

Mr. John McCormick,
McCormick Consulting Engineers,
25 Slievemish Park,
Kinsale Road,
Cork.

14th August, 2019

RE: Section 5 Declaration - 221 Blarney Road, Cork City.

Dear Mr. McCormick,

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

Having regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended, and
- (b) Articles 5(2), 9 and 10 and Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018,

the change of use of the premises from a vacant commercial unit to 2 no. 1 bedroomed apartments at the above address is considered to be **DEVELOPMENT** and is **NOT EXEMPTED DEVELOPMENT.**

Yours faithfully,

Linda Skillington
Administrative Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

Application type	SECTION 5 DECLARATION
Question	<i>Is the conversion of the above commercial property to 2 No. 1 bedroom apartments an exempt development under the Planning and Re-development (Amendment No. 2) Regulations 2018, based on the details provided below and the attached drawings 01 – 05?</i>
Location	221 Blarney Road, Cork City.
Applicant	Russell Chapman c/o John McCormick Consultants (Agent)
Date	13/08/2019
Recommendation	Is development and is not exempted development

INTERPRETATION

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 APPLICATION

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:

Is the conversion of the above commercial property to 2 No. 1 bedroom apartments an exempt development under the Planning and Re-development (Amendment No. 2) Regulations 2018, based on the details provided below and the attached drawings 01 – 05?

3. SITE DESCRIPTION

The subject property is a single storey former public house on Blarney Street, where it is zoned Residential, Local Services and Institutions, and where it is the policy of the Council :

To protect and provide for residential uses, local services, institutional use and civic uses.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the premises from a vacant public house to 2 no. 1 bedroom apartments.



Fig. 1: Google image inserted in August 2019.

5. RELEVANT PLANNING HISTORY

TP 11/34998 Retention permission granted for alterations and minor changes to front elevation and addition of rooflight to rear flat roof for planning granted under Planning Reference TP 07/31739 at 221 Blarney Street.

Applicant: Michael Cotter (Receiver).

TP 07/31739 Permission granted for the sub-division of pub with part change of use to pharmacy and two surgeries on the ground floor and for first floor extension for a restaurant (planning permission T.P. 05/29962 referds) with ground floor entrance, access stairs and ancillary site works.

TP 05/29962 Permission granted on appeal for extension to lounge / bar, incorporating a restaurant at first floor level, new ground floor entrance, access stairs and associated site works.

TP 04/28959 Permission refused for a first floor extension to the existing Lounge / bar, to incorporate a restaurant, external fire escape stairs, new ground floor entrance, access stairs and associated site works.

6. LEGISLATIVE PROVISIONS

6.1 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 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 (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(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.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 9

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

Article 10

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

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned

(6)

- (a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

- (b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.
- (c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—
 - i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
 - ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and
 - iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then 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).

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’. It is clear that the proposal constitutes a ‘material change in the use of any structures’. It is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION Is development

7.2 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 consider that the proposal comes within **subsections (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

In my opinion this proposal comes within the scope of section 4(2) as the works relate to a change of use. The substantive issues of the case are set out below.

The proposed works comprise of the following:

“Works proposed are a change of use of the above premises from a vacant commercial unit to 2 no. dwelling units”

Essentially this proposal involves the change of use of 221 Blarney Street (former Kennedy’s Bar) from a “vacant commercial unit” into 2 no. 1 bedroom units.

I note that this exemption is being applied for under Article 10 of the Planning and Development Regulations 2001 to 2018 which states that any proposed development seeking exemption under these regulations must meet three specific criteria specified in Article 10 (6) (c). These criteria are:

6 (c)

- i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
- ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and
- iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

I note the use of the phrasing “and” in section 6 (c) (ii) above which indicates that all three criteria must be met for an exemption to be granted. Each element of this section will be considered below.

- i) *the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

I note the planning history as stated in section 5 of this report. Permissions have been granted for extensions, sub-division and retention of minor alterations to facade for an extension for this property in 2004, 2005, 2007 and 2011 previously. I consider that this confirms that the structure was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 and therefore meets the requirement of section 6 (c) (i) above.

- ii) *the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and*

I note the phrasing “of its current use class” in section 6 (c) (ii) above which I consider indicates that the structure must have been in use as a use specified in Class 1, 2, 3 or 6 of Part 4 to Schedule 1 at the time the building became vacant. The final use of the property has been indicated under Q.2 of the Section 5 application form as being a bar, and a desktop study with an image from ‘Google Street View’ in Fig. 1 in this report supports this.

As this use class is not a class which is specified in section 6 (c) (ii), i.e. Class 1, 2, 3 or 6 of Part 4 to Schedule 1, it is not considered to meet the requirement of section 6 (c) (ii) above.

I note that the previous use of the building, from reviewing previous planning applications for the subject site, was as that of a day centre which would be considered to be Class 8 (d) of the uses specified in Part 4 of Schedule 1. This use would, also, not be considered to meet the requirement of section 6 (c) (ii) above

iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

I note that no evidence of the period of time for which the subject property has been vacant is included as part of the application for this exemption on behalf of the applicant, however, in Q.2 of the Section 5 application form, the Agent has indicated that it has been vacant for more than 2 years.

If all other criteria for exemption had been satisfactorily complied with, further information could be requested for documentary proof of the vacancy of the building for a period of 2 years or more immediately prior to the commencement of the proposed development.

However, as the proposed development does not comply with 6 (c) (ii) specified in section 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 it is not considered that an exemption applies under the Planning and Development (Amendment) (No. 2) Regulations 2018.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is not exempted development

8. 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.

Section 177U(9)

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.

8.1 Screening for Environmental Impact Assessment

Pursuant to article 103(1) of the Planning and Development Regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of, at the least, the nature, size or location of the proposed development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that **EIA is not required.**

8.2 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.**

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 5(2), 9 and 10 and Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018

the planning authority has concluded that —

- the proposed development does not comply with Article 10 (6) (c) (ii) of the Planning and Development Regulations 2001 to 2018

and therefore the planning authority considers that —

the change of use of the premises from a vacant commercial unit to 2 no. 1 bedroom apartments at 221 Blarney Road, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Helen O'Sullivan

Agreed MW. 13/08/19.

Helen O' Sullivan
A. Planner
08/8/2019

Comhairle Cathrach Chorcaí
Cork City Council
19 JUL 2019
R-Phost/E-Mail planning@corkcity.ie
Strategic Planning & Economic Development Directorate
Fón/Tel: 021-4924564/4321
Economic Development Directorate
Léara/Website: www.corkcity.ie

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

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

221 Blarney Road Cork
(Previously Kennedy's Bar)

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.

Is the conversion of the above commercial property to 2 No 1 bedroom apartments an exempt development under the Planning and Development (Amendment No. 2) Regulations 2018 Based on the details provided below and the attached drawings 01-05

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The property was previously a Bar with associated toilets and store rooms. The property has been vacant for more than 2 years. Prepared The apartments have been laid out to comply with the area requirements as recommended for new apartments

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	Existing 113.5m ² Proposed Apt 1-65m ² , Apt 2-48.5m ²
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) previous planning 07/31739 05/29962
(c) If concerning a change of use of land and /or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/ existing use (please circle)
Bar & associated store room, toilets	2 No 1 bed apartments

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		RUSSELL CHAPMAN	
Applicants Address		THRESHOLD 22 SOUTH MAU CORK CITY	
Person/Agent acting on behalf of the Applicant (if any):	Name:	John M ^c Cormick	
	Address:	M ^c Cormick Consultants Engineers 25 Sliemish Park Kinsale Rd, Cork	
	Telephone:		
	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	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	Proposed purchase of property	
If you are not the legal owner, please state the name and address of the owner if available	see Attached consent letter Denis O Sullivan	

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

Signature: Rosell Chyng / Josh McCannick (Agent)
Date: 18/6/19

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:

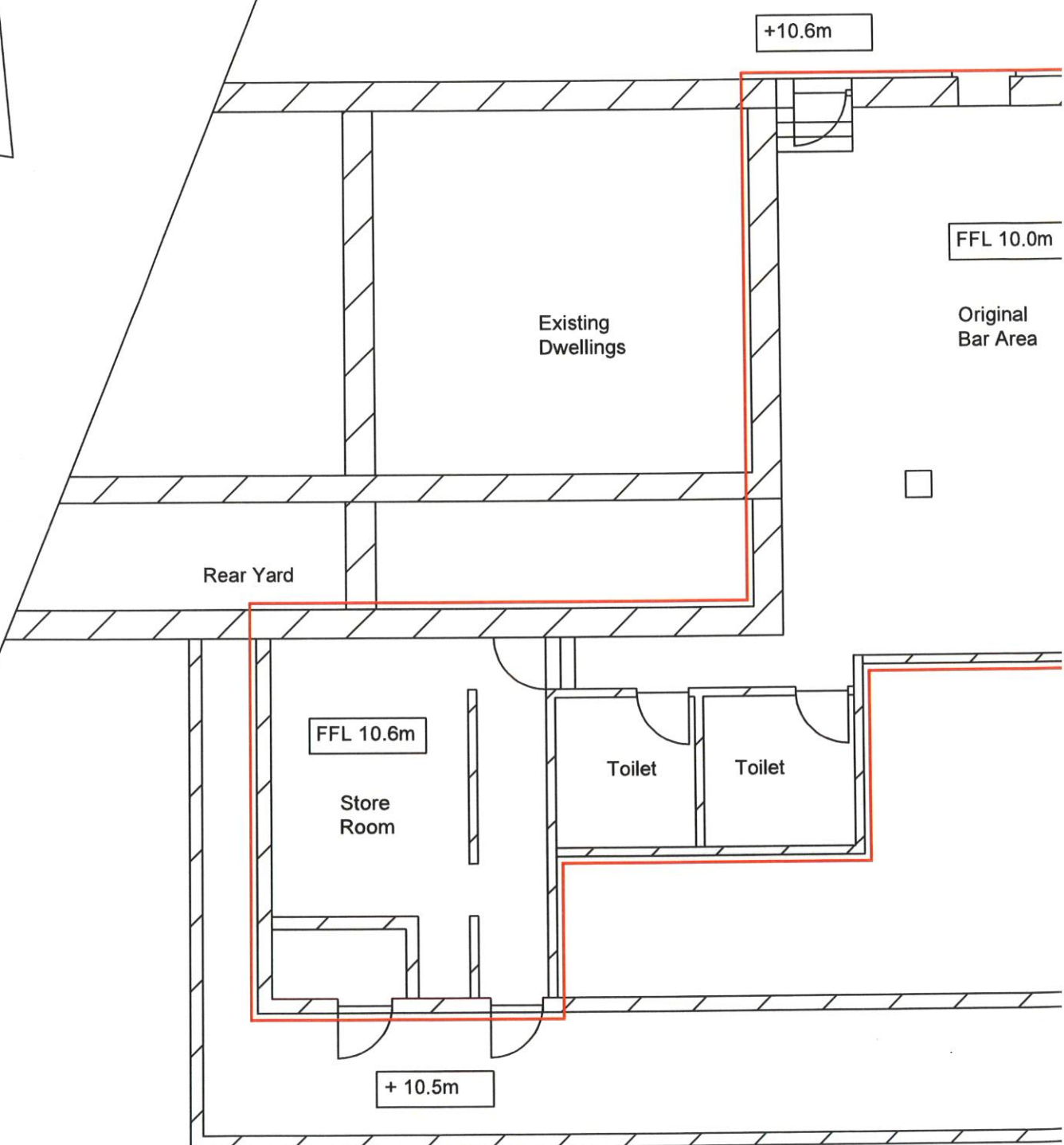
The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- 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.

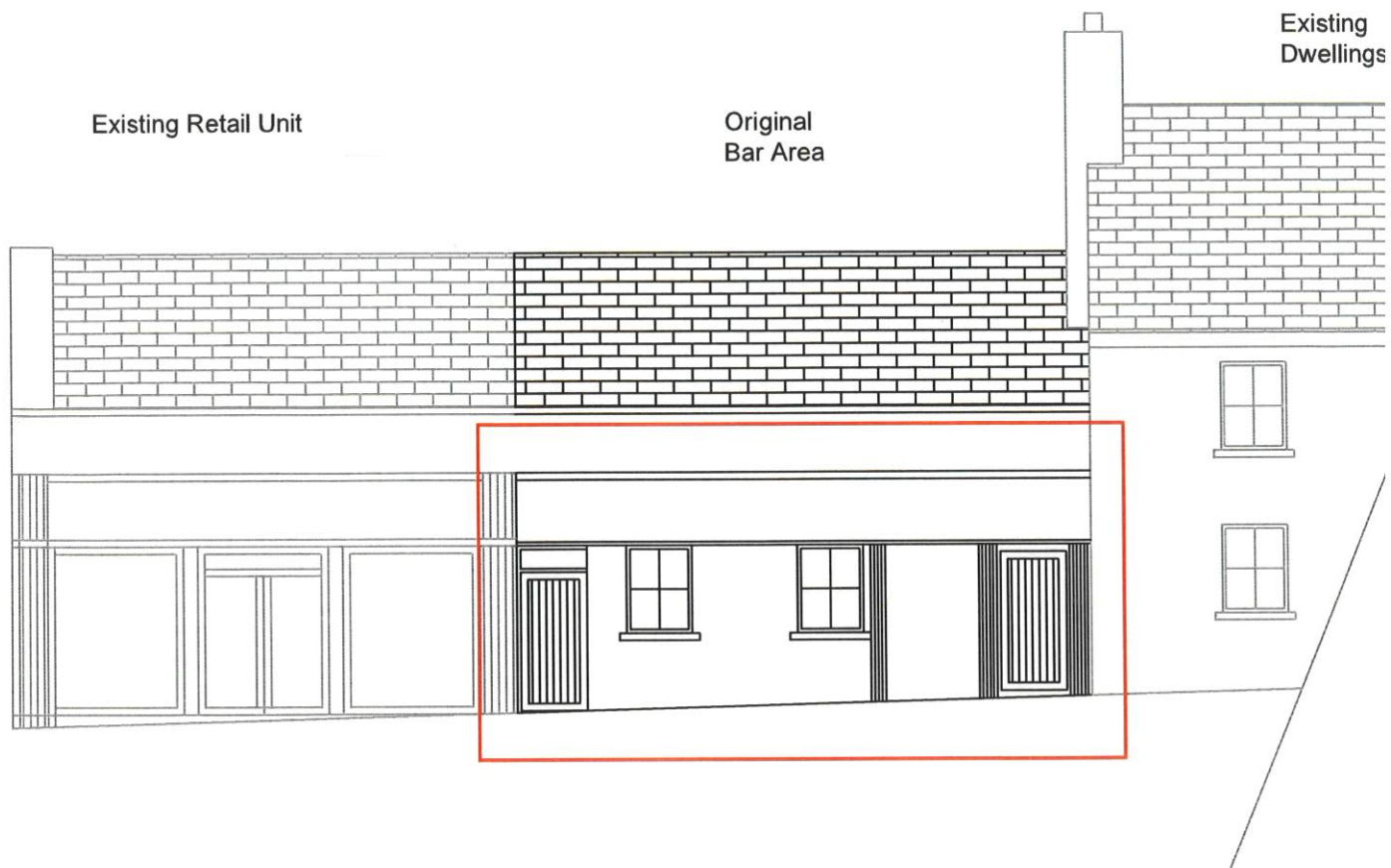
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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



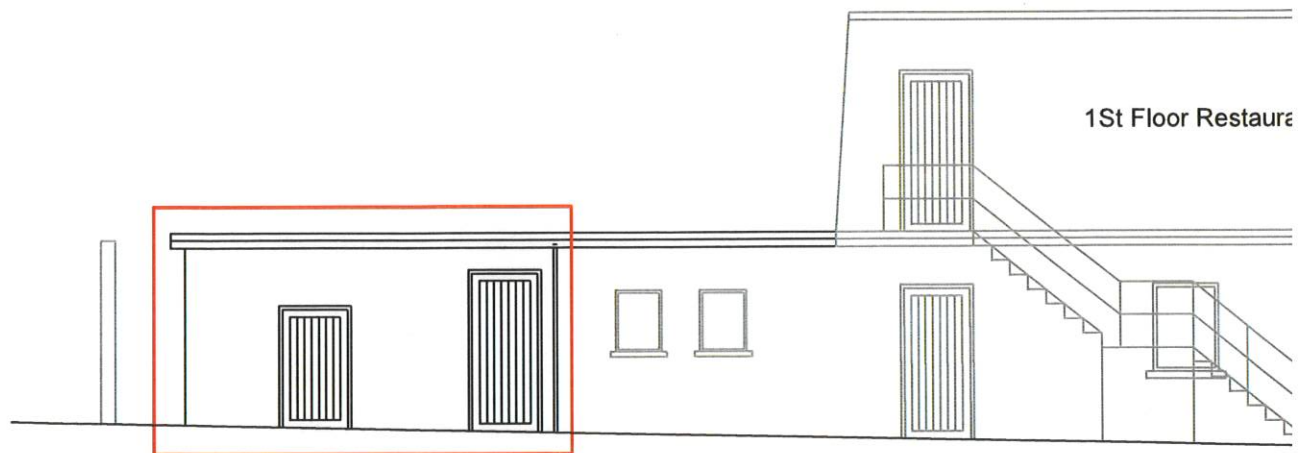
Existing Layout



Front Elevation (North)

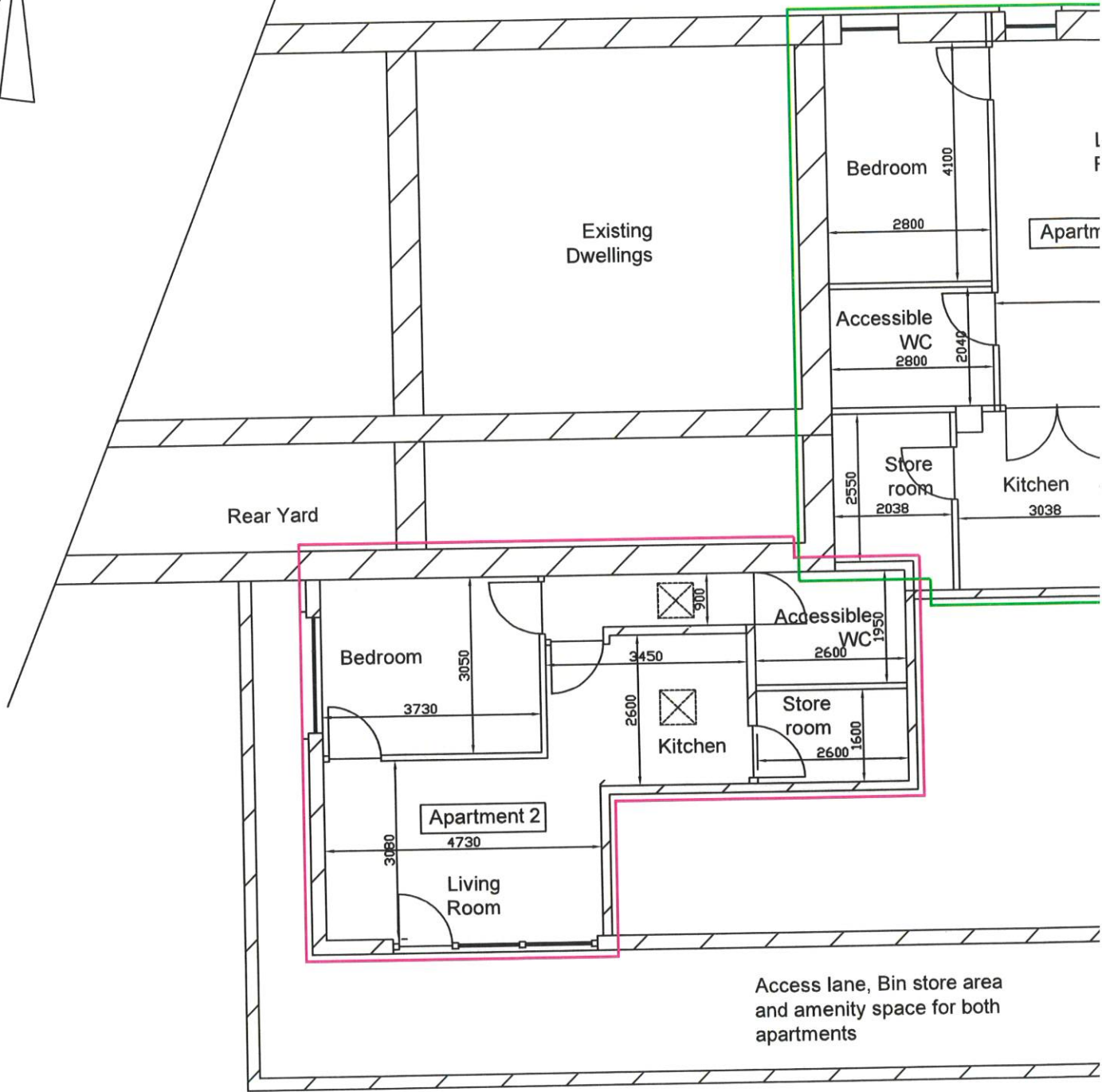


Side



Rear Elevation (South)

N



Proposed Layout

Area Description
Apartment Floor Area
Kitchen/Living Room Area
Bedroom Area
Storage Area

The layouts and areas indicate options to demonstrate that a functional layout. The final layout to be agreed with the Building Code.

1st Floor Restaurant

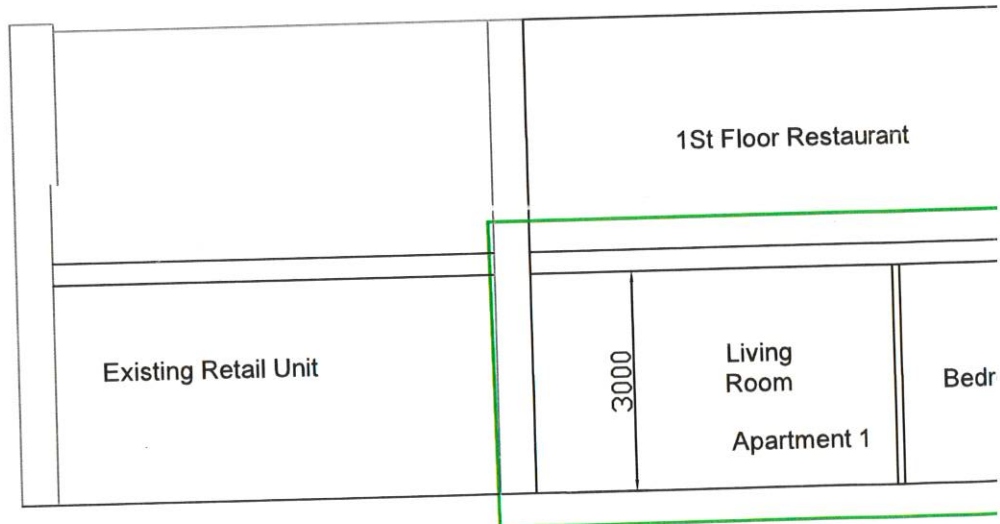


Existing Retail Unit

Apartment 1

Door replaced with full height glass door and frosted glass

Front Elevation (North)



1st Floor Restaurant

Existing Retail Unit

3000

Living Room

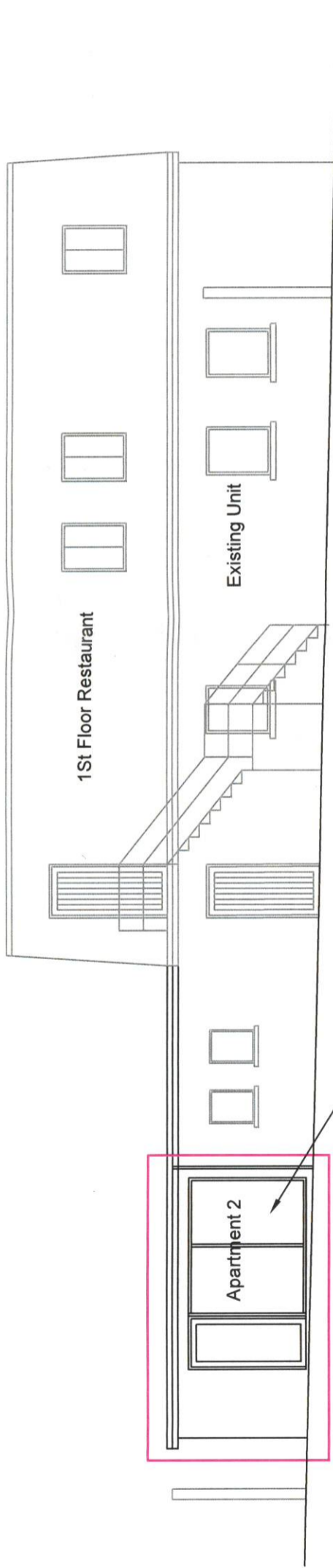
Bedr

Apartment 1

Section

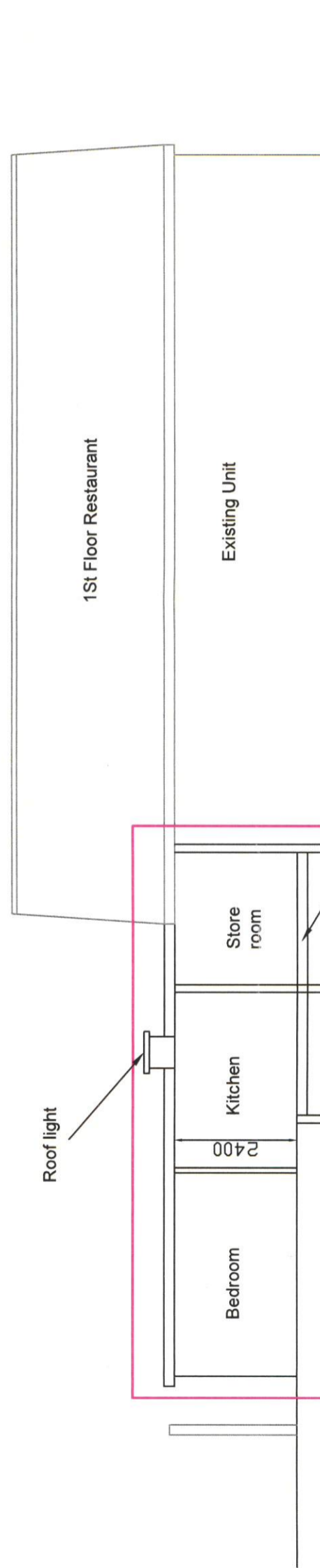
1. This drawing shall be read in conjunction with the specifications.
2. All work to be compliant with current Building Regulations and/or Home Bond standards unless a higher standard has been specified in the contract documents.
3. All dimensions to be checked on site by the contractor prior to commencing work. Any discrepancies to be reported to the Engineer.

Proposed Apartment 2
Outlined in Magenta



Doors and center pier replaced with full height glass windows and door

Rear Elevation (South)



Section

McCormick CONSULTING ENGINEERS <small>REGISTERED OFFICE ADDRESS: 25 SLEVE MGR PARK, TRINALE ROAD, CORK. Email: john@mccormick.ie</small> <small>TEL. NO. 087 2202794</small>	
PROJECT:	221 Blarney Road
CLIENT:	Theshold
PROJECT STAGE:	Section 5 Declaration
DRAWING TITLE:	Apartment No.2 Proposed Elevation & Section
SCALES:	1:100
DATES:	July 19
REVISION:	A
PROJECT NO:	190404
DRAWING NO:	S5D - 05
<small>© COPYRIGHT: THIS DRAWING CANNOT BE REPRODUCED OR TRANSMITTED WITHOUT WRITTEN CONSENT FROM MCCORMICK CONSULTING ENGINEERS.</small>	

Re: 221, Blarney Road, Cork

I, Donald O' Sullivan being the owner of the above property confirm that the representatives of Threshold have my permission to discuss my property with the relevant Planning Personnel.

Yours Faithfully,

Donald O Sullivan 31/5/2019.
Donald O' Sullivan