



Comhairle Cathrach Chorcaí Cork City Council

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

Fergal O Dea
12 Tramway Terrace
Douglas
Cork

28th September 2020

RE: *Section 5 Declaration R601/20
No 1 Adare Mews, Tramway Terrace, Douglas*

Dear Sir/Madam,

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

In view of the above and having regard to —
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 medical consulting room to a proposed single dwelling unit at 1 Adare Mews, Tramway Terrace, Douglas, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

Yours Faithfully,

Kerry Bergin

*Assistant Staff Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council*



We are Cork.

PLANNER'S REPORT**Ref. R 601/20**

Cork City Council

Development Management
Strategic Planning and
Economic Development

Application type	SECTION 5 DECLARATION
Question	<i>Whether the change of use of the premises from a medical consulting room to a proposed single dwelling unit is development or is exempted development</i>
Location	1 Adare Mews, Tramway Terrace, Douglas, Cork
Applicant	Dr. Maurice Minogue (owner) c/o Fergal O'Dea (agent)
Date	24/09/2020
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

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, "Property was bought in 1984 by Doctor Maurice Minogue. Change of use was applied for in 1984 and obtained. Doctor Minogue is retired and currently has been letting out the consulting room to other tenants. He would now like to revert back to residential which is the prime reason for this declaration".

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Whether the change of use of the premises from a medical consulting room to a proposed single dwelling unit is development or is exempted development.

3. SITE DESCRIPTION

The subject property is on the ground floor a three-storey end-of-terrace building in the Existing Built-Up Area zoning. The general area contains a mixture of residential and commercial uses.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the premises from a medical consulting room into a ground floor, 2-bedroom apartment unit.

5. RELEVANT PLANNING HISTORY

1984 – change of use from residential use to medical consulting rooms

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 the following:

"the change of use of the premises from a medical consulting room to a proposed single dwelling unit."

Essentially this proposal involves the change of use of the ground floor of 1 Adare Terrace, Tramway Terrace, Douglas from a medical consulting room into 1 no. ground floor, 2 bedroom apartment.

I note that an exemption for a change of use of a commercial unit into a residential unit would be applied for under Article 10 of the Planning and Development Regulations 2001 to 2018, which state 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. Permission has been granted for a change of use on this property in 1984 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. These classes are defined as follows:

CLASS 1:

Use as a shop.

CLASS 2:

Use for the provision of—

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.

CLASS 3:

Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 6:

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

I note the application form indicates that the current use of the building is as a consultation room. This use would be considered to be Class 8 (a) of the uses specified in Part 4 of Schedule 1:

“as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose)”.

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.

- 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 indicating that the subject property has been vacant is included as part of the application for this exemption on behalf of the applicant. If all other criteria for

exemption have been satisfactorily complied with, further information should 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

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.**

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 —

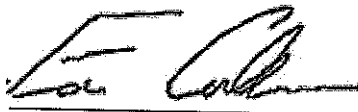
- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 5(2), 9 and 10 and Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018

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 medical consulting room to a proposed single dwelling unit at 1 Adare Mews, Tramway Terrace, Douglas, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**



Eoin Cullinane
Assistant Planner
18/09/2020

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

Líonra/Web: 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

NO 1 ADARE MEWS, TRAMWAY TERRACE,
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.

property was bought in 1984 by Dr Maurice Menogue. Change of use was applied for 1984 and obtained. Dr Menogue is retired and currently has been letting out the consulting room to other tenants. He would now like to revert back to Residential which is the prime reason for this Declaration.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Revert Consulting Rooms Reverting back to Residential (2 Bedroom apartment)
Current area of Consulting Room 53m²
Reverting back to Residential

Comhairle Cathrach Chorcaí
Cork City Council

11 SEP 2020

Strategic Planning & Economic
Development Directorate

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		
(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) _____
(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)	
<i>Doctors Consulting Rooms</i>	<i>Reverting back to Residential 2 bedroom apartment</i>	

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		<i>Dr Maurice Minogue</i>	
Applicants Address	<i>[Redacted]</i>		
	<i>[Redacted]</i>		
Person/Agent acting on behalf of the Applicant (if any):	Name:	<i>FERGAL O'DEA</i>	
	Address:	<i>12 TRAMWAY TERRACE, DOUGLAS, CO CORK</i>	
	Telephone:	<i>[Redacted]</i>	
	Fax:	<i>[Redacted]</i>	
	E-mail address:	<i>[Redacted]</i>	
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		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: _____

Jergal O' Da

Date: _____

11/09/20

.....

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.

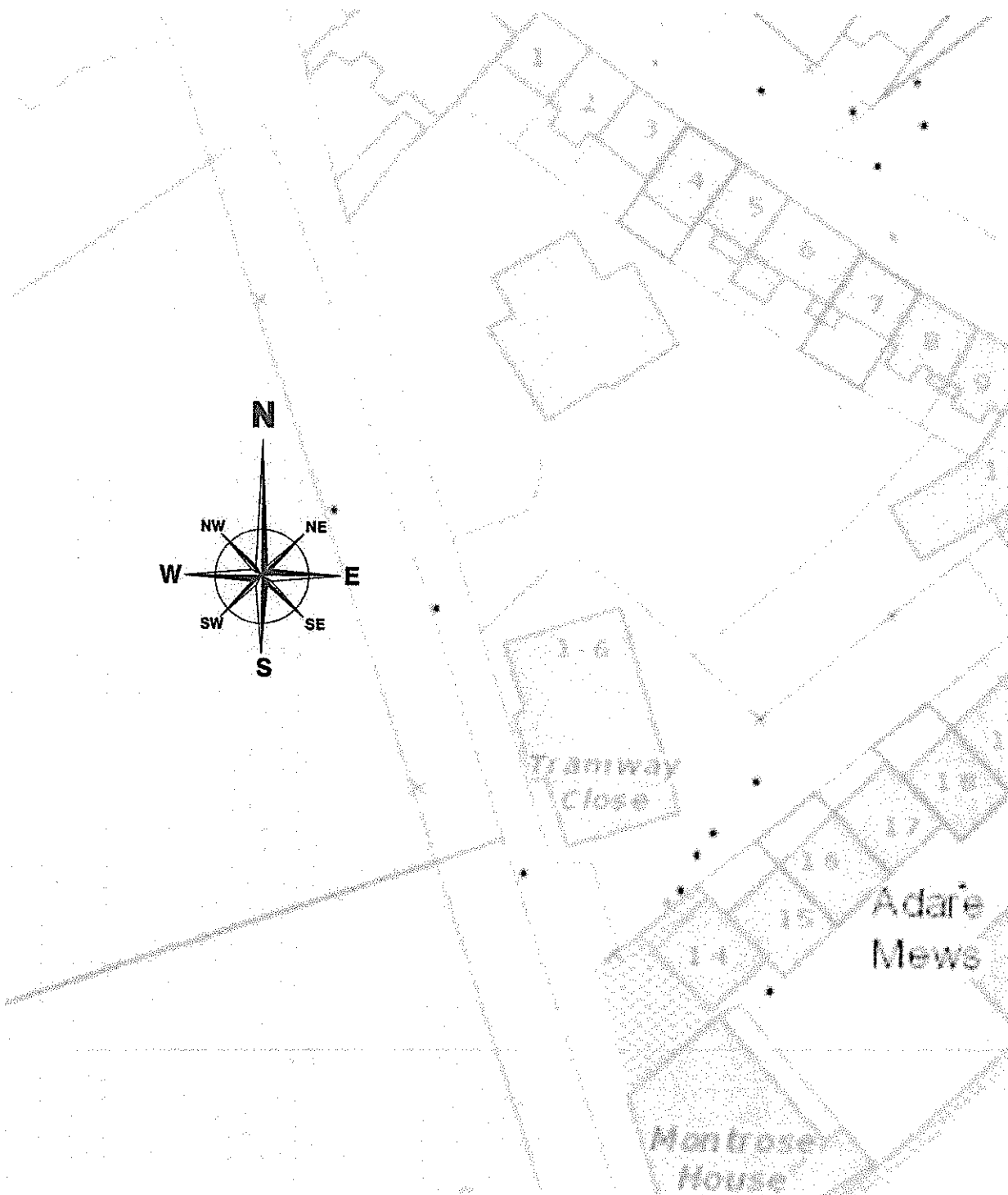
