Comhairle Cathrach Chorcaí
Cork City Council

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

V.S.C. Limited,
c/o Bernard Dwyer,
Tom Phillips & Associates,
Suites 425& 455,
1 Horgan's Quay,
Waterfront Square,
Cork R23 PPT8.

29/02/2024

**RE: Section 5 Declaration R812/23 28 MacCurtain Street, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 31st October 2023, and further information received on 09th February 2024, I wish to advise as follows:

In view of the above and having regard to:

- Section 3 of the Planning and Development Act 2000 (as amended),

The Planning Authority considers that –

*the replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property)* at 28 MacCurtain Street, Cork **IS NOT DEVELOPMENT** and, therefore, **IS CONSIDERED EXEMPT**.

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, 29th February 2024.

We are Cork.

Is mise le meas,

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

| PLANNER'S REPORT<br>**Ref. R812/23** | Cork City Council<br>Culture, Community and Placemaking |
|---|---|

| | |
|---|---|
| **Application type** | Section 5 Declaration |
| **Description** | *Does the replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation?* |
| **Location** | 28 MacCurtain Street, Cork |
| **Applicant** | V.S.C. Ltd |
| **Date** | 29/02/2024 |
| **Recommendation** | *Is Not Development.* |

This report should be read in conjunction with the pervious report on the file dated 24/11/2023.

## 1. FURTHER INFORMATION REQUETSED

1) The 'Statement of Facts' letter submitted with the application suggests that the gaming arcade use was implemented at basement and ground floor level, it is considered that a letter from a former owner is insufficient evidence to demonstrate that the developments granted permission under CCC Ref. 95/ 19749 (ABP Ref. 28.096923) and CCC 94/19170 were enacted. The applicant is therefore requested to submit documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site. This may include but is not limited to photos/ details of rates paid/ receipt for works carried out etc.

## 2. FURTHER INFROMATION PROVIDED AND ASSESSMENT

A response to the further information request was received on 09/02/2024.

The applicant in responding stated that *'they have not been able to gather additional documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site in the form of photos or receipts for works carried out.'* It is stated that no rates evidence is available.

The applicant has submitted *'a sworn affidavit prepared by Joyce and Co. Solicitors by the previous owner of the property to support the veracity of the Statement of Facts submitted with the section 5 declaration.'*

The submitted affidavit is noted. As set out in the previous planner's report, a review of the drawings submitted for planning application 22/40860 indicates that there is a link between the subject site and No. 5 St Patrick's Quay. This would indicate that this element of the developments permitted under 95/19749 (ABP Ref. 28.096923) and 94/19170 were implemented. In this regard and having regard to the submitted affidavit, I am satisfied that the gaming arcade use was implemented. I consider that the replacement of an unauthorised barber shop use with a previously permitted gaming arcade use does not constitute development.

In view of the above and the previous report on file dated 24/11/2023 and having regard to –

- Section 3 of the Planning and Development Act 2000 (as amended),

It is considered that *the replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property)* at 28 MacCurtain Street, Cork **Is Not Development.**

| | |
|---|---|
| Jan Oosterhof<br>A/ Executive Planner<br>29/02/2024 | Melissa Walsh<br>Senior Executive Planner<br>29/02/2024 |

# FW: Section 5 Ref. R812/23 - 28 MacCurtain St

Jan Oosterhof
To Kate Magner

Start your reply all with: Got it, thanks! | Thanks for forwarding. | Thanks for sharing. | Feedback

fyi

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**From:** Melissa Walsh [redacted]
**Sent:** Thursday, February 29, 2024 1:28 PM
**To:** Jan Oosterhof [redacted]
**Subject:** RE: Section 5 Ref. R812/23 - 28 MacCurtain St

Agreed

Thanks

Melissa Walsh
Senior Executive Planner

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**From:** Jan Oosterhof [redacted]
**Sent:** Wednesday, February 28, 2024 5:02 PM
**To:** Kate Magner [redacted] Melissa Walsh [redacted]
**Subject:** RE: Section 5 Ref. R812/23 - 28 MacCurtain St

Hi Melissa,

See attached a copy of my FI report for sign off. Happy to discuss if you have any queries. Decision due tomorrow.

Kind regards,
Jan

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TOM PHILLIPS + ASSOCIATES
PLANNING FOR THE FUTURE

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w www.tpa.ie

Planning Section
Cork City Council
Civic Offices
Anglesea Street
Cork



Thursday, 8th February 2024
[By Post]

Dear Sir / Madam,

**Re: SECTION 5 DECLARATION – R812/23 – Relating to the Authorised use of a business premises at 28 MacCurtain Street, Cork.**

VSC Limited[1], the owners of Victoria Casino at 5 St. Patrick's Quay and 28 /28b MacCurtain Street have retained Tom Phillips + Associates[2] (TPA), Town Planning Consultants to seek a Declaration from Cork City Council (CCC) as per the provisions of Section 5(2)(a) of the *Planning and Development Acts 2000* as amended.

We refer to correspondence received from the Planning Authority dated 27th November 2023 seeking further information in relation to the declaration sought. The letter stated the following:

> *"While the 'Statement of Facts' letter submitted with the application suggests that the gaming arcade use was implemented at basement and ground floor level, it is considered that-a letter-from a former owner is insufficient evidence to demonstrate that the developments granted permission under CCC Ref. 95/ 19749 (ABP Ref. 28.096923) and CCC 94/19170 were enacted. The applicant is therefore requested to submit documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site. This may include but is not limited to photos/ details of rates paid/receipt for works carried out etc."*

The Planning Authority will note that in the intervening period we have not been able to gather additional documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site in the form of photos or receipts for works carried out.

A written request was made to Cork City Council Rates Office on 29th November for information on rates paid in relation to the premises between the years of 1995 and 2000. In subsequent telephone correspondence it was indicated that the only available information was in relation to the latest valuation on the property, which was from the early 1990s. A variety of uses were listed at the address across the various floors including retail. As this pre-dated the 1995 permission it does not provide any evidence of the subsequent permitted change of use being carried out.

[1] St. Mary's Road, Buncrana, Co. Donegal.
[2] Suites 425 and 455, 1 Horgan's Quay, Waterfront Square, Cork T23 PPT8

Notwithstanding the above, we enclose a sworn affidavit prepared by Joyce and Co. Solicitors by the previous owner of the property to support the veracity of the Statement of Facts submitted with the Section 5 Declaration.

The Planning Authority will note that when they purchased the business in 2019, the applicants did so with the understanding that the gaming arcade use was authorised.

Please do not hesitate to contact us if you have any queries on the above.

Yours sincerely,

**Bernard Dwyer**
**Senior Planner**
**Tom Phillips + Associates**

## STATUTORY DECLARATION

I, John O'Mahony, of age eighteen years and upwards make oath and say as follows:

1. The property to which this Declaration relates is property Ground Floor Shop and Basement at 28A and 28B MacCurtain Street, Cork

2. I, am the former owner of VSC Ltd t/a Victoria Sporting Club, 5 St. Patricks Quay & 28 MacCurtain St. in the City of Cork.

