

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT
Douglas Village Shopping Centre, Douglas, Cork

2. QUESTION/ DECLARATION DETAILS
PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:
Sample Question: *Is the construction of a shed at No 1 Wall St, Cork 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.
confirmation that the replacement/reconstruction of part of Douglas Village Shopping Centre that was damaged/compromised by fire, is exempted development and does not therefore require planning permission on the basis that the works constitute exempted development under Section 4(1)(h) of the PDA

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).
See attached cover letter

3. 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)

<p>(a) Floor area of existing/proposed structure/s</p>	<p>Existing: 63,337 sqm : Replacement: 8,156 sqm</p>	
<p>(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)?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) _____</p>	
<p>(c) If concerning a change of use of land and / or building(s), please state the following:</p>		
<p>Existing/ previous use (please circle) ----- N/A ----- -----</p>	<p>Proposed/existing use (please circle) ----- N/A ----- -----</p>	

4. APPLICANT/ CONTACT DETAILS

<p>Name of applicant (principal, not agent):</p>	<p>Canmont Limited</p>	
<p>Applicants Address</p>	<p>Montrose House, Carrigaline Road, Douglas, Cork</p>	
<p>Person/Agent acting on behalf of the Applicant (if any):</p>	<p>Name:</p>	<p>Tom Halley</p>
	<p>Address:</p>	<p>McCutcheon Halley Planning Consultants 6 Joyce House Barrack Square Ballincollig, Cork</p>
	<p>Telephone:</p>	<p>021 4208710</p>
	<p>Fax:</p>	<p>N/A</p>
	<p>E-mail address:</p>	<p>thalley@mhplanning.ie</p>
	<p>Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</p>	
	<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>

5. LEGAL INTEREST

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

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

Signature: _____



Date: 07/10/2019

.....

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, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- 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

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

PLANNER'S REPORT

FILE REF: R 545/19

TYPE: Section 5 Declaration

APPLICANT: Canmont Limited (via McCutcheon Halley Chartered Planning Consultants)

LOCATION: Douglas Village Shopping Centre, Douglas, Cork

REPORT DATE: 04/11/2019

RECOMMENDATION: Is development and is exempted development

INTERPRETATION:

'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 APPLICATION

The requirements for making a section 5 declaration are set out in the Act. Section 5(1) 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.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is,

Whether the replacement / reconstruction of part of Douglas Village Shopping Centre that was damaged and / or compromised by fire is development or is exempted development.

3. SITE DESCRIPTION

The subject property comprises the Douglas Village Shopping Centre, which dates from the 1970s and underwent a significant redevelopment and expansion in the mid-2000s. On 31 August 2019 it was subject to a significant fire event which directly affected parts of the multi-storey car park. The Centre has been closed since the fire.

4. DESCRIPTION OF DEVELOPMENT

This section 5 relates to the 'replacement / reconstruction of the existing fabric that was damaged in the fire (i.e. a portion of the internal car park floorspace and external north / south elevation)'. These works are to 'replicate the existing building that existed prior to the fire and will not... materially affect the external appearance of the structure (shopping centre)'. The submission accompanying the subject section 5 declaration request (the 'McCutcheon Halley submission') sets out in some detail the extent and scope of the works proposed. This is addressed below in more detail.

5. RELEVANT PLANNING HISTORY

The shopping centre has an extensive planning history, both in Cork City Council and Cork County Council (the majority of the shopping centre was located in Cork County Council prior to the 2019 Cork City Council boundary extension) however the following are of note:

TP 03/27006 (City) and **03/1426** (County), permissions granted for the refurbishment of the shopping centre. **TP 06/31315** (City) and **06/11346** (County), permissions granted for the reconfiguration of the refurbishment and extension to the shopping centre permitted under **TP 03/27006** (City) and

03/1426 (County). There have been several applications since (mostly within the former County area) affecting various units and parts of the shopping centre.

The following **An Bord Pleanála** precedent cases are also noted:

RL.2592 (2009) whether (a) domestic extension (b) works of repair and renewal to house is or is not development or is or is not exempted development at Rose Cottage, Brockagh, Glendalough, Co. Wicklow (*is development and is exempted development*).

RL.2464 (2008) whether the erection of a wall separating Supervalu from Debenhams is or is not exempted development at Merchants Quay Shopping Centre, Patrick Street, Cork (*is development and is exempted development*).

