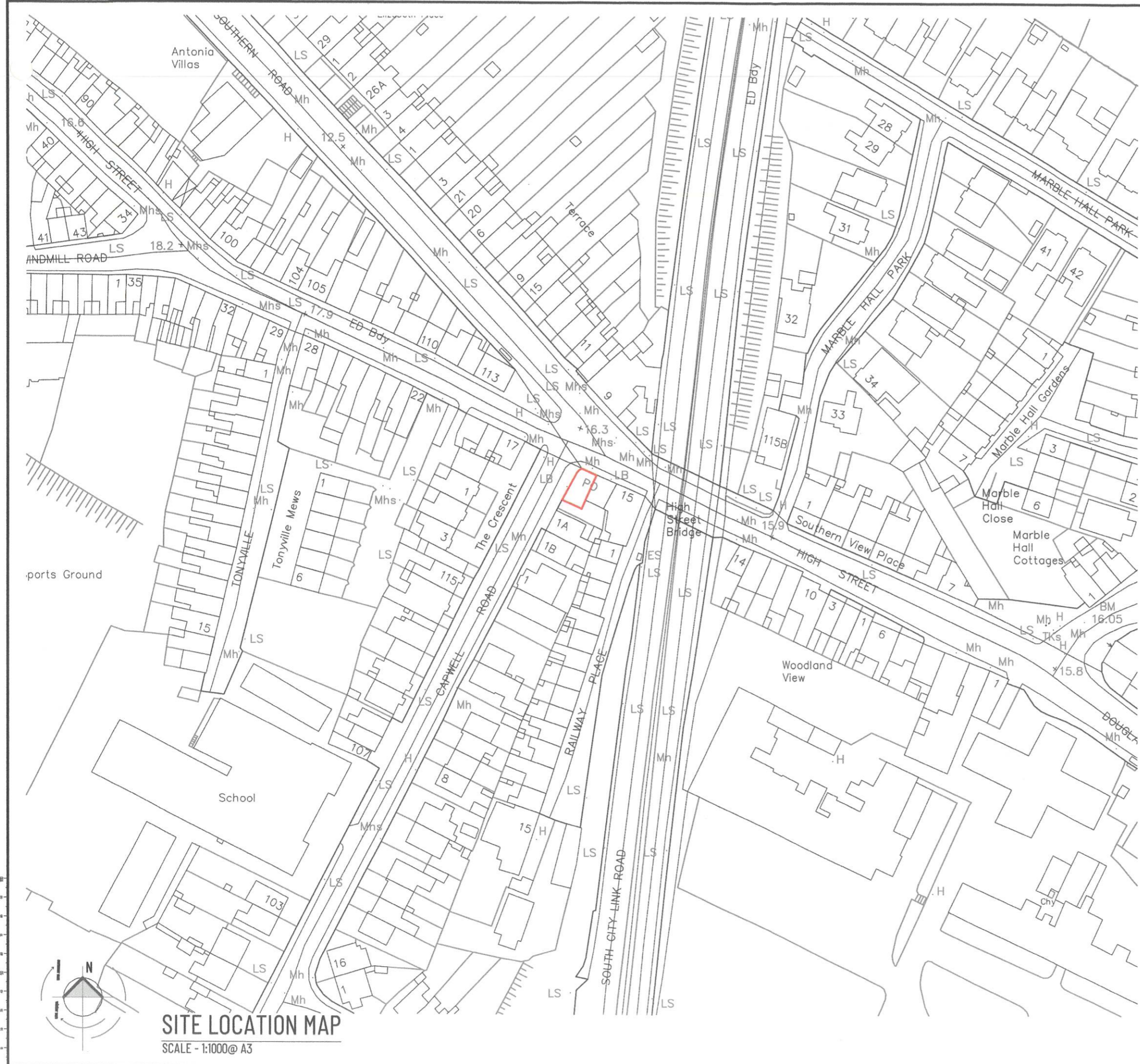
We look forward to your decision on this Section 5 Declaration Application.

Kind Regards,



Robert White BE BSc (Hons) MEngSc CEng MIEI
Managing Director





SITE LOCATION MAP
SCALE - 1:1000@ A3

NOTES

DEVELOPMENT MANAGEMENT
CCP
29 MAR 2023
CORK CITY COUNCIL

FOR INFORMATION

A	28.03.23	ISSUED FOR PLANNING	RW	RW	RW
Rev.	Date	Amendment Details	Drawn	Chk'd	App'd

This drawing should not be relied on or used in circumstances other than those for which it was originally prepared and for which Engenuiti Consulting Engineers was commissioned. Engenuiti Consulting Engineers accept no responsibility for the drawing to any party other than the person by whom it was commissioned. Any party which breaches the provisions of this disclaimer shall indemnify Engenuiti Consulting Engineers for all loss or damage arising therefrom.

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Client: **RUAIRI DOMICAN-BYRNE**

Drawings Status: **FOR INFORMATION**

Project Title: **No. 17 HIGH STREET
TURNERS CROSS
CORK
T12X750**

Drawing Title: **SITE LOCATION MAP**

Scale	AS SHOWN	Designer	RW	Drawn	RW	Checked	RW	Approved	RW	
Original Size	A3	Date	28.03.23	Date	28.03.23	Date	28.08.23	Date	28.03.23	
Drawing Number	10174 - OS-01								Revision	A