



Comhairle Cathrach Chorcaí Cork City Council

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

William Long
c/o Brendan Roynane
20 Ard Na laoi
Montenotte
Cork

07/05/2019

RE: Section 5 R513/19 20 Gerald Griffin St, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise as follows:

Having regard to:

- the particulars received by the Planning Authority on 1st April 2019
- the provision of Article 9 (1) (a) (viii) of the Planning and Development Regulations 2001 (as amended)
- the planning history of the site on the site

it is considered that,

- The proposed change of use is **development** and is **not exempted** development.

Yours Faithfully,

Paul Hartnett

Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 513/19

Description: Whether the conversion of an existing unused ground floor retail unit to a residential unit is or is not development and is or is not exempted development.

Applicant: William Long

Location: 20 Gerald Griffin Street , Cork

Date: 30/04/2019

SUMMARY OF RECOMMENDATION

Constitutes development; is not exempted development

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.

Site Location

The site is located at 20 Gerald Griffin Street in the Blackpool area of the city. The property is a mid terraced 2 storey building with attic conversion.

Subject Development

The proposed development subject to this Section 5 declaration request asks the following question of the Planning Authority in respect of the conversion of an existing unused ground floor retail unit to a residential unit. The applicant considers that the development is exempted development as:

- **The change of use would be exempt under S.I. 30/2018 which allows for a change of use of certain vacant commercial premises to residential use by exemption up to 31/12/2021.**

The applicant seeks clarification on whether the above works and use is development and is exempted development.

Relevant Legislation

Planning and Development Act, 2000

Section 3 (1) of the Act defines "*Development*" as, '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 of the Act refers to '*Exempted Development*' and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

'Development consisting of the carrying out of the 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 of the structure or of neighboring structures'.

Definitions

The definition of "*Structure*" in the 2000 Act is as follows:

"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 situate, 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 (ii)"

Planning and Development (Amendment) (No.2) Regulation, 2018

As an amendment to the Article 10 of the principal regulations of the *Planning and Development Regulation 2001*, Article 10 of Part 4 of the Regulations provides definitions Classes of Uses for the purposes of provided Exempted Development.

The amendment broadens the availability for exempted development for change of use to residential use from Class 1, 2 an3 or 6 of Part to Schedule 1. Class 1 is defined as "*use as a shop*".

Under the amendment of the regulations, the proposed development for residential use, and any related works shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d) which is as follows:

(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area

plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting. 4 [30]

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

Ministerial Guidelines

The document *Sustain Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities* (March 2018) is of relevance here. The guidelines specify minimum floor areas for residential units. Specific Planning Policy Requirement 3 proves the following :

Specific Planning Policy Requirement 3

Minimum Apartment Floor Areas:

- Studio apartment (1 person) 37 sq.m
- 1-bedroom apartment (2 persons) 45 sq.m
- 2-bedroom apartment (4 persons) 73 sq.m
- 3-bedroom apartment (5 persons) 90 sq.m

Land use zoning

The Cork City Development Plan 2015-2021 ("The Development Plan") establishes the following:

ZO 4 Residential, Local Services and Institutional Uses

OBJECTIVE: To protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.

The site is located within the Blackpool Architectural Conservation Area where objective 9.29 seeks to preserve and enhance designated Architectural Conservation Areas in the city.

Planning History

On this site:

TP17/37459 – Retention application refused for an existing single storey rear extension and dormer windows to front and rear elevation. Planning permission was also sought for a change of use from an existing ground floor retail unit (including the floor area to be retained) to a studio apartment. Reasons for refusal were as follows:

- 1. The proposed residential unit incorporating the rear extension would constitute a substandard form of development in terms of its layout, room sizes and absence of internal storage space and private amenity space and would not comply with standards set out in Chapter 16 of the Cork City Development Plan 2015-2021 or with qualitative and quantitative criteria set out in Ministerial Guidelines "Sustainable Urban Housing: Design Standards for New Apartments" (DoEHLG 2015). It would therefore seriously injure the residential amenities of future occupants and be contrary to the proper planning and sustainable development of the area.*
- 2. There is an existing residential unit on site with no dedicated waste storage facilities and no private amenity space. In this context, the provision of an additional unit incorporating rear extension proposed for retention would constitute overdevelopment of the site and be contrary to the proper planning and sustainable development of the area.*
- 3. The site is located within the Blackpool Architectural Conservation Area (ACA) per the Cork City Development Plan 2015-2021 (Volume 3). Proposed retention of the front dormer as constructed would be contrary to Objective 9.29 (enhancement of Architectural Conservation Areas) and to Section 16.72 (dormers) of the Development Plan, and would therefore be contrary to the proper planning and sustainable development of the area.*

Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) Regulations 2011) 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 an EIS is not required to be submitted.

Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

Assessment

Is the proposal "Development"?

As per definition of "*development*" in Section 3 (1) of the Planning and Development Act 2000 (as amended), the issues of works and material change of use proposed by this development will be assessed to determine the planning status of the proposed development.

Works

The proposed change of use requires the carrying out on internal works. These works will be carried out within the interior of the structure (the building itself) and would therefore be considered as internal works. Having regard to the provisions set out in Section 4 (1) (h) of the Act, these internal works would not materially affect the external appearance of the structure. In addition, it can be stated that these internal works would not render the appearance as inconsistent with the character of the structure or of neighboring structures and would therefore be considered exempted development under this section of the Act.

Material Change of use

The established use of the planning unit subject to this Section 5 request is retail. The Planning and Development Regulations 2001 (as amended) define this use "as a shop" in Part 4 of Schedule 2, where 11 different classes of use are listed. Class 1 is defined as "*use as a shop*". A "*Shop*" is defined in Article 5 (1) as a structure used for 9 no. specified purposes, where the sale, display or service is principally to visiting members of the public.

The proposed residential use is not within the same class use as the established use and would therefore constitute a material change of use and would be considered as constituting "development" as defined in the Act.

Is the proposal exempted development?

The planning agent for the applicant has submitted an assessment of the proposed development as part of this Section 5 declaration request. It is asserted that the change of use as exempted development having regarded to:

- Planning and Development (Amendment) (no. 2) Regulations 2018 which provides for exempted development for the change of use from certain class uses (Includes Class 1, Use as a shop) to residential use.

The planning history of the site is central to the question of whether the proposed change of use can enjoy the planning exemption as provided for in the amendment.

The established use (now vacant) of the planning unit was as a shop. The vacancy has been in excess of 2 years. Notwithstanding any other considerations, the change of use from a shop (Class 1) to residential use would exempt under the regulations as amended.

However, the planning history of TP17/37459 sought retention of the rear extension and permission for the change of use. This meant that the extension was built without planning permission and was unauthorised. The refusal of TP17/37459 results in the extension remaining unauthorised, despite the length of time that the unauthorised structure has been in situ.

In the principal regulations - Planning and Development Regulation 2001, Article 6 refers to *Exempted Development*. Article 9 refers to *restrictions of exemptions*. Article 9 (1) (a) (viii) stated the following:

- (1) Development to which Article 6 relates shall not be exempted development for the purposes of the Act –
 - (a) If the carrying out of such development would –
 - (viii) consist of or comprise of the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

As the part of the subject structure, namely the rear extension is unauthorised, the planning exemption for the change of use does not apply.

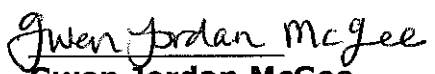
Recommendation

Having regard to:

- the particulars received by the Planning Authority on 1st April 2019
- the provision of Article 9 (1) (a) (viii) of the Planning and Development Regulations 2001 (as amended)
- the planning history of the site on the site

it is considered that,

- The proposed change of use is development and is not exempted development.


Gwen Jordan McGee
Senior Executive Planner
30/04/2019

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

20 Gerald Griffin Street, Cork

2. 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.

Conversion of an existing unused ground floor retail unit to a residential unit. The property has been vacant for more than 2 years. There is an existing residential unit overhead with its own access from the street.

We are querying if the proposal to convert this unit to residential use would be exempt under S.I. 30/2018 which allows for the change of use of certain vacant commercial premises to residential use by exemption up to December 31st 2021.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- The property in question is an unused retail unit and has been as such for more than 2 years (in fact it's been this way for over 10 years).
- Current works were completed before 8th February 2018.
- No plans to change the existing street elevation.
- It is proposed to use the ground floor space as a studio apartment of 40sq/m area.
- Planning permission for this was refused in 2017 (17/37459) but we are querying this current exemption now which was not in place at the time of that application before we make any further decisions on how to develop this property going forward.
- Attached are the following drawings relating to this application.
 1. O.S. Map – scale 1:1000 – site boundary outlined in red
 2. Site Plan – scale 1:200 – site boundary outlined in red
 3. Drawing of the property in question – proposed area subject to change of use from retail to residential outlined in blue. Includes existing & proposed floor plan.
- There is an existing independent residential unit overhead accessed by its own door from the street.