6. RELEVANT CASE LAW

I note **McCabe v CIE (2006) IEHC 356** and **Westmeath County Council v Moriarty (1991, unreported)**.

7. LEGISLATIVE PROVISIONS

7.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situated, and

(b) in relation to a protected structure or proposed protected structure, includes—

- (i) the interior of the structure,*
- (ii) the land lying within the curtilage of the structure,*
- (iii) any other structures lying within that curtilage and their interiors, and*
- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“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(1)(h)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

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.

Section 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.

7.2 Planning and Development Regulations, 2001 as amended**Article 6(1)**

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

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 50

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 50</p> <p>(a) The demolition of a building, or buildings, within the curtilage of—</p> <ul style="list-style-type: none"> (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex. <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<ul style="list-style-type: none"> 1. No such building or buildings shall abut on another building in separate ownership. 2. The cumulative floor area of any such building, or buildings, shall not exceed: <ul style="list-style-type: none"> (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres. 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

8. ASSESSMENT

8.1 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’. It is clear that the proposal constitutes ‘works’, which is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION: Is development

8.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I do not consider that the development comes within the scope of section 4(2) (i.e. the Regulations and *inter alia* articles 6 and 9 and Schedule 1, Part 2). I note Class 50 in relation to demolition, however I note the nature and extent of the development proposed and I do not consider that Class 50 applies. Therefore, I consider that the proposal comes within **section 4(1)**, more specifically **section 4(1)(h)** (quoted above in this report).

Section 4(1)

In order for section 4(1)(h) to apply, a number of criteria must be met:

- *The development must consist of the carrying out of works for the maintenance, improvement or other alteration of any structure.*

In the context of the question posed to the planning authority, I am satisfied that the ‘structure’ in this instance is the shopping centre as a whole. The shopping centre was clearly damaged in the aforementioned fire. The applicant intends to repair this damage. These works would not, in my opinion, have been proposed had the fire not occurred. The works are therefore in my view *prima facie* for maintenance or improvement purposes.

However, I note McCabe v CIE (2006) IEHC 356 in which the issue of section 4(1)(h) is addressed by Mr Justice Herbert. This case related to works carried out to a rail bridge as exempted development under the scope of section 4(1)(h). I note in particular the ‘test’ set out in his judgement, quoted below (highlights are my own):

In my judgment the renewal or reconstruction of a part or of parts of the bridge would be covered by the provisions of s. 4(1)(h) of the Act of 2000, provided that the extent of that renewal or reconstruction was not such as to amount to the total or substantial replacement or rebuilding of the original structure. The question is one of fact and degree whether in the instant case the original railway under-bridge has been so changed by the works that one could not reasonably conclude that it remains the same bridge even though with some alternations, improvements or indications of maintenance work.

The applicant has set out the scope and scale of the proposed works, which comprises reconstructing 12.9% of the total floor area of the shopping centre, 8% of each of the northern and southern elevation perimeters, and 13% overall elevation area. Following the above 'test', I am satisfied that the extent of the reconstruction does not amount to the total or substantial replacement or rebuilding of the original structure, being the shopping centre.

– *The development must consist of works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*

The applicant has stated that the works will 'replicate the existing building that existed prior to the fire and will not... materially affect the external appearance of the structure'. Therefore, assuming the works will replicate the previously-existing shopping centre, these proposed works would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

In view of the above, I conclude that the proposed works come under the scope of section 4(1)(h) as development comprising works for the maintenance, improvement or other alteration of the structure (in this case the shopping centre in question) being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4(2)

As set out above I do not consider that the proposal comes within the scope of section 4(2).

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION: Is exempted development

9. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

9.1 Screening for Environmental Impact 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.

9.2 Screening for Appropriate Assessment

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.

10. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4(1)(h) of the Planning and Development Act 2000 as amended,

the planning authority has concluded that —

- the proposal comes within the scope of the definition of ‘development’ as defined in section 3 of the Planning and Development Act, 2000 as amended,
- the proposal involves works for the maintenance or improvement of the shopping centre,
- the proposal involves development which affects only the interior of the structure or which does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures,
- the proposal therefore comes within the scope of section 4(1)(h) of the Planning and Development Act 2000, as amended,

and therefore the planning authority considers that —

the replacement / reconstruction of part of Douglas Village Shopping Centre that was damaged and / or compromised by fire **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



KEVIN O'CONNOR
SENIOR PLANNER

Legend



Site Boundary



Title Douglas Village Shopping Centre, Cork
Site Location Map 1

Client Canmont Ltd.
Project Section 5 Declaration
Douglas Village Shopping Centre, Cork

Scale	1:10560	Date	03/10/2019
O.S. map	CK074, CK075 CK086, CK087	Draw No.	4013-01
Ordnance Survey Licence No.:	EN0005419	Version	1.1
		Drawn	J.P.
		Checked	T.H.

 **McCutcheon Halley**
CHARTERED PLANNING CONSULTANTS

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6 Joyce House
Barrack Square
Ballincollig, Cork

Dublin
72-73 Farnham
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Dublin 2

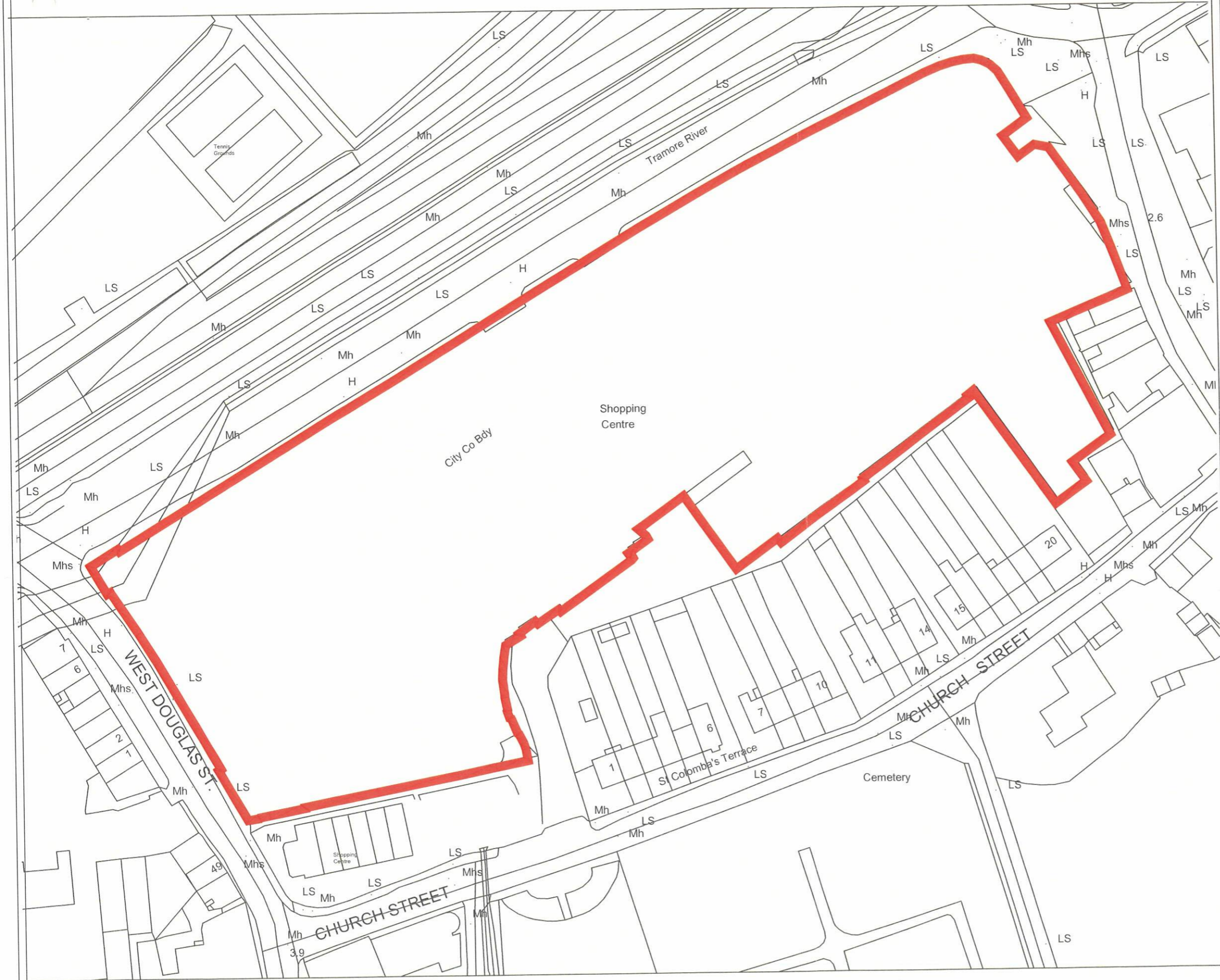
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PLEASE NOTE: This drawing should only be used for planning purposes. For detailed information please refer to the architectural or engineering drawings.

Legend



Site Boundary



Title Douglas Village Shopping Centre, Cork
Site Location Map 2

Client Canmont Ltd.
Project Section 5 Declaration
Douglas Village Shopping Centre, Cork

Scale	1:1000	Date	03/10/2019
O.S. map	6428-03 6428-08	Draw No.	4013-02
Ordnance Survey Licence No.:	EN0005419	Version	1.1
		Drawn	J.P.
		Checked	T.H.



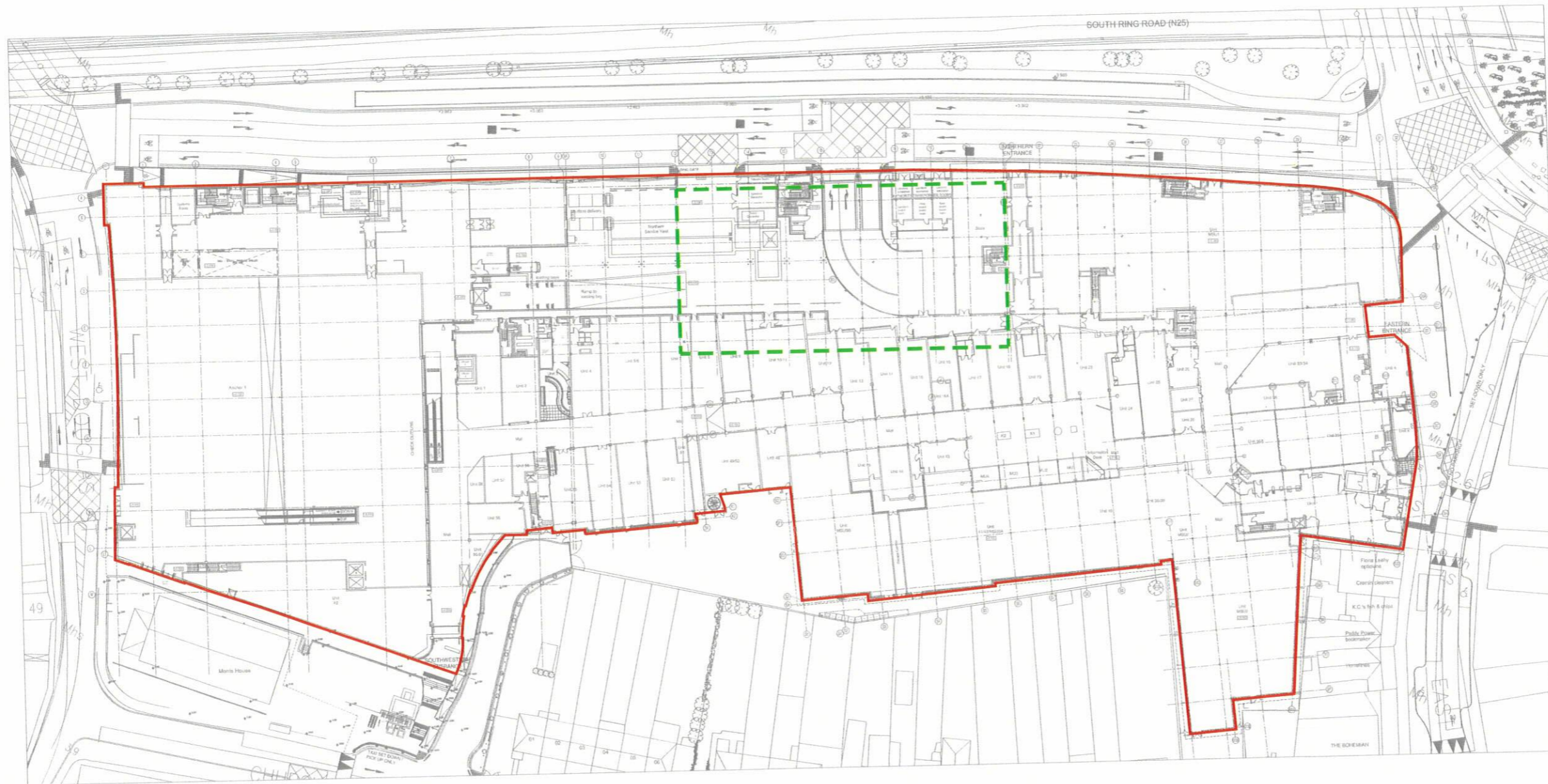
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LEGEND:

- GROUND FLOOR AREA = 22000m²
- - - DENOTES DEMOLITION ZONE/RECONSTRUCTION ZONE

11	ISSUED FOR INFORMATION	M.C	TO'N	04.10.19
1	ISSUED FOR INFORMATION	M.C	TO'N	23.09.19

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DRG. TITLE		4488-P1	
GROUND FLOOR LAYOUT		STATUS INFORMATION	
GROUND FLOOR LAYOUT		SCALE	1:1000 A3
		CHECK SCALE	50mm @ 1:1

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LEGEND:
 ——— RETAIL \ COMMERCIAL AREA
 - - - - - DENOTES DEMOLITION ZONE/ RECONSTRUCTION ZONE

11	ISSUED FOR INFORMATION	M.C	TON	04.10.19
1	ISSUED FOR INFORMATION	M.C	TON	23.09.19

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GROUND FLOOR LAYOUT		4488-P2	
MEZZANINE LAYOUT		STATUS INFORMATION	
DRG. TITLE	SCALE	1:1000	A3
	CHECK SCALE	50mm @ 1:1	

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LEGEND:
 — RETAIL/COMMERCIAL AREA
 - - - DENOTES DEMOLITION ZONE /RECONSTRUCTION ZONE

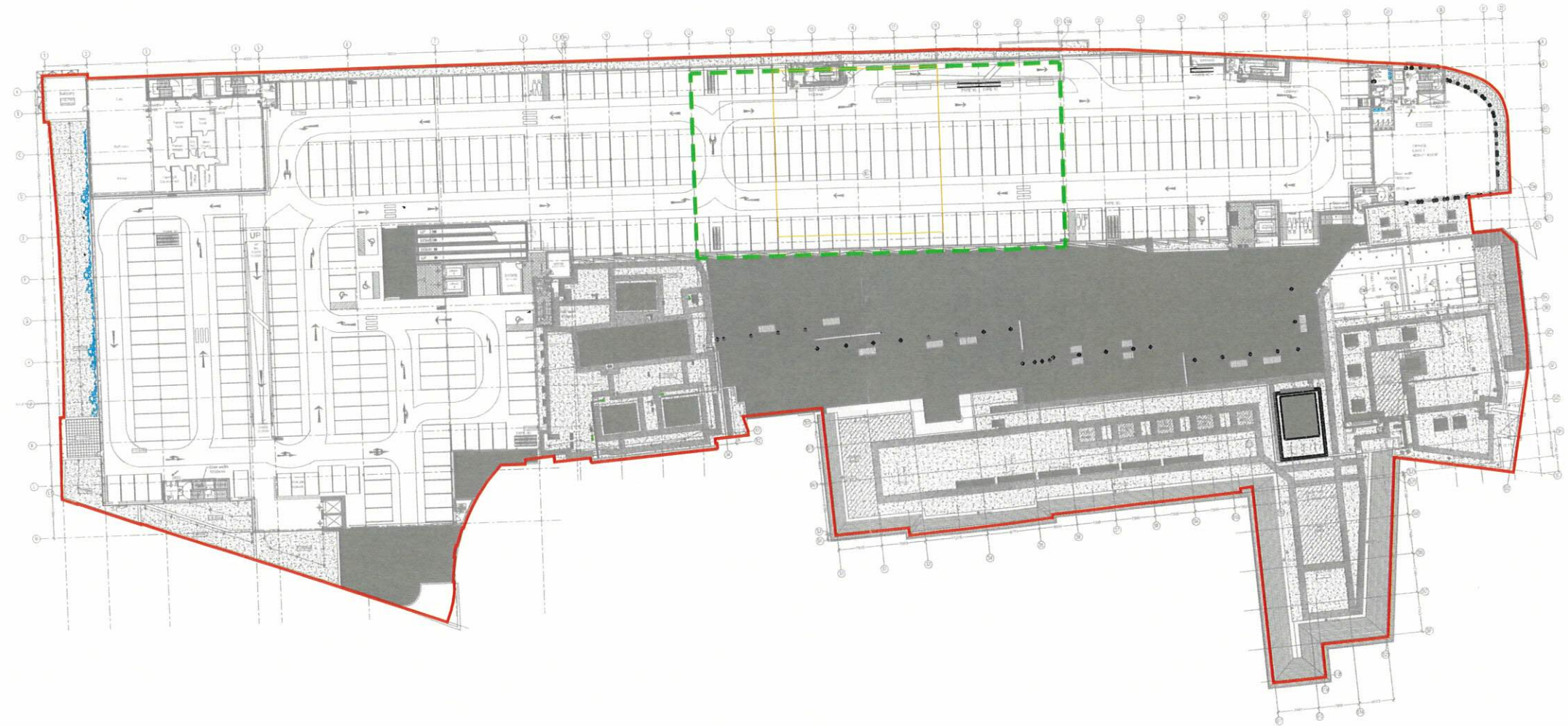
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I	ISSUED FOR INFORMATION	M.C	TON	23.09.19

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GROUND FLOOR LAYOUT		4488-P3	
FIRST FLOOR LAYOUT		INFORMATION	
SCALE	1:1000	A3	
CHECK SCALE	50mm @ 1:1		

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LEGEND:
— RETAIL \ COMMERCIAL AREA
- - - DENOTES DEMOLITION ZONE/RECONSTRUCTION ZONE

11	ISSUED FOR INFORMATION	M.C	TO'N	04.10.19
1	ISSUED FOR INFORMATION	M.C	TO'N	23.09.19

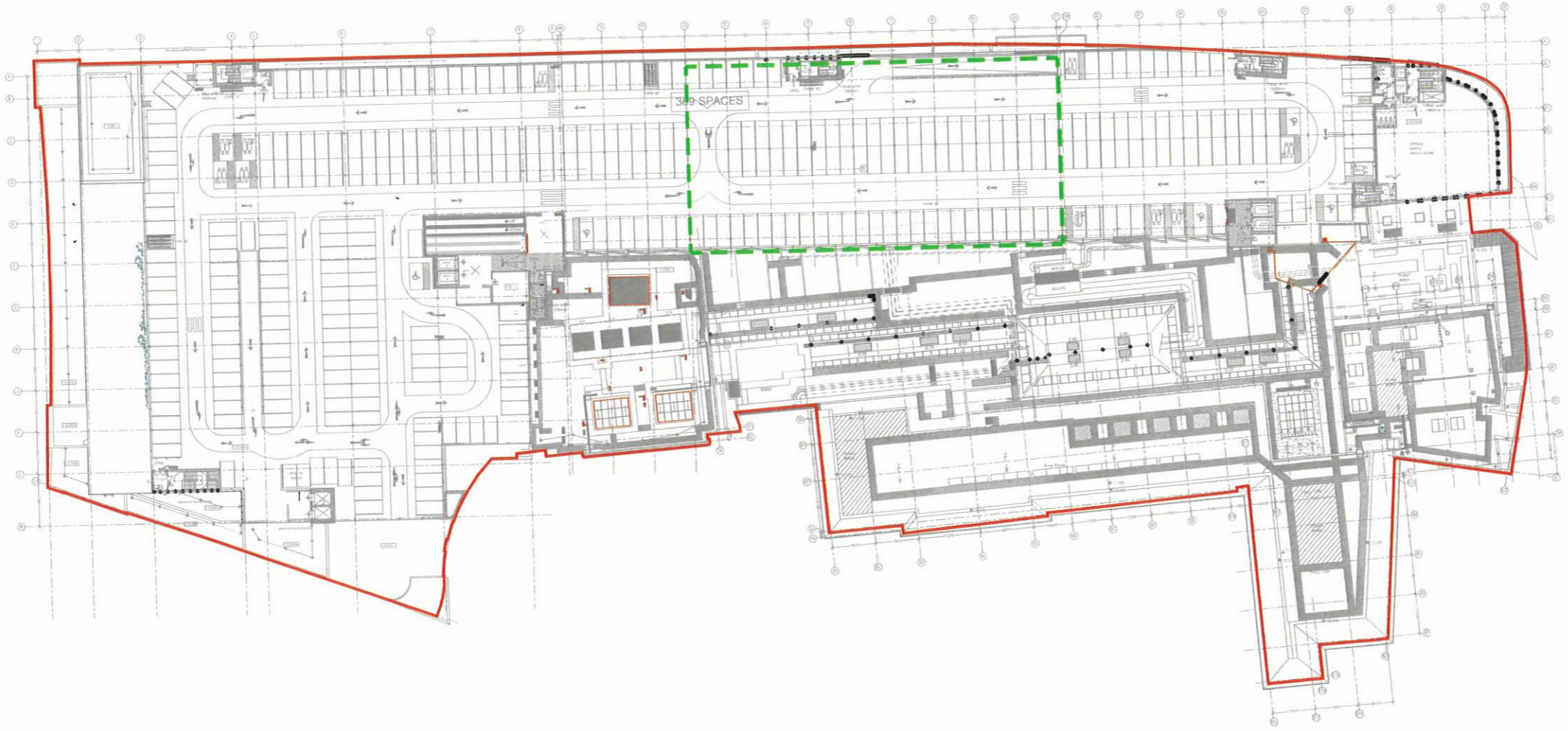
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GROUND FLOOR LAYOUT	4488-P4	
	STATUS	INFORMATION
SECOND FLOOR LAYOUT	SCALE	1:1000
	CHECK SCALE	50mm @ 1:1

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LEGEND:
 ——— RETAIL \ COMMERCIAL AREA
 - - - - DENOTES DEMOLITION ZONE.RECONSTRUCTION ZONE

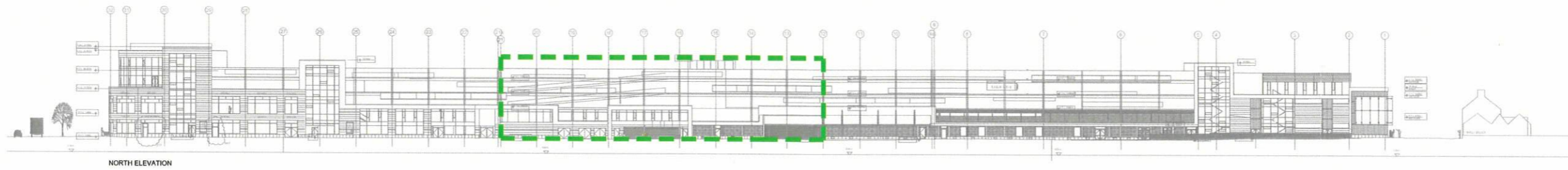
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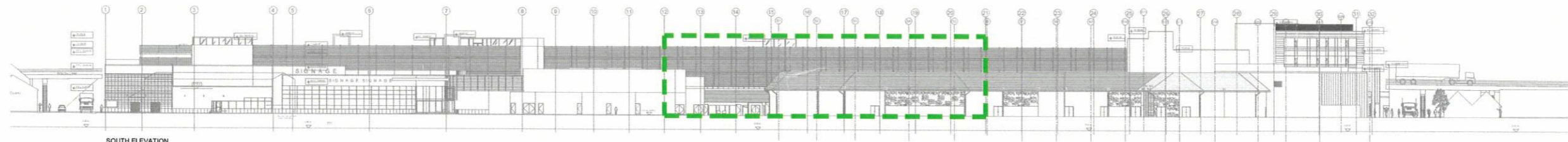


GROUND FLOOR LAYOUT		4488-P5	
THIRD FLOOR LAYOUT		STATUS INFORMATION	
SCALE	1:1000	A3	
CHECK SCALE	50mm @ 1:1		

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NORTH ELEVATION



SOUTH ELEVATION

I1	ISSUED FOR INFORMATION	M.C	TON	04.10.19
I	ISSUED FOR INFORMATION	M.C	TON	23.09.19

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GROUND FLOOR LAYOUT		4488-P6	
DRG TITLE		STATUS	
NORTH & SOUTH ELEVATIONS		INFORMATION	
SCALE		1:1000	A3
CHECK SCALE		50mm @ 1:1	