3. VSC Ltd. Purchased the business and Premises at 5 St. Patrick's Quay Cork in or about 1987 and operated a Snooker Club there.

4. In or about 1990 VSC Ltd. purchased the Basement at 28a & 28b MacCurtain St. and what is now the Fire Exit onto MacCurtain St. from 5 St. Patrick's Quay.

5. In or about 1994 VSC Ltd. purchased the Ground Floor Shop at 28b MacCurtain St. and applied for a change of use in respect of the Ground Floor Shop and Basement for use as a Licenced Gaming Arcade and link between 28b MacCurtain St. and 5 St. Patrick's Quay and an entrance at 28b MacCurtain St. to the basement. This was initially refused but subsequently granted by An Bord Pleanala in 1995.

6. VSC Ltd. opened the Gaming Arcade in the Ground Floor Shop 28b & Basement 28a & 28b MacCurtain St in or about 1995 and operated the Ground Floor Arcade until in or about 1997. At that time VSC Ltd. closed the shop at 28b MacCurtain St. as it was not performing. VSC Ltd. continued to operate the Basement portion, 28a & 28b MacCurtain St. as a Gaming Arcade with an entrance from 28b MacCurtain St. while operating an Amusement Arcade at 5 St. Patrick's Quay with a link between the two properties.

7. In or about 1998, the Ground Floor Shop at 28b MacCurtain St. was Leased to Franco Barbeari Ltd who operated a Barber Shop there until Sep 2019. A change of use planning application was never sought for the Barber Shop.

8. The Basement at 28a & 28b MacCurtain St. continued to operate as a Gaming Arcade until 2004 when, after the introduction of the Smoking Ban in Ireland, VSC Ltd. lost 50% of the Arcade Business practically overnight. VSC Ltd. applied for and received Planning Permission for a change of use at 5 St. Patrick's Quay, Cork from Amusement Arcade to a Licenced Gaming Arcade.

9. In August 2019 I sold my interest in VSC Ltd. to Causeway Leisure RoI Ltd.

10. These facts are to the best of my knowledge and recollection as the file containing all of the information was inadvertently destroyed during renovations following the sale in 2019.

11. I make this Declaration conscientiously believing the same to be true to the best of my knowledge information and belief and by virtue of the Statutory Declarations Act 1938 and for the benefit of Causeway Leisure ROI Ltd.

**DECLARED** before me a practising Solicitor
By the said **John O'Mahony** who is identified
to me by Joseph Cuthbert who certifies he
knows the deponent at Washington Street West
in the City of Cork this 23rd day of January
2024

John O'Mahony

**PRACTISING SOLICITOR**

I, Joseph Cuthbert hereby certify that I know the Deponent

· EST.1982 ·

# JOYCE & CO

— SOLICITORS —

Incorporating Joseph Cuthbert Solicitor

9 Washington Street West,
Cork, T12 FK07

joycecosolicitors.ie
info@joycecosolicitors.com
Tel: 021-4270391
Fax: 021-4271523
DX 2078 Cork

**OUR REF:** JC/LB/VSC001-001 **YOUR REF:** **DATE:** 01 February 2024

ATTN: Mari Gormley
Coastline Gaming LTD
St Marys Road
Buncrana
Co Donegal
F93 K6KP

**Re:** Statutory Declaration

Dear Maria,

Recent telephone conversation refers, I enclose Statutory Declaration of John O'Mahony as requested.

Yours sincerely,

Joyce Company

**Joseph Cuthbert**
**JOYCE & COMPANY**
**joseph@joycecosolicitors.com**

Comhairle Cathrach Chorcaí
Cork City Council

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

V.S.C. Limited
c/o Bernard Dwyer,
Tom Phillips & Associates,
Suites 425 and 455,
1 Horgan's Quay,
Waterfront Square,
Cork T23 PPT8.

27/11/2023

**RE:** **Section 5 Declaration R812/23 28 MacCurtain Street, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 31st October 2023, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that further information is required in order to properly assess this application.

1. While the 'Statement of Facts' letter submitted with the application suggests that the gaming arcade use was implemented at basement and ground floor level, it is considered that a letter from a former owner is insufficient evidence to demonstrate that the developments granted permission under CCC Ref. 95/ 19749 (ABP Ref. 28.096923) and CCC 94/19170 were enacted. The applicant is therefore requested to submit documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site. This may include but is not limited to photos/ details of rates paid/ receipt for works carried out etc.

We are Cork.

Is mise le meas,

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

| PLANNER'S REPORT<br>**Ref. R812/23** | Cork City Council<br>Culture, Community and Placemaking |
|---|---|

| | |
|---|---|
| **Application type** | Section 5 Declaration |
| **Description** | Does the replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation? |
| **Location** | 28 MacCurtain Street, Cork. T23 CX7K |
| **Applicant** | V.S.C. Limited |
| **Date** | 10/01/2024 |
| **Recommendation** | *Request Further Information.* |

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

## 1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

*5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this 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.*

The requirements for making a section 5 declaration are set out in the Act.

## 2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form:

*Does the replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation?*

## 3. SITE DESCRIPTION

The subject site is located on MacCurtain Street and comprises a four-bay three-storey (with dormer extension) terraced building.

The subject site lies within MacCurtain Street Architectural Conservation Area (ACA) and the building is recorded on the National Inventory of Architectural Heritage (NIAH) (Ref. No. 20863093, Rating Regional) and noted as being of regional significance for architectural interest. The Register contains the follow detail:

*Description*

*Terraced four-bay three-storey commercial building, built c. 1860, with dormer addition. Now in use as retail outlet and offices. Pitched tile roof with rendered parapet, rendered chimneystack, and flat-roofed dormer addition. Rendered walls with moulded render eaves course. Timber sash windows to upper floors. Pair of shopfronts inserted to ground floor, having timber panelled doors, timber fixed windows and timber fascias.*

*Appraisal*

*This building is a notable and positive addition to the streetscape, due to the scale and form of the building. The three-storey scale of many of the nineteenth-century buildings on the south-west end of MacCurtain Street creates continuity and character in this part of the city. Though many interesting features and materials have been replaced, this building retains some timber sash windows, and a moulded render eaves course.*

## 4. PLANNING HISTORY

Subject Site

| | |
|---|---|
| Planning Ref. | 22/40860 |
| Development Description | Retention planning permission is sought for a new pedestrian entrance to an existing gaming arcade, elevational alterations and external signage at No.28 MacCurtain Street. Retention planning permission is also sought for elevational alterations and new signage at 5 St. Patrick's Quay, all at both 28 MacCurtain Street and 5 St. Patrick's Quay, Victorian Quarter, Cork. The development consists of carrying out works to a Recorded Protected Structure reference number PS410. |
| Decision | Permission refused. Decision appealed (Ref. 313470-22) by applicant to An Bord Pleanála (ABP). ABP upheld decision of the planning authority to refuse permission. |
| | |
| Planning Ref | 95/19749 |
| Development Description | Change of use of ground floor to a gaming arcade, the provision of a new staircase from basement to ground floor and provision of a link building at 28/ 28a MacCurtain Street. |
| Decision | Permission granted by CCC. Decision appealed to ABP (Ref. 28.096923) by third party. ABP decided to grant permission. |
| | |
| Planning Ref | 94/19170 |
| Development Description | Change of use of basement floor to gaming arcade and to change a permitted exit to an entrance and exit at 28 MacCurtain Street. |
| Decision | Conditional grant of permission. |
| | |
| Planning Ref | 92/17324 |
| Development Description | Erected a satellite dish at the rear of 28 MacCurtain Street. |
| Decision | Grant of permission. |
| | |
| Planning Ref | 92/17229 |
| Development Description | Change of use at 28a MacCurtain Street from café to betting shop. |
| Decision | Conditional grant of permission. |
| | |
| Planning Ref | 89/15488 |
| Development Description | Change of use to amusement centre and coffee dock at 5 St. Patricks Quay, for a stairs link building and exit to McCurtain Street and for change of use of vacant basement at no. 28 MacCurtain Street to snooker room workshop. |

| | |
|---|---|
| Decision | Permission granted. Decision appealed. |

## 5. LEGISLATIVE PROVISIONS

### *5.1 The Act*

*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 3(2)*

*For the purposes of subsection (1) and without prejudice to the generality of that subsection—*

*(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or*

*(b) where land becomes used for any of the following purposes—*

i. *the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,*

ii. *the storage of caravans or tents, or*

iii. *the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.*

*Section (3)*

*For avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.*

Limit of duration of permission.

**40.—(1) Subject to *subsection (2)*, a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—**

**(*a*) in case the development to which the permission relates is not commenced during that period, the entire development, and**

**(*b*) in case the development is commenced during that period, so much of the development as is not completed within that period.**

## 6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

The question before the planning authority is *'whether replacement of barber shop use with a previously permitted gaming arcade/ casino use at 28/ 28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitutes development.'*

As set out in the documentation submitted, the replacement of the barbershop to gaming arcade/ casino consisted of various alterations (incl. layout changes, changes to shopfront etc.) to the building. The applicant acknowledges that external alterations to the shopfront (incl. signage) are not exempted development and it is stated that a new planning application for a revised shopfront is currently being

prepared. The current section 5 solely relates to the use of the unit and whether the change from barber shop to gaming arcade/ casino use constitutes development.

It is clear from a review of the planning history for the site that planning permission has been granted for a gaming arcade at basement and ground floor level of No. 28/ 28a MacCurtain Street under CCC Planning Reg. Ref. 94/19170 and 95/19749 (ABP Ref. 28.096923). The development permitted under 94/19170 included '*a change from permitted exit to an entrance and exit at 28 MacCurtain Street.*' The development permitted under 95/19749 (ABP Ref. 28.096923) included '*the provision of a new staircase from basement to ground floor and the provision of a link building at 28/ 28a MacCurtain Street.*' The link connects 28 MacCurtain Street with 5 St. Patricks Quay. It is clear from a review of the drawings submitted for planning application 22/40860 that there is a link between the subject site and No. 5 St Patrick's Quay. This would indicate this element of the developments permitted under 95/19749 (ABP Ref. 28.096923) and 94/19170 were implemented.

The applicant contends that the gaming arcade use is the 'authorised use of the premises.' The applicant's case if centred around High Court Ruling [2004] IEHC 74 – MOLLOY & ORS v. MINISTER FOR JUSTICE EQUALITY & LAW REFORM & ORS where Justice Paul Gilligan held that '*where there was an existing valid planning permission for a specific use of property and no subsequent planning permission had been granted for the use of the property concerned and where a material unauthorised change of use had occurred, notwithstanding that that intervening use was incapable of being prevented, and where the original permission was capable of being implemented (in the sense that there had been no material structural alteration of the property which would render the original permission for use incapable of being implemented), the original permission could not be abandoned or extinguished.*'

The applicant contends that '*in the absence of any planning history on the site following the 1995 permission and up until the applicant's recent retention permission, we considered that notwithstanding the significant period of time during which the former barber shop operated, the authorised use of the premises is in fact as a gaming arcade and is consistent with the current business activities of the applicant's.*'

The key question is determining whether development has occurred is whether or not the gaming arcade use was implemented at basement and/ or ground floor level of 28/ 28b MacCurtain Steet.

A 'statement of facts' concerning 28b ground floor shop and basement at 28a and 28b MacCurtain Street has been submitted with this section 5 application from the former owner and operator of VSC Ltd t/a Victoria Sporting Club (operators of the Casino at 5 St. Patricks Quay). In this letter, it is stated that '*VSC Ltd. Opened the Gaming Arcade in the Ground Floor Shop 28b and Basement 28a and 28b MacCurtain Street in 1995 and operated the Ground Floor Arcade until 1997. At the time VSC Ltd. Closed the shop at 28b MacCurtain Street as it was not performing. VSC Ltd., continued to operate the Basement portion, 28a and 28b MacCurtain Street as a Gaming Arcade with an entrance from 28b MacCurtain Street while operating an Amusement Arcade at 5 St. Patrick's Quay with a link between the two properties.*' The ground floor was leased to Franco Barbeari Ltd in 1998 who operated form the premises until 2019. No permission was obtained for the barbershop use. It is stated that 'the *Basement at 28a and 28b MacCurtain Street continued to operate as a Gaming Arcade until 2004 when, after the introduction of the smoking ban in Ireland, VSC Ltd lost 50% of the Arcade Business practically overnight. VSC Ltd. applied for and received Planning Permission for a change of use at 5 St. Patrick's Quay, Cork from Amusement Arcade to a Licensed Gaming Arcade.*'

While the 'Statement of Facts' letter submitted with the application suggests that the gaming arcade use was implemented at basement and ground floor level, it is considered that a letter from a former owner is insufficient evidence to demonstrate that the developments granted permission under CCC Ref. 95/ 19749 (ABP Ref. 28.096923) and CCC 94/19170 were enacted. The applicant will be requested to submit

documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site. This may include but is not limited to photos/ details of rates paid/ receipt for works carried out etc.

## 7. RECOMMENDATION

Request further information.

1) While the 'Statement of Facts' letter submitted with the application suggests that the gaming arcade use was implemented at basement and ground floor level, it is considered that a letter from a former owner is insufficient evidence to demonstrate that the developments granted permission under CCC Ref. 95/ 19749 (ABP Ref. 28.096923) and CCC 94/19170 were enacted. The applicant is therefore requested to submit documentary evidence to demonstrate that the gaming arcade use was implemented at the subject site. This may include but is not limited to photos/ details of rates paid/ receipt for works carried out etc.

Jan Oosterhof
Assistant Planner

24/11/2024

**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

Bernard Dwyer, Tom Phillips and Associates on behalf of VSC Limited

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

28 MacCurtain Street, Cork. T23 CX7K

## 3. QUESTION/ DECLARATION DETAILS

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

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

***Does the replacement of a barber shop use with a previously permitted gaming arcade / casino use at 28 /28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation?***

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**
*(Use additional sheets if required).*

See accompanying Section 5 Referral Letter prepared by Tom Phillips + Associates.

4. **Are you aware of any enforcement proceedings connected to this site?**
   ***If so please supply details:*** *Yes* - (Ref: E8340, E8133). Please see accompanying letter prepared by Tom Phillips + Associates

5. **Is this a Protected Structure or within the curtilage of a Protected Structure?** ☐

   **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:*
   Please see accompanying letter prepared by Tom Phillips + Associates

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 | n/a |
| (b) If a domestic extension, have any previous extensions/structures been erected at this location after 1st October, 1964, (including those for which planning permission has been obtained)? | Yes ☐ No ☐<br>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)<br><br>Barber Shop | ~~Proposed/~~existing use (please circle)<br><br>Gaming Arcade / Casino |

**7. LEGAL INTEREST**

| | | |
|---|---|---|
| Please tick appropriate box to show applicant's legal interest in the land or structure | **A.** Owner **√** | **B.** Other |
| Where legal interest is **'Other'**, please state your interest in the land/structure in question | | |

| | |
|---|---|
| **If you are not the legal owner,** please state the name of the owner if available | |

**8. I / We confirm that the information contained in the application is true and accurate:**

**Signature:** _____ _____

**Date:** __31st October 2023_____

## CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

TOM PHILLIPS + ASSOCIATES
PLANNING FOR THE FUTURE

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Waterfront Square
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w www.tpa.ie

Planning Section
Cork City Council
Civic Offices
Anglesea Street
Cork

Tuesday, 31st October 2023
[Electronically]

Dear Sir / Madam

**Re: SECTION 5 DECLARATION – Relating to the Authorised use of a business premises at 28 MacCurtain Street, Cork.**

## 1.0 INTRODUCTION

VSC Limited[1], the owners of Victoria Casino at 5 St. Patrick's Quay and 28 /28b MacCurtain Street have retained Tom Phillips + Associates[2],(TPA) Town Planning Consultants to seek a Declaration from Cork City Council (CCC) as per the provisions of Section 5(2)(a) of the *Planning and Development Acts 2000* as amended.

We are seeking this Declaration in order to establish whether the replacement of a pre-existing barber shop with a gaming arcade / casino use within the ground floor and basement of the premises at 28 / 28b MacCurtain Street, Cork is or is not development and is, or is not, exempted development within the meaning of the *Planning and Development Acts 2000* as amended and the *Planning and Development Regulations 2001* as amended. The question to be determined by DLRCC is as follows:

> *'Does the replacement of a barber shop use with a previously permitted gaming arcade / casino use at 28 /28b MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation?'*

The proposal is described in greater detail below. The requisite fee of €80 has been paid by EFT and a completed and signed *Section 5 Application Form* is enclosed.

[1] St. Mary's Road, Buncrana, Co. Donegal.
[2] 80 Harcourt Street, Dublin 2 & Suites 425 & 455, 1 Horgan's Quay, Waterfront Square, Cork.

## 1.1 Description of the Property

The property to be assessed for the purposes of this Section 5 declaration comprises the ground floor and basement level of 28 /28b MacCurtain Street, as well as a rear link and an emergency exit located just east of the main premises. The referral excludes 28a (currently occupied by "Chasing Ghosts" Tattoo shop) as the applicants do not have legal interest in this property. The property in question is referred to interchangeably as 28 or 28b in this letter and in the accompanying statement of facts provided by the previous property owner (Appendix B) for clarity, although the address of the building on Eircode is no. 28 MacCurtain Street. The extent of the property is outlined in Figure 1 below and on the accompanying site location map prepared by Deady Gahan Architect.

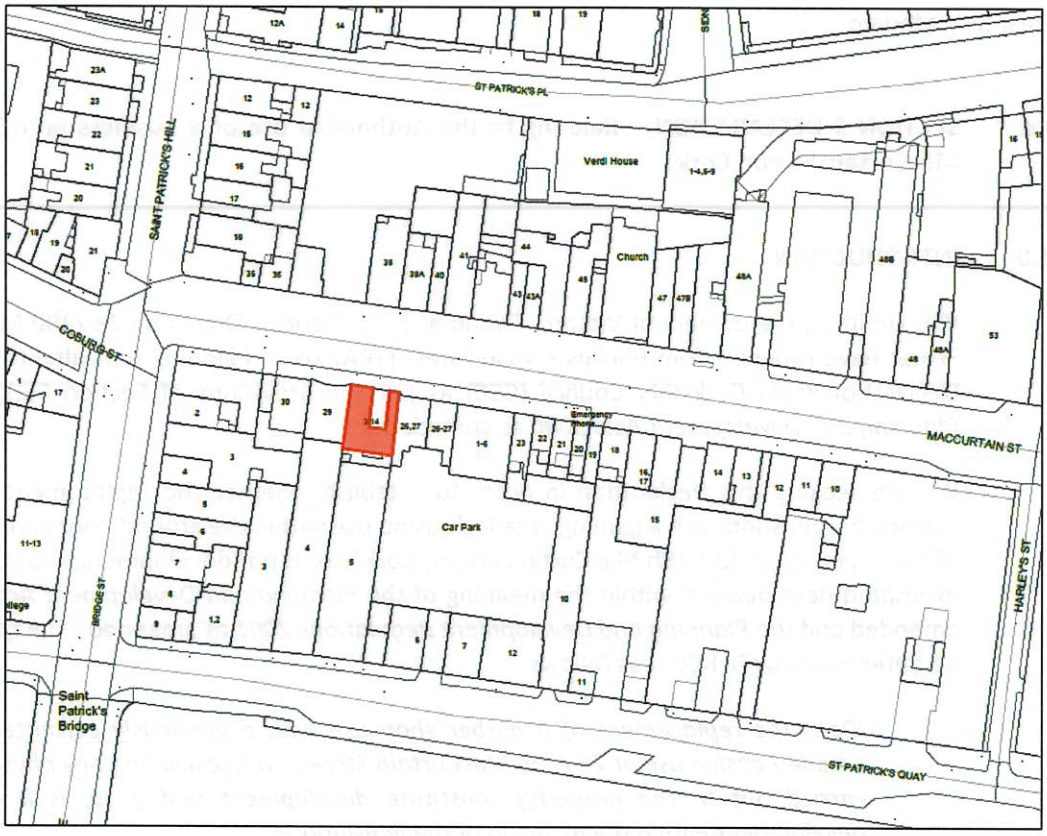


*Figure 1 - Location of the Property*

## 2.0 PLANNING HISTORY AND CONTEXT

The most recent planning history at the subject address relates to an application for retention planning permission for a new pedestrian entrance to an existing gaming arcade, elevational alterations and external signage at No.28 MacCurtain Street (**Cork City Council Planning Ref 22/40860**). This application also sought retention of elevational alterations and new signage at 5 St. Patrick's Quay. The works for which retention was sought were carried out by the applicants following their acquisition of 28 MacCurtain Street and 5 St. Patrick's Quay in 2019 and in response to enforcement proceedings issued by Cork City Council on the property (**Ref: E8340, E8133**). The former enforcement file in particular refers to:

> *"Change of use of No. 28 MacCurtain Steet from Barber's shop to Casino and unauthorised signage at No's 28 MacCurtain Street and 5 St Patrick's Quay."*

The planning application which sought retention of the works was refused by Cork City Council by order dated 5th April 2022. In refusing Planning Ref: 22/40860, the City Council Planner considered that:

> *"the replacement of a retail unit with an access to an adjoining leisure use, results in the loss of an active ground floor use frontage and is inconsistent with the retail strategy which seeks to reinforce the primacy and retail function of the City Centre Retail Area..."*

TPA, on behalf of our client, subsequently lodged a First Party Appeal of the decision (**ABP Ref. 313470-22**). This appeal was recently Refused by An Bord Pleanála by order dated 2nd August 2023. On the matter of the authorised use of the premises at 28 MacCurtain Street, the Inspector acknowledged the pre-existing permission attaching to the property but considered that there was insufficient information to make a determination on whether the permission had at any point been enacted. The Planning Authority will note our assessment in section 4 of this letter which elaborates on these matters.

The above referenced First Party Appeal also related to unauthorised works to 5 S. Patrick's Quay, a protected structure (PS No. 410). In the intervening period since the First Party appeal was lodged , the applicants have submitted a revised application to carry out remedial works to 5 St. Patricks Quay, having received advice from a qualified Conservation Architect (Cork City Council Planning Ref: 23/41706). On 25th July 2023 Cork City Council issued a Decision to Grant permission for the proposal which would have resulted in revised signage to 5 St. Patrick's Quay, removal of strip lighting and other alterations. This Decision was appealed by a Third Party (ABP Ref: 317836-23) and has yet to be decided by An Bord Pleanála.

In relation to the elevation alterations and revised signage at 28 MacCurtain Street, the applicants have engaged in pre-planning discussions with Cork City Council and intend to submit revised plans for the property shortly following receipt of pre-planning advice from the area Planner and City Conservation architect.

## 3.0 PROPOSAL TO BE ASSESSED

As outlined in the planning history section above, the replacement of the previous barber shop to gaming arcade / Casino comprised minor internal layout changes and alterations to the previously existing shopfront. The internal layout changes involved amalgamating the property with the existing Victoria Casino at 5 St. Patricks Quay via a pre-existing and permitted link (see enclosed planning history). As the Planning Authority will be aware, except where the context otherwise requires, "development" means:

> *(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or*
>
> *(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).*

The exterior shopfront renovations carried out were not exempted development and as such, the applicants are currently preparing a planning application for a revised shopfront

treatment, having regard to the location of the property within an ACA and under the guidance of a qualified conservation architect. These proposals are being guided by initial Pre-Planning discussions which have taken place with Cork City Council. The purpose of the current declaration is therefore solely to establish whether the change from barber shop to gaming arcade /casino use constituted development within the meaning of the legislation i.e. whether the proposal under discussion in this Section 5 referral constituted a change of use.

## 4.0 ASSESSSMENT

### 4.1 Current use was originally permitted and enacted.

The Planning Authority will be aware that 28 MacCurtain Street is currently occupied by 2 separate premises, one being the tattoo parlour at 28a and the other being the Victoria Casino, referred to as no. 28 or 28b in this submission. The Casino forms part of a complex that stretches south towards 5 St. Patrick's Quay. The rear link between 28 MacCurtain Street and 5 St. Patrick's Quay was established by planning permission Ref: 15488/89 (included in Appendix A) which provides for inter alia:

> *"A stairs link building and exit to McCurtain Street and for change of use of vacant Basement at No. 28 to Snooker Room workshop."*

A subsequent permission in 1994 (Ref: 19170 / 94) provided for the change of use of the basement floor at 28 MacCurtain Street to arcade use and the existing permitted exit to an exit and entrance at 28 MacCurtain Street.

Subsequent to the above, VSC Ltd. applied for permission for change of use of 28 and 28a to a gaming arcade (Ref 19749 / 95, ABP Ref: PL28.096923). This permission also provided for a link building and staircase to basement ground floor level. The planning history up to 1995 therefore clearly established both a functional connection between 28 MacCurtain Street and 5 St. Patrick's Quay as well as the use of 28 MacCurtain Street as a gaming arcade.

In relation to the replacement of the barber shop, in particular, TPA argued in the First Party Appeal of the previous retention application (Cork City Council Planning Ref: 22/40860, ABP Ref: 313470-22) that no unauthorised development had occurred. A search of the planning history indicated that the pre-existing permitted use of the McCurtain Street premises was as a gaming arcade (Cork City Council Planning Ref: 19749/95, ABP Ref: ABP Ref: PL28.096923 ). The subsequent barber shop which operated for a sustained period from c. 1998 up until c. 2019 did not appear to have had the benefit of planning permission for a change of use on the basis of a thorough review of the Cork City Council Planning Register. The absence of permission for the barber shop use has been confirmed by the former owner of the property in the accompanying statement of facts. TPA, in the First Party Appeal (ABP Ref: 313470-22) noted High Court Ruling *[2004] IEHC 74 - MOLLOY & ORS v. MINISTER FOR JUSTICE EQUALITY & LAW REFORM & ORS* whereby Justice Paul Gilligan held that:

> *Where there was an existing valid planning permission for a specific use of property and no subsequent planning permission had been granted for the use of the property concerned and where a material unauthorised change of use had occurred, notwithstanding that that intervening use was incapable of being prevented, and where the original permission was capable of being implemented (in the sense that*

*there had been no material structural alteration of the property which would render the original permission for use incapable of being implemented), the original planning permission could not be abandoned or extinguished.*

In the absence of any planning history on the site following the 1995 permission and up until the applicant's recent retention permission, we considered that notwithstanding the significant period of time during which the former barber shop operated, the authorised use of the premises is in fact as a gaming arcade and is consistent with the current business activities of the applicants. We note that there had been no material structural alteration to the property which would render the 1995 permission incapable of being implemented. We therefore considered that the use of 28 or 28b MacCurtain Street as a gaming arcade had been long established and did not require planning permission for change of use.

An Bord Pleanála refused the First Party appeal by order dated 2nd August 2023. The Inspector in their report stated that:

*"From the details accompanying the appeal No.28 Mac Curtain Street did secure permission as a gaming arcade. However it is unclear whether the premises was used as a casino/amusement arcade following the said permission. It is also unclear as to when the ground floor of No. 28 was subdivided to provide for two separate retail/commercial units and whether the use as gaming arcade pertained to the entire ground floor or just to the portion now subject of this appeal. On this basis I do not consider that there is sufficient detail before the Board to make an adjudication on this matter. Notwithstanding, I submit that the application before the Board is for the retention of the entrance and signage at No. 28 and not for the use of the premises as a casino per se.*

In relation to the question of whether the premises was in use as an amusement arcade following the said permission, we refer the Planning Authority to the accompanying statement of facts provided by the previous owner of the casino and included as Appendix B of this letter. The letter states that a gaming arcade was opened by the previous owners at 28 MacCurtain Street in 1995 and operated until 1997 when it was closed as it was not performing. The letter refers to 28b for clarity, and so as to distinguish from 28a (premises currently occupied by Chasing Ghosts). The ground floor of 28b MacCurtain Street was subsequently leased to Franco Barbeari Limited in May 1998. This change of use did not have the benefit of planning permission. The barber shop operated at 28 MacCurtain Street up until 2019 when, our clients purchased the property and the VSC Limited business name.

The Board Inspector (ABP Ref: 313470-22) referred to the sub division of the Ground Floor of 28 MacCurtain Street. The Planning Authority will note that this subdivision was in place prior to the 1995 permission and that the 1995 permission applied to both premises. The previous owners have confirmed that the gaming arcade use was only implemented within 28b and not 28a. The use was subsequently abandoned for commercial reasons. However in this regard we note Section 40 (1)(b) of the Planning and Development Act 2000, as amended which states the following:

*40.—(1) Subject to subsection (2), a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—*

*(a) in case the development to which the permission relates is not commenced during that period, the entire development, and*

*(b)* ***in case the development is commenced during that period, so much of the development as is not completed within that period.***

On the basis of the above, the change of use to gaming arcade would have ceased to have effect in relation to 28a, as this element of the premises was not converted to gaming arcade use before the expiration of the 1995 permission. The Planning Authority will further note that this premises remains as a separate retail unit (chasing ghosts, tattoo shop), not under the ownership of our clients. The current determination therefore does not apply to this premises.

### 4.2 No intensification of use

The replacement of the pre-existing barber shop with the current casino use has not resulted in any intensification of use at the property. The number of customers currently attending the premises would be comparable with the previous barber shop which would have had a consistent passing trade from MacCurtain Street, albeit during normal trading hours.

### 4.3 De-exemptions

We have reviewed the restrictions on exemptions as identified in Part 2, Article 9 of the *Planning and Development Regulations 2001,* as amended, and we are satisfied that none of these apply to the proposal described in this submission.

We note Article 9(1)(a)(xii) which refers to *"the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area"*. The aforementioned provision applies to the unauthorised alterations to the shopfront and signage of 28 MacCurtain Street which are the subject of the ongoing enforcement action by Cork City Council and are currently being addressed by way of a planning application for revised signage, as referred to above. However for clarity we wish to re-iterate the section 5 declaration being sought presently refers solely to the authorised use of the structure.

### 4.4 Appropriate Assessment Screening

Given that the proposal does not comprise any physical works, is within an existing built development in an urban area, with no additional proposed floor area, it is considered that significant effects are not likely to arise, either alone or in combination with other plans or projects that will result in significant effects to the integrity of the Natura 2000 network. A Natura Impact Statement is therefore not required.

### 4.5 Conclusion

The purpose of this request for a declaration under Section 5 of the Act is to ascertain whether the replacement of a barber shop with a gaming arcade / casino use is or is not development and is, or is not, exempted development within the meaning of the *Planning and Development*

*Acts 2000* as amended and the *Planning and Development Regulations 2001* as amended. The question to be determined by Cork City Council is as follows:

> *'Does the replacement of a barber shop use with a previously permitted gaming arcade / casino use at 28 MacCurtain Street, Cork (excluding any physical works carried out to the property) constitute development and if so, is it exempted development within the meaning of the legislation?'*

It is our professional planning opinion, on the basis of the planning history and the pre-existing permitted use of 28 MacCurtain Street that the current use did not require planning permission as it had the benefit of same, and therefore it does not constitute development. The question of exempted development does not therefore arise.

## APPENDIX A – Planning History

| PLAN NUMBER | CORPORATION OF CORK<br>LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963<br>**REGISTER**<br>(PART 1) | FOLIO<br>17229 / 92 |
|---|---|---|

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 PROPOSAL Subject of Application | Permission for change of use at 28a McCurtain St., Cork from cafe to betting shop | | | | | | |
| 2 APPLICATION Type and Date | Type | PErmission | | Date | 19/2/92 | | |
| 3 SUBMITTED BY Name and Address | Name | Mr. Dominic Daly | | Address | | | |
| 4 APPLICANT'S NAME | 10 Green Lawn, Curragh Road, | | | | | | |
| 5 APPLICANT'S ADDRESS | Cork. | | | | | | |
| 6 DECISION 6/03/92 | O.C.M. & Date 16/3/92 | Notified 16/3/92. | Effect | S.26 (2) (e) | S.26 (2) (g) | S.26 (2) (h) | |
| 7 GRANT | Date of Grant 27.8.92 | Sent 27.8.92 | Per/Cons | | | | |
| 8 APPEAL | Notification to Corporation | Date of Minister's Decision | Effect of Decision of Minister | | | | |
| 9 S.26 (3) APPLICATION | Date of Application | Date of Minister's Decision | Effect of Decision of Minister | | | | |
| 10 COMPENSATION | Claim | | Ref. in Part II. (Compensation Register) | | | | |
| 11 ENFORCEMENT | Section | | Ref. in Part III. (Enforcement Register) | | | | |
| 12 PURCHASE NOTICE | | | | | | | |
| 13 REVOCATION OR AMENDMENT | | | | | | | |
| 14 | | | | | | | |
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| 16 | | | | | | | |

| PLAN NUMBER | CORPORATION OF CORK<br>LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963<br>**REGISTER**<br>(PART 1) | FOLIO |
|---|---|---|
| / | | 17324/92 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 PROPOSAL Subject of Application | Erect a satellite dish at the rear of 28 McCurtain Street, Cork | | | | | |
| 2 APPLICATION Type and Date | Type<br>Permission | | | Date<br>24/3/1992 | | |
| 3 SUBMITTED BY Name and Address | Name<br>Dominic Daly | | | Address | | |
| 4 APPLICANT'S NAME | Dominic Daly | | | | | |
| 5 APPLICANT'S ADDRESS | 10 Green Lawn, Curragh Road, Cork | | | | | |
| 6 DECISION 976/92 | O.C.M. & Date<br>1.5.92 | Notified<br>1.5.92 | Effect | S.26 (2) (e) | S.26 (2) (g) | S.26 (2) (h) |
| 7 GRANT | Date of Grant<br>31/8/92 | Sent<br>31/8/92 | Per | | | |
| 8 APPEAL | Notification to Corporation | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 9 S.26 (3) APPLICATION | Date of Application | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 10 COMPENSATION | Claim | | Ref. in Part II. (Compensation Register) | | | |
| 11 ENFORCEMENT | Section | | Ref. in Part III. (Enforcement Register) | | | |
| 12 PURCHASE NOTICE | | | | | | |
| 13 REVOCATION OR AMENDMENT | | | | | | |
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| 16 | | | | | | |

| PLAN NUMBER | CORPORATION OF CORK<br>LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963<br>**REGISTER**<br>(PART 1) | FOLIO |
|---|---|---|
| / | | 15488/89 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 PROPOSAL Subject of Application | CHANGE OF USE TO AMUSEMENT CENTRE AND COFFEE DOCK AT 5, ST. PATRICKS QUAY, FOR A STAIRS ~~LINK BUILDING AND EXIT TO McCURTAIN STREET AND FOR CHANGE OF USE OF VACANT BASEMENT AT NO. 28,~~ | | | | | |
| 2 APPLICATION Type and Date | McCurtain St., Cork Type<br>TO ~~SNOOKER~~ ROOM WORKSHOP PERMISSION | | | Date<br>8.11.89 | | |
| 3 SUBMITTED BY Name and Address | AND STORE V.S.C Limited | Name | | Address | | |
| 4 APPLICANT'S NAME | V.S.C. Limited | | | | | |
| 5 APPLICANT'S ADDRESS | c/o D. J. Nestor, Consulting Engineer, Sheraton House, Hartlands Avenue, Cork | | | | | |
| 6 DECISION 543/90 | O.C.M. & Date 8/1/90 | Notified 8/1/90 | Effect Perm/Cor. | S.26 (2) (e) | S.26 (2) (g) | S.26 (2) (h) |
| 7 GRANT | Date of Grant | Sent | | | | |
| 8 APPEAL 28/5/81681 | Notification to Corporation 13/2/90 | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 9 S.26 (3) APPLICATION | Date of Application | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 10 COMPENSATION | Claim | | Ref. in Part II. (Compensation Register) Appeal per tel call of 26/1/90 | | | |
| 11 ENFORCEMENT | Section | | Ref. in Part III. (Enforcement Register) | | | |
| 12 PURCHASE NOTICE | Wgs 20/2/ | | | Rds/Drainage/Water | | |
| 13 REVOCATION OR AMENDMENT | | | | | | |
| 14 | | | | | | |
| 15 | | | | | | |
| 16 | | | | | | |

| PLAN NUMBER | CORPORATION OF CORK<br>LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963<br>**REGISTER**<br>(PART 1) | FOLIO<br>19170 / 94 |
|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 PROPOSAL Subject of Application | Permission for change of use of basement floor to gaming arcade and to change a permitted exit to an entrance and exit at 28, McCurtain Street, Cork. | | | | | |
| 2 APPLICATION Type and Date | Type: Permission | | | Date: 28th September, 1994. | | |
| 3 SUBMITTED BY Name and Address | Name: V.S.C. Ltd., | | | Address | | |
| 4 APPLICANT'S NAME | c/o Dermot J. Nestor, | | | | | |
| 5 APPLICANT'S ADDRESS | Sheraton House, Hartlands Avenue, Cork. | | | | | |
| 6 DECISION 5244/94 | O.C.M. & Date: 24.11.1994 | Notified: 24.11.1994 | Effect: Perm | S.26 (2) (e) | S.26 (2) (g) | S.26 (2) (h) |
| 7 GRANT | Date of Grant: 3.1.95 | Sent: 5.1.95 | | | | |
| 8 APPEAL | Notification to Corporation | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 9 S.26 (3) APPLICATION | Date of Application | Date of Minister's Decision | Effect of Decision of Minister | | | |
| 10 COMPENSATION | Claim | | Ref. in Part II. (Compensation Register) | | | |
| 11 ENFORCEMENT | Section | | Ref. in Part III. (Enforcement Register) | | | |
| 12 PURCHASE NOTICE | | | | | | |
| 13 REVOCATION OR AMENDMENT | | | | | | |
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| 15 | | | | | | |
| 16 | | | | | | |

| PLAN NUMBER | CORPORATION OF CORK<br>LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963<br>**REGISTER**<br>(PART 1) | FOLIO<br>19749 / 95 |
|---|---|---|
| / | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 PROPOSAL Subject of Application | Permisssion for change ofuse of ground floor to a gaming arcade, the provision of a new staircase from basement to ground floor and the provision of a link building at 28/28a MacCurtain Street, Cork. | | | | | |
| 2 APPLICATION Type and Date | Type PERMISSION | | | Date 19/06/95 | | |
| 3 SUBMITTED BY Name and Address | Name VSC Ltd | | | Address | | |
| 4 APPLICANT'S NAME | VSC Ltd | | | | | |
| 5 APPLICANT'S ADDRESS | 5 St Patricks Quay, Cork. | | | | | |
| 6 DECISION 2334 | O.C.M. & Date 17/8/1995 | Notified 17/8/1995 | Effect Per/Con. | S.26 (2) (e) | S.26 (2) (g) | S.26 (2) (h) |
| 7 GRANT | Date of Grant | Sent | | | | |
| 8 APPEAL PL 28.096923 | Notification to Corporation 15.09.1995 | Date of Minister's Decision 12.01.1996 | Effect of Decision of Minister 3rd party | | | |
| 9 S.26 (3) APPLICATION | Date of Application | Date of Minister's Decision | Effect of Decision of Minister Granted | | | |
| 10 COMPENSATION | Claim | | Ref. in Part II. (Compensation Register) | | | |
| 11 ENFORCEMENT | Section | | Ref. in Part III. (Enforcement Register) | | | |
| 12 PURCHASE NOTICE | | | | | | |
| 13 REVOCATION OR AMENDMENT | | | | | | |
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## APPENDIX B – Statement of Facts

# Oratava House, Rosepark, Douglas, Cork T12 XF6H

Causeway Leisure Services RoI Ltd.
St Marys Road,
Buncranny,
Co. Donegal

30th September 2023

STATEMENT OF FACTS CONCERNING
28b GROUND FLOOR SHOP & BASEMENT AT
28a & 28b MacCURTAIN ST CORK

I, John O'Mahoney, owned and operated VSC Ltd t/a Victoria Sporting Club at 5 St. Patricks Quay & 28 MacCurtain St. in Cork.

VSC Ltd. took over the business and Premises at 5 St. Patrick's Quay Cork in 1987 and operated a Snooker Club there.

In 1990 VSC Ltd. purchased the Basement at 28a & 28b MacCurtain St. and what is now the Fire Exit onto MacCurtain St. from 5 St. Patrick's Quay.

In 1994 VSC Ltd. purchased the Ground Floor Shop at 28b MacCurtain St. and applied for a change of use in respect of the Ground Floor Shop and Basement for use as a Licenced Gaming Arcade and link between 28b MacCurtain St. and 5 St. Patrick's Quay and an entrance at 28b MacCurtain St. to the basement. This was initially refused but subsequently granted by An Bord Pleanala in 1995.

VSC Ltd. opened the Gaming Arcade in the Ground Floor Shop 28b & Basement 28a & 28b MacCurtain St in 1995 and operated the Ground Floor Arcade until 1997. At that time VSC Ltd. closed the shop at 28b MacCurtain St. as it was not performing. VSC Ltd. continued to operate the Basement portion, 28a & 28b MacCurtain St. as a Gaming Arcade with an entrance from 28b MacCurtain St. while operating an Amusement Arcade at 5 St. Patrick's Quay with a link between the two properties.

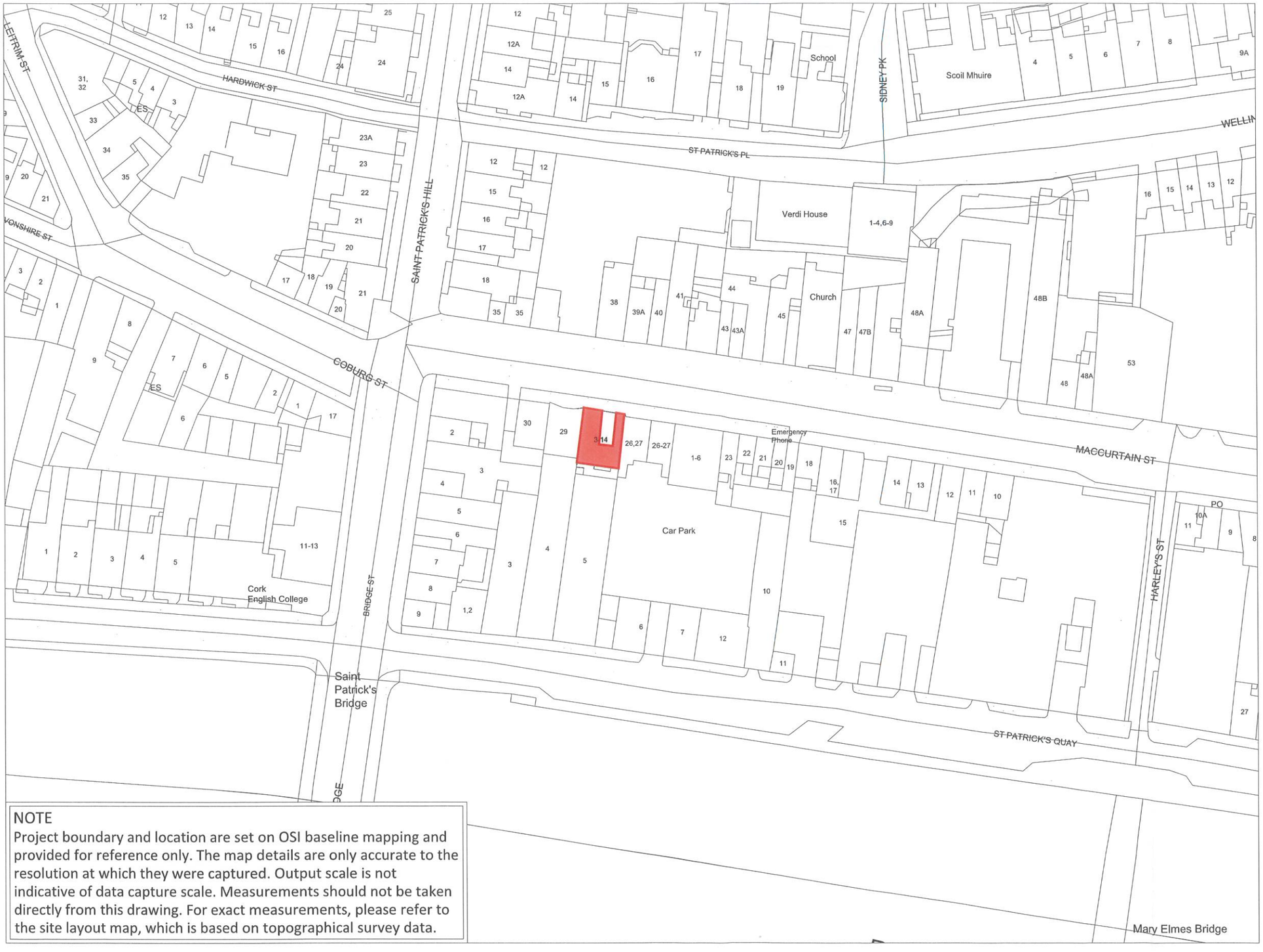
In May 1998 VSC Ltd. the Ground Floor Shop at 28b MacCurtain St. was Leased to Franco Barbeari Ltd who operated a Barber Shop there until Sep 2019. A change of use planning application was never sought for the Barber Shop.

The Basement at 28a & 28b MacCurtain St. continued to operate as a Gaming Arcade until 2004 when, after the introduction of the Smoking Ban in Ireland, VSC Ltd. lost 50% of the Arcade Business practically overnight. VSC Ltd. applied for and received Planning Permission for a change of use at 5 St. Patrick's Quay, Cork from Amusement Arcade to a Licenced Gaming Arcade.

In August 2019 I sold my interest in VSC Ltd. to Causeway Leisure RoI Ltd.

These facts are to the best of my knowledge and recollection as the file containing all of the information was inadvertently destroyed during renovations following the sale in 2019.

Signed: _____
John O'Mahoney




NOTE
Project boundary and location are set on OSI baseline mapping and provided for reference only. The map details are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Measurements should not be taken directly from this drawing. For exact measurements, please refer to the site layout map, which is based on topographical survey data.

# SITE LOCATION MAP

SCALE 1:1000

DENOTES SITE BOUNDARY EDGED RED

## MAP DETAILS

Description:
Digital Landscape Model (DLM)

Publisher / Source:
Ordnance Survey Ireland (OSi)

Data Source / Reference:
PRIME2

File Format:
Autodesk AutoCAD (DWG_R2013)

File Name:
v_50294206_1.dwg

Clip Extent / Area of Interest (AOI):
LLX,LLY= 567532.0,572117.0
LRX,LRY= 567864.0,572117.0
ULX,ULY= 567532.0,572363.0
URX,URY= 567864.0,572363.0

Projection / Spatial Reference:
Projection= IRENET95_Irish_Transverse_Mercator

Centre Point Coordinates:
X,Y= 567698.0,572240.0

Reference Index:
Map Series | Map Sheets
1:1,000 | 6382-10

Data Extraction Date:
Date= 29-Sep-2022

Source Data Release:
DCMLS Release V1.156.113

Product Version:
Version= 1.4



| No. | Revision/Issue | Date |
|---|---|---|
| P1 | ISSUE FOR PLANNING | 24.10.23 |

Firm Name and Address
DEADY GAHAN ARCHITECTS
EASTGATE VILLAGE, LITTLE ISLAND, CORK
T: 021 4355015 W: WWW.DGARCHITECTS.IE
EMAIL: INFO@DGARCHITECTS.IE

Project Name and Address
EXISTING BUILDING
AT 28 MACCURTAIN STREET,
CORK

| Drawing Title | Date |
|---|---|
| SITE LOCATION MAP | 24.10.23 |
| Drawing No. 23075/P/002B | Drawn LM |
| Scale 1:1000@A3 | Sheet No. 2 OF 2 |