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)

(a) Floor area of existing/proposed structure/s	40.1 sq/m – existing ground floor area proposed to be used as a studio apartment.
(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 checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) The rear part of the structure was knocked and rebuilt 10 years ago (proposed kitchen & shower room area) but the structure was not extended.
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing use <u>Unused retail unit</u>	Proposed use <u>Residential – studio apartment</u>

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		William Long	
Applicants Address	20 Ard Na Laoi, Montenotte, Cork.		
Person/Agent acting on behalf of the Applicant (if any):	Name:	Brendan Ronayne B.Sc.Arch. Tech	
	Address:	"Dun Barra", Lotamore, Glanmire, Co. Cork	
	Telephone:	[REDACTED]	
	Fax:		
	E-mail address:		
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

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

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

Signature: Brendan Ronayne B.Sc. Arch. Tech.

Date: 1st April 2019

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Urban PLACE Map



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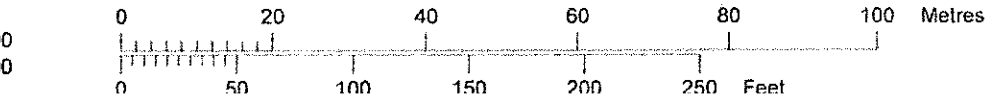
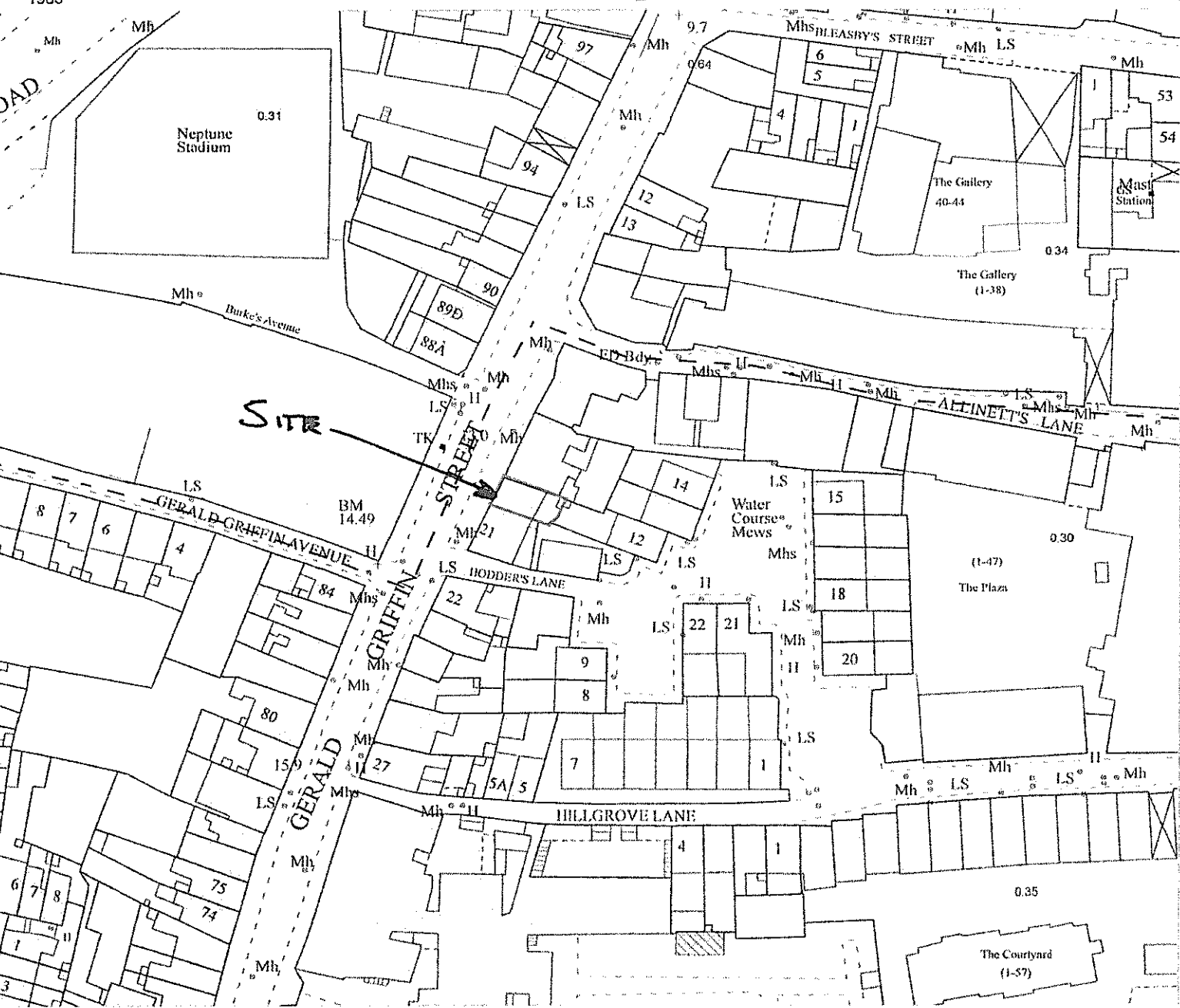
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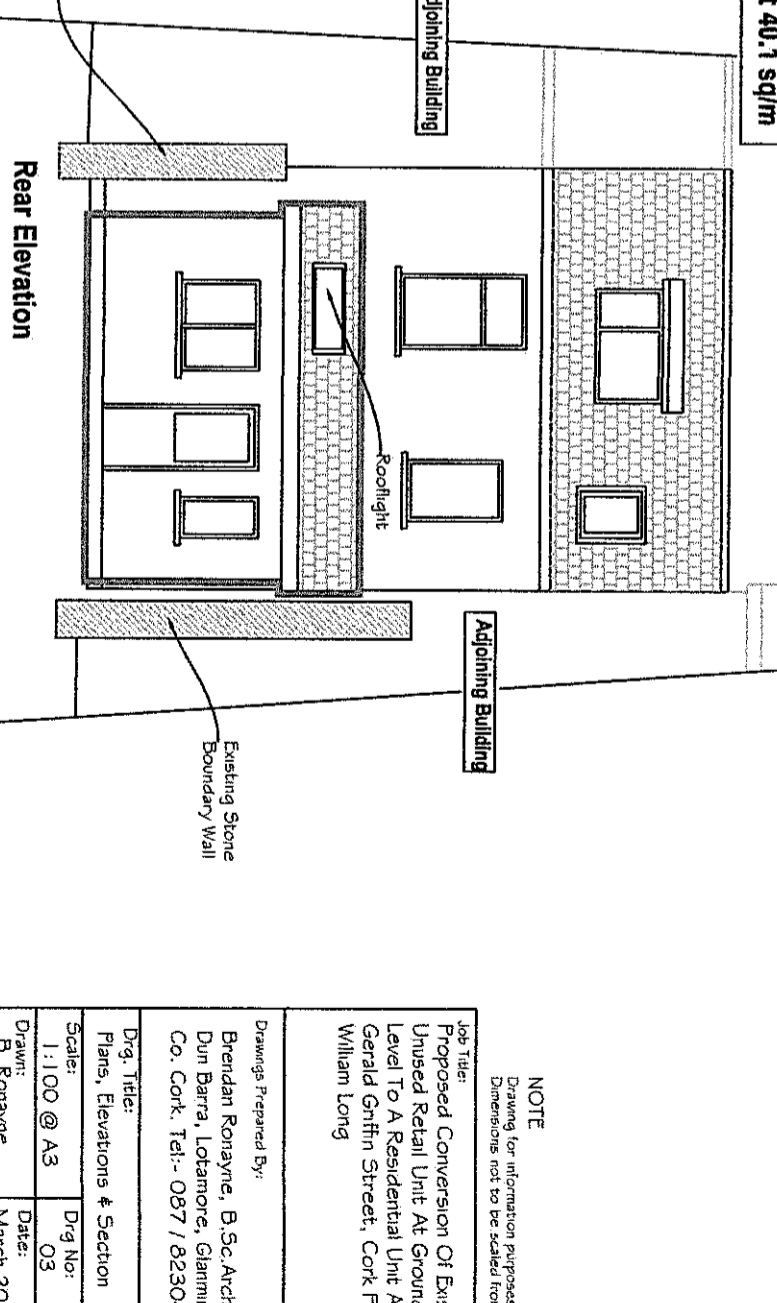
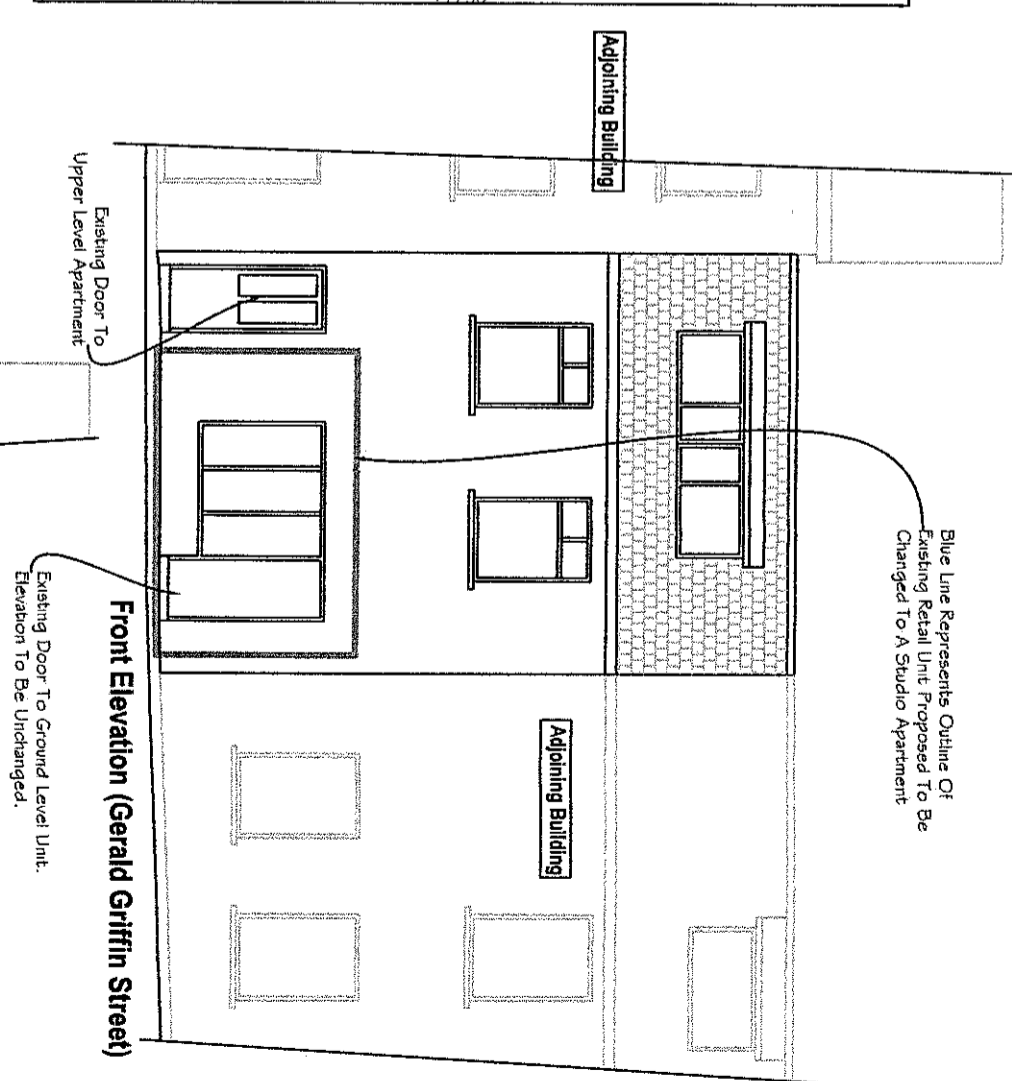
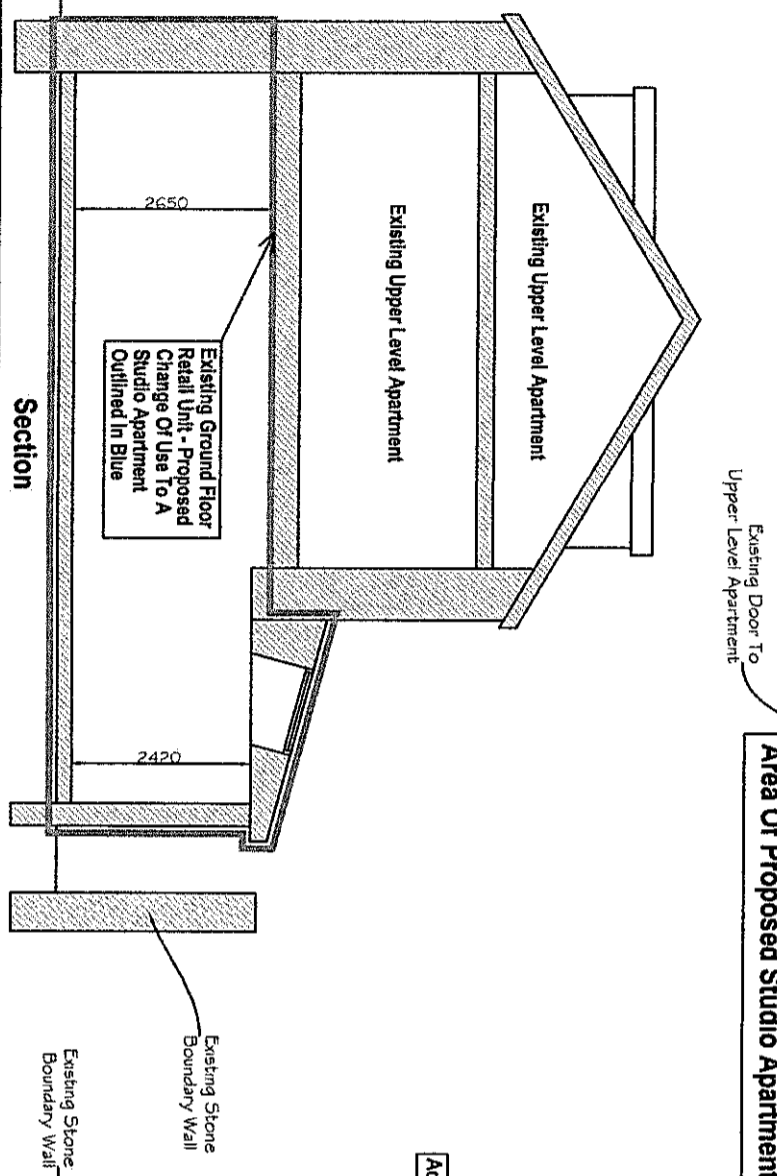
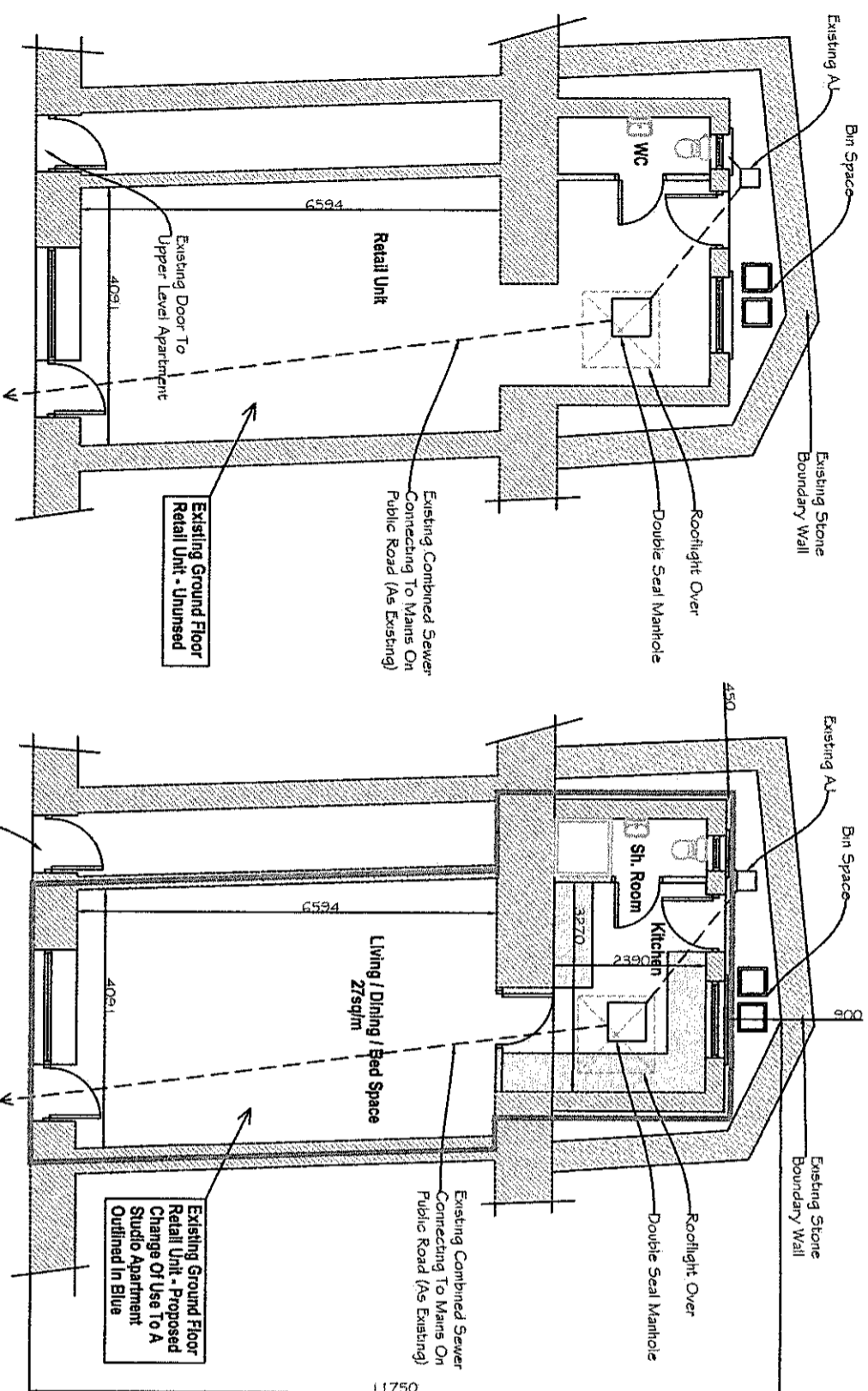
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Plot Ref. No. 25297506_1_1
Plot Date 29-MAY-2017

PROPOSED CHANGE OF USE OF GROUND FLOOR UNUSED UNIT FROM RETAIL TO STUDIO APARTMENT OUTLINED IN BLUE



Blue Line Represents Outline Of Existing Retail Unit Proposed To Be Changed To A Studio Apartment

Existing Door To Ground Level Unit. Elevation To Be Unchanged.

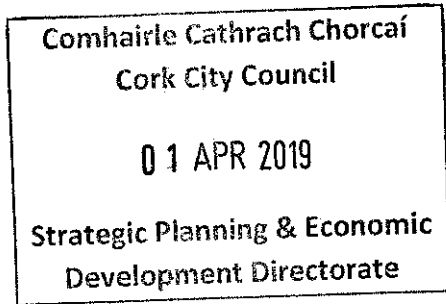
NOTE
Drawing for information purposes only
Dimensions not to be scaled from drawing

Job Title:
Proposed Conversion Of Existing Unused Retail Unit At Ground floor Level To A Residential Unit At 20 Gerald Griffin Street, Cork For William Long

Drawings Prepared By:
Brendan Ronayne, B.Sc. Arch. Tech, Dun Barra, Lismore, Glanmire, Co. Cork. Tel:- 087 / 8230477

Draw. Title:
Plans, Elevations & Section

Scale: 1:100 @ A3	Draw No: 03
Drawn: B. Ronayne	Date: March 2019



Brendan Ronayne, B.Sc.Arch.Tech
Lotamore,
Glanmire,
Co. Cork.
Tel:- 087 / 8230477
brendanronayne72@gmail.com

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

1st April 2019

RE:- Section 5 Declaration Application
For:- William Long
At:- 20 Gerald Griffin Street, Cork


Dear Sir or Madam,

Please find enclosed the following information with regard to a Section 5 Declaration Application at the above property.

- 2no. copies of completed application form.
- 2no. copies of an O.S. Map with the site outlined in red – Scale 1:1000.
- 2no. copies of a site plan with site outlined in red - Scale 1:200.
- 2no. copies of drawings of the portion of the property to which this application relates with the relevant areas outlined in blue – Scale 1:100.
- The sum of €80.00 representing the fee for this application.

If you require any further information about this application do not hesitate to contact me.

Yours sincerely,


Brendan Ronayne.
B.Sc.Arch.Tech.