



# Comhairle Cathrach Chorcaí Cork City Council

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

Jane O'Connor,  
c/o Dennis O'Sullivan & Associates, Consulting Engineers,  
Joyce House,  
Barrack Square,  
Ballincollig,  
Cork.

06/12/2022

**RE: Section 5 Declaration R750/22 33 Marlboro Street, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 04<sup>th</sup> November 2022, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10 (6) of the Planning and Development Regulations 2001 (as amended),

It is considered that “*proposed change of use from retail to residential at first and second floor*” at 33 Marlboro Street, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 06<sup>th</sup> December 2022.

Is mise le meas,

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



**We are Cork.**

<b>PLANNER'S REPORT</b>		<b>Cork City Council</b> Development Management Strategic Planning and Economic Development
<b>Ref. R750/22</b>		
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Change of use of existing commercial premises at 1<sup>st</sup> floor and 2<sup>nd</sup> floor levels to 2 no. residential studio apartments.</i>	
<b>Location</b>	33 Marlboro Street	
<b>Applicant</b>	Jane O'Connor	
<b>Date</b>	06/01/2023	
<b>Recommendation</b>	<i>Is Development and Is Not Exempted Development</i>	

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:

### 3. Site Description

The site is an existing 3 storey mi terrace building located in the city centre. It is currently vacant.

### 4. Planning History

Two planning applications are referred to which are both attached to this site:

### 5. Legislative Provisions

#### 5.1 The Act

Section 2(1),

*"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),

*The following shall be exempted developments for the purposes of this Act-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 2001-2013.*

Section 5(1),

*(See section 1 of this report)*

Section 177U (9) (screening for appropriate assessment)

*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.*

**5.2 The Regulations**

Article 9 (1)

*Development to which article 6 relates shall not be exempted development for the purposes of the Act –*

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

Article 10 (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*

Article 10 (6) (as amended under SI 600 of 2001)

The Principal Regulations are amended in article 10 (as amended by article 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 ( S.I. No. 30 of 2018 )) by substituting for sub-article (6) the following:

- (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, 6 or 12 of Part 4 to Schedule 2.*
- (d) (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 -*
    - (l) primarily affect the interior of the structure,*

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) 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.

(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.

(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 sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

## 6. ASSESSMENT

### 6.1 Development



The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’

In this case, there is a material change of use from retail use at 1<sup>st</sup> and 2<sup>nd</sup> floor to residential use and therefore this constitutes development as defined above.

### 6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The structure is not a protected structure and there is no historical planning permissions known at the time of writing this report. There are therefore no known conditions which could be contradicted. The recent amendment to Article 10 of the Regulations relates to change of use to residential and allows for more exemptions. The scheme must meet the limitations of this article in order to be considered exempt. It is noted that the proposal is for less than 9 units and not change of use to the ground floor is proposed. Further to this, the existing shop front is to remain unaltered and works relate to the interior only. However, Article 10 (6) (c) (vi) requires “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.” The proposal does not meet all the required minimum standards as shown in the table below:

*Sustainable Urban Housing: Design Guidelines for New Apartments, 2018*

<b>Minimum Areas/Widths</b>	<b>Sus. Housing Design Standards for New Studio Apts (2018)</b>	<b>Proposed Unit 1</b>	<b>Proposed Unit 2</b>
<b>Overall Floor Area</b>	37sq.m	36.80sq.m	40.0sq.m
<b>Widths Areas for Living / Dining Rooms</b>	4sq.m	4.55sq.m	4.55sq.m
<b>Aggregate Floor Areas for Living / Dining / Kitchen Rooms</b>	30sq.m	28.75sq.m	31.95sq.m
<b>Width for Bedroom</b>	4sq.m	4.55sq.m	2.38sq.m
<b>Storage Space</b>	3sq.m	0sq.m	2.28sq.m
<b>Private Space</b>	4sq.m	0sq.m	0sq.m
<b>Communal Amenity Space</b>	4sq.m	0sq.m	0sq.m

elling floor areas of the proposed apartments and storage spaces do not 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" as required for exemption under Article 10 (6) (c) (vi) of the Planning And Development regulations 2001 (as amended).

## 7. ENVIRONMENTAL ASSESSMENT

### 7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) 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 environmental impact statement is not required to be submitted.

### 7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

## 8. Conclusion

The question has been asked whether "*Change if use of existing commercial premises at 1<sup>st</sup> floor and 2<sup>nd</sup> floor levels to 2 no. residential studio apartments*"

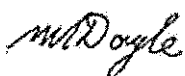
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed change of use is development and is not exempted development.

## 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
- Article 10 (6) of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed change of use from retail to residential at first and second floor is **Development** and is **Not Exempted Development**.



---

Mary Doyle  
Executive Planner



**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](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924709

Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

**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**

33 MARLBORO STREET, 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.*

CHANGE OF USE OF EXISTING COMMERCIAL PREMISES  
AT FIRST & SECOND FLOOR LEVELS TO 2 No. RESIDENTIAL  
STUDIO APARTMENTS.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

DEVELOPMENT MANAGEMENT

CCP

04 NOV 2022

CORK CITY COUNCIL

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

If so please supply details:

No

4. 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?

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

If so please supply details:

NOT KNOWN

**6. 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 <del>existing</del> /proposed structure/s	106.0 M <sup>2</sup> .
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> 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) N/A.
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ <u>previous</u> use (please circle)	<u>Proposed</u> /existing use (please circle)
COMMERCIAL	RESIDENTIAL (2 No. STUDIO APARTMENTS)

**7. 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		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: [Signature]

Date: 01.11.2022.



## CONTACT DETAILS

### 9. Applicant:

<b>Name(s)</b>	JANE O'CONNOR.
<b>Address</b>	35 CORNMARKE STREET, CORK.

### 10. Person/Agent acting on behalf of the Applicant (if any):

<b>Name(s):</b>	DENIS O' SULLIVAN & ASSOCIATES, CONSULTING ENGINEERS,		
<b>Address:</b>	JOYCE HOUSE, BARRACK SQUARE, BALLINCOURG, CORK.		
<b>Telephone:</b>	021. 4871781		
<b>E-mail address:</b>	info@dosa.ie		
<b>Should all correspondence be sent to the above address?</b> (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes	<input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 11. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Tel. No. \_\_\_\_\_  
Mobile No. \_\_\_\_\_  
Email Address: \_\_\_\_\_

For Office Use Only:

File Ref. No. \_\_\_\_\_

### ADVISORY NOTES:

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

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

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

*The application should be sent to the following address:*

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

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

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

### DATA PROTECTION

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

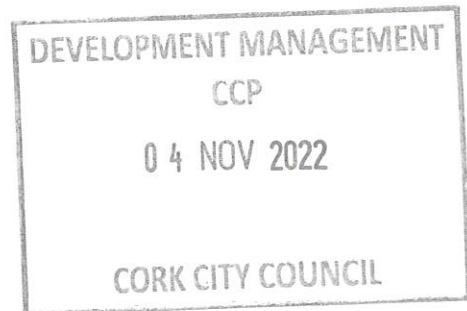


03 November 2022  
Our Ref. 6657/COS

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

Attention: Planning Department

Re: 33 Marlboro Street, Cork  
Section 5 Declaration



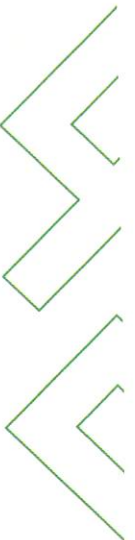
Dear Sir/Madam

We enclose herewith documentation in support of the above application.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ciarán O'Sullivan".

\_\_\_\_\_  
Ciarán O'Sullivan, BE. CEng. MIEI Eurlng  
On behalf of Denis O'Sullivan & Associates

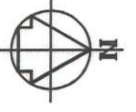






**Site Location Map**

Scale : 1:1000



**DOSA**  
DENIS O'SULLIVAN & ASSOCIATES  
CONSULTING ENGINEERS

Joyce House  
Borwick Square  
110, O'Connell St  
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info@dosa.ie  
www.dosa.ie

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REV.	DATE	APPROV.	DETAILS
A	01.11.22	CO'S	Issued for Planning

CLIENT	PROJECT
Ted O'Connor	33 Marlboro Street, Cork

DRAWING TITLE	SHEET	SCALE	PROJECTION	DRAWING NO.	STATUS
Site Location Map	A3	1:1000	6657	1000	A

**Description:**  
Historic 6<sup>th</sup> Latest Edition

**Publisher / Source:**  
Ordnance Survey Ireland (OSI)

**Data Source / Reference:**  
C K074

**Revision Date =**  
Survey Date = 31-Dec-1928  
Levelled Date = 31-Dec-1936

**File Format:**  
Tagged Image File Format (TIFF)

**File Name:**  
R\_502922\_1.tif

**Clip Extent / Area of Interest (AOI):**  
LX,LLY = 563948,5405,569487,9011  
LRX,LLY = 570958,5405,569487,9011  
URX,URY = 563948,5405,574681,9011  
URX,URY = 570958,5405,574681,9011

**Projection / Spatial Reference:**  
IRENE195\_ Irish\_Transverse\_Mercator

**Centre Point Coordinates:**  
X, Y = 567453,5405,572084,9011

**Data Extraction Date:**  
26-Oct-2022

**Product Version:**  
1.3

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Arna thiomnú agus ama fhóilsiú ag Suirbhíreachtí Ordánais Éireann, Páirc an Fhionnuisce, Baile Átha Cliath 8, Éire.

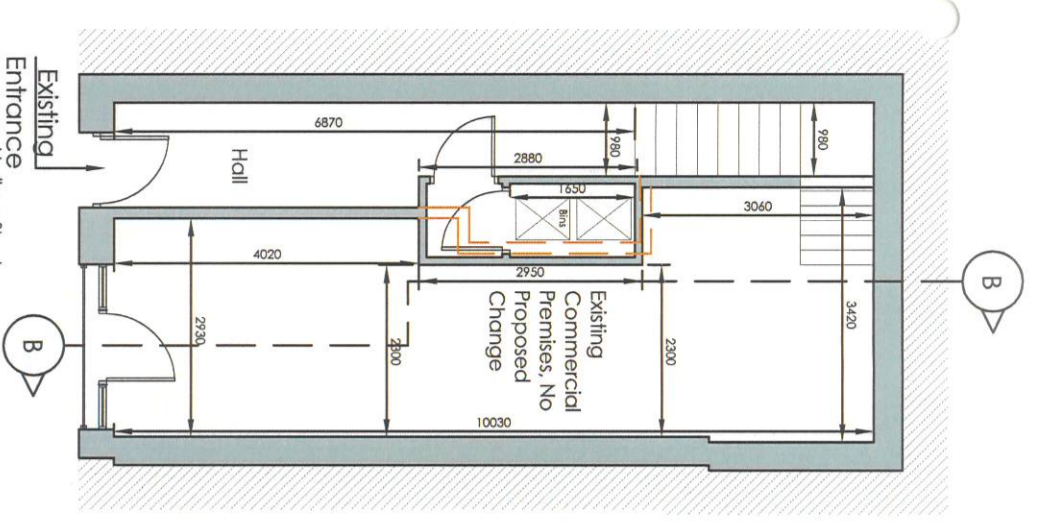
Sárann ardtírgeadh neamhdaralthe eolpicheart Shuirbhíreachtí Ordánais Éireann agus Rialtas na hÉireann.

Gach cead ar cosnamh. Ní ceadnóch aon chuid den fhóilseachán seo a chloipeáil, a athtírgeadh nó a threachtur in aon fhorm nó ar bhealach gan cead i scríbhinn riartháil ó úinéirí an chloipeáil.

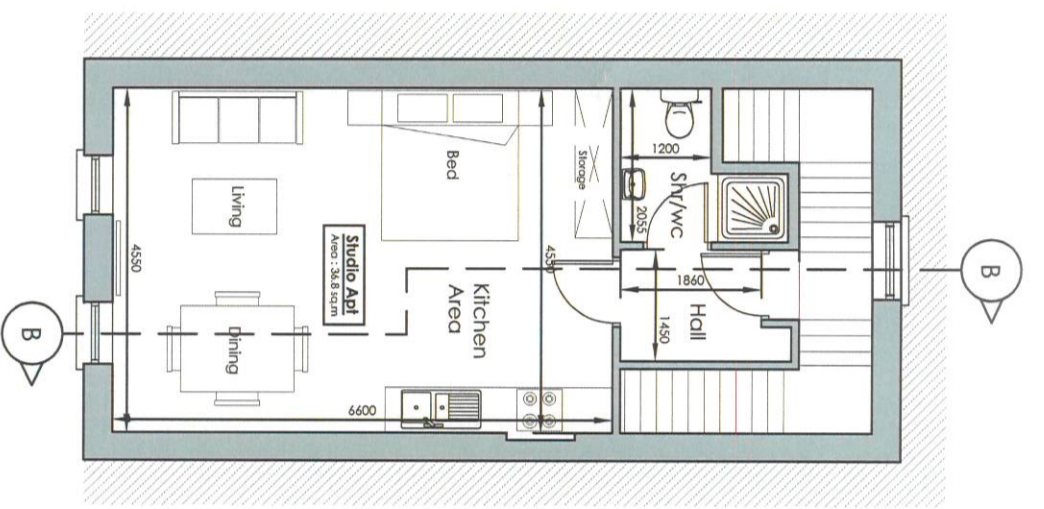
Ní hionann béthar, bealach nó cosán a bheith ar an léarscáil seo agus fianaise ar chread síl.

Ní tháirgeann léarscáil de chuid Ordánais Shuirbhíreachtí na hÉireann teorann phointí cleathúil de mhaoin riomh, nó úinéirí de ghrúpaí fríscúla.

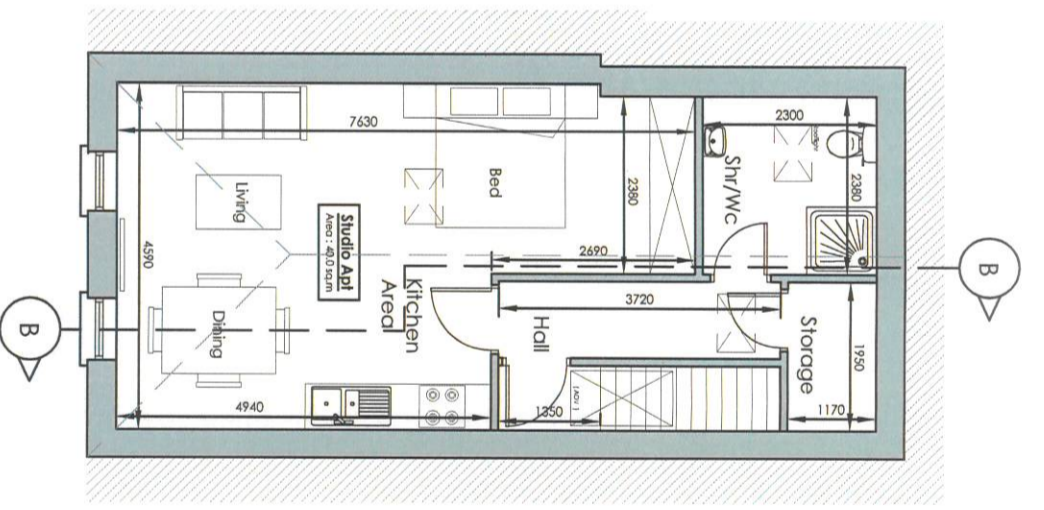




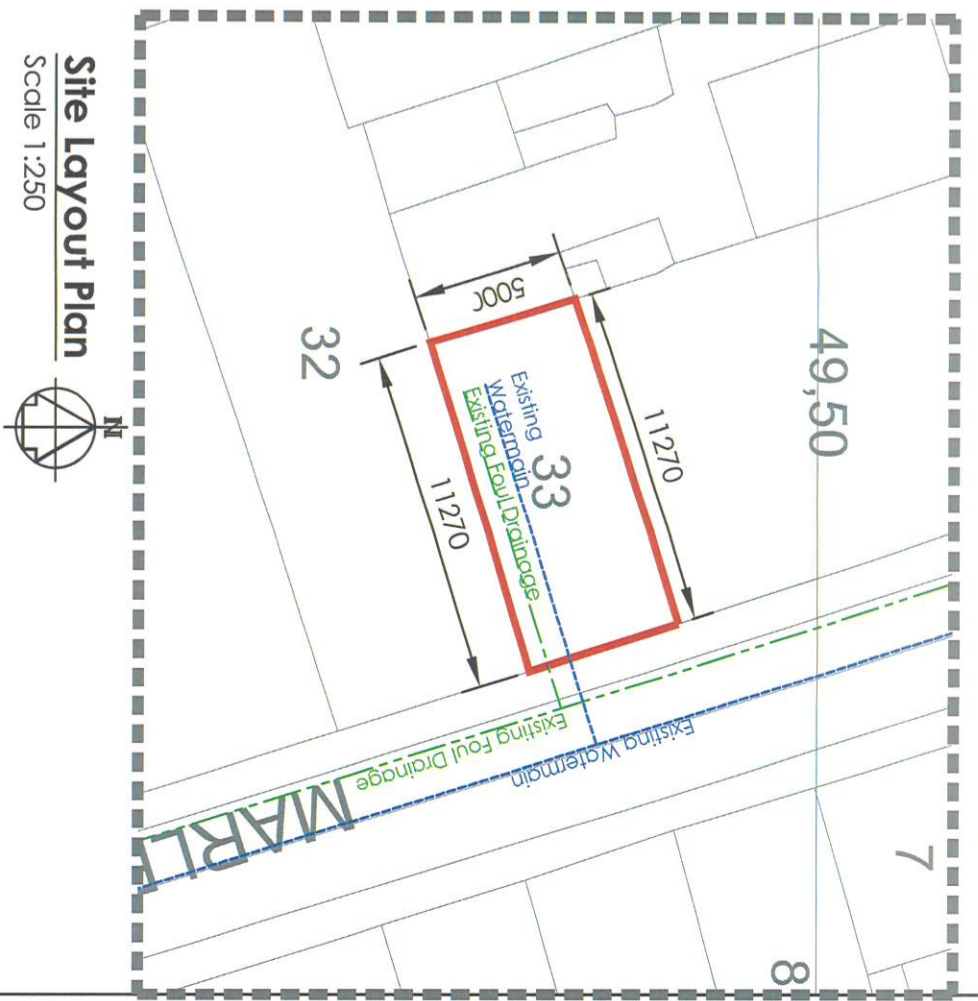
**Proposed Ground Floor Layout**  
Scale 1:100



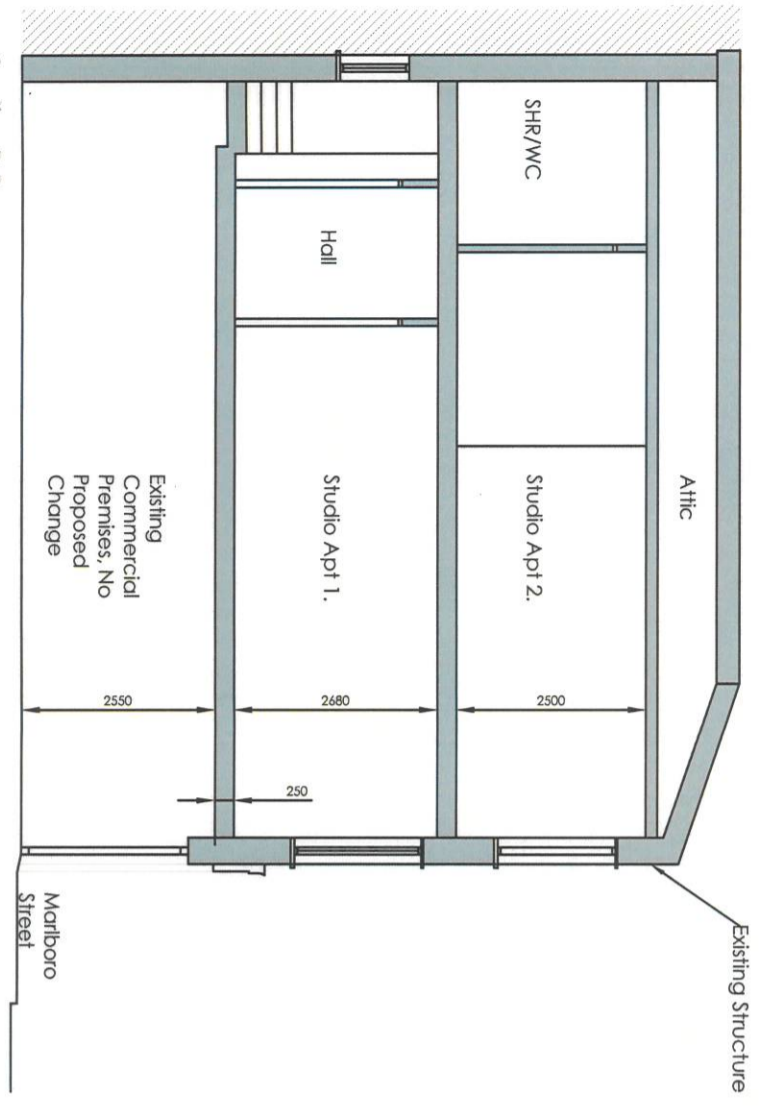
**Proposed First Floor Layout**  
Scale 1:100



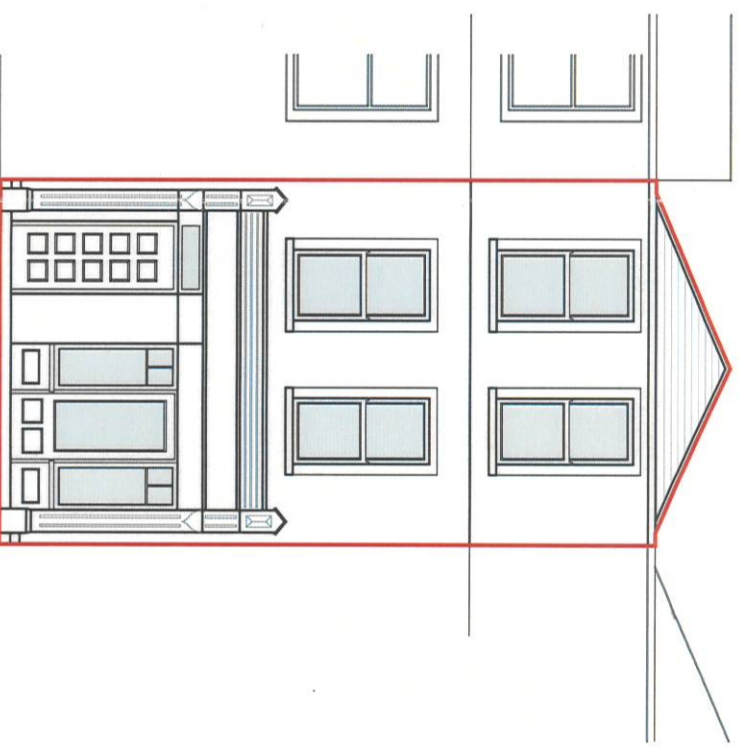
**Proposed Second Floor Layout**  
Scale 1:100



**Site Layout Plan**  
Scale 1:250



**Section B-B**  
Scale 1:100



**Front Elevation (No Change)**  
Scale 1:100

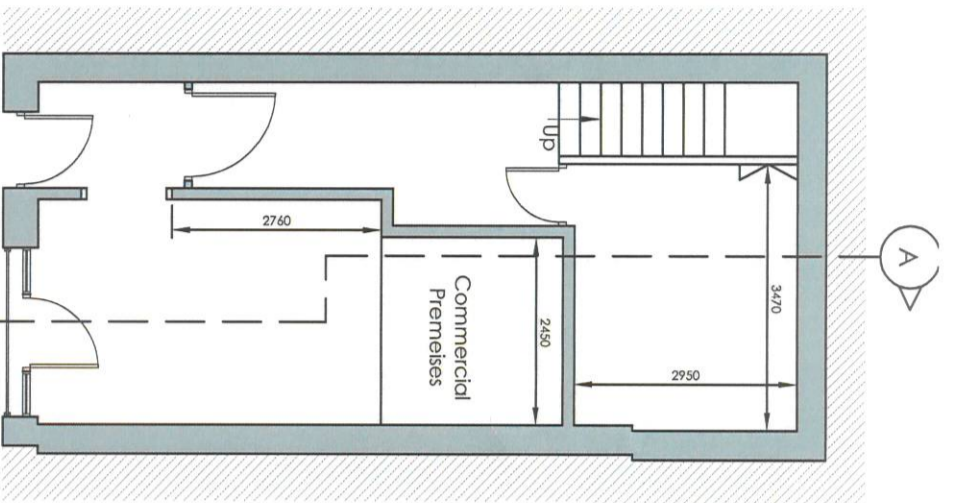
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REV.	A	P.N.	W.K.	C.O.S.	DATE	ISSUED FOR
						DETAILS
						Issued for Planning

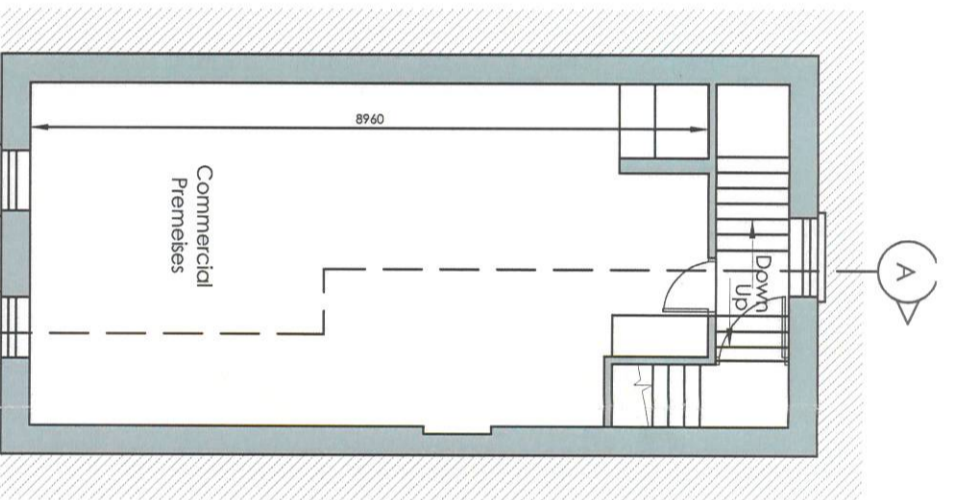
CLIENT	Ted O'Connor
PROJECT	33 Marlboro Street, Cork

DRAWING TITLE	Proposed Plans, Section, Elevation and Site Layout Plan
SHEET	A3
SCALE	1:100
PROJECT NO.	6657
DRAWING NO.	1001
STATUS	A

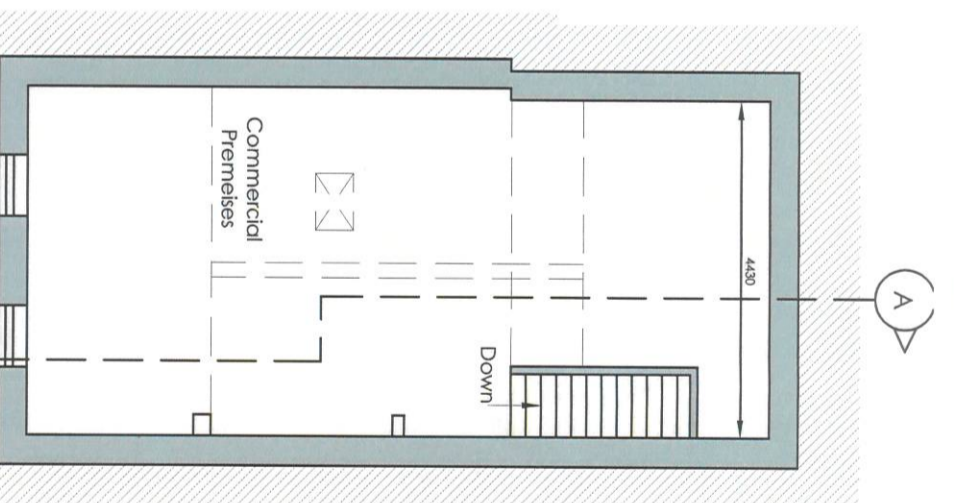




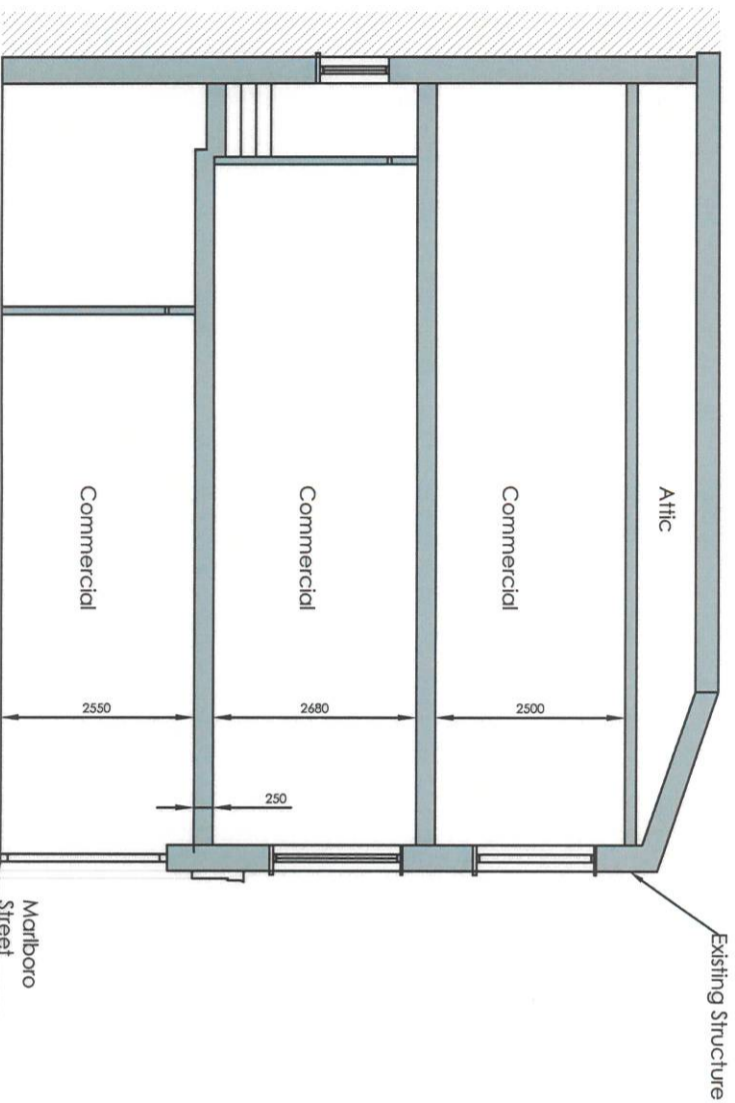
Ground Floor Plan  
Scale 1:100



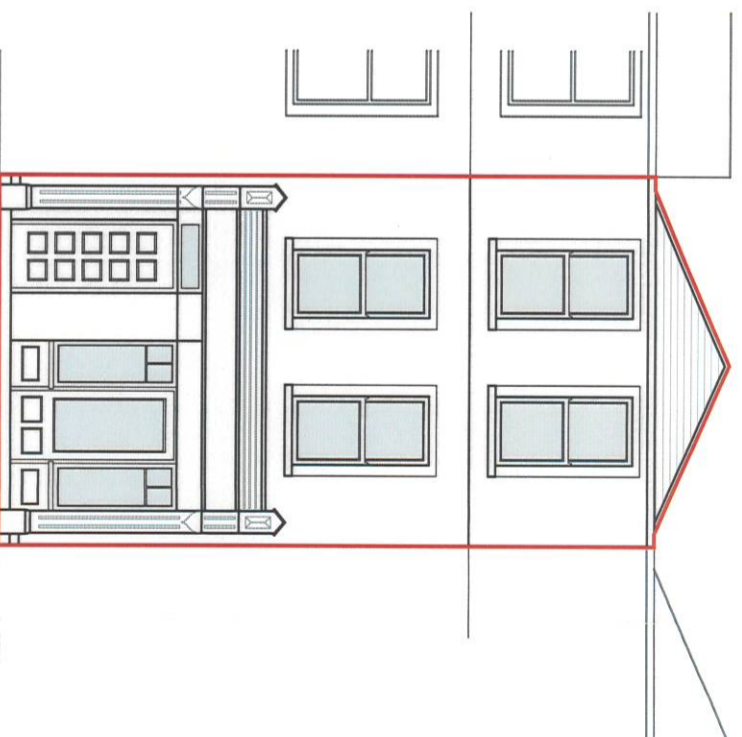
1st Floor Plan  
Scale 1:100



2nd Floor Plan  
Scale 1:100



Section A-A  
Scale 1:100



Existing Front Elevation  
Scale 1:100

REV.	DATE	BY	CHKD	APPVD	DETAIL
A	01.11.22				Issued for Planning

CLIENT	Ted O'Connor
PROJECT	33 Marlboro Street Cork

DRAWING TITLE	Existing Plans, Section and Elevation
SHEET	A3
SCALE	1:100

PROJECT NO.	6657
DRAWING NO.	1002
STATUS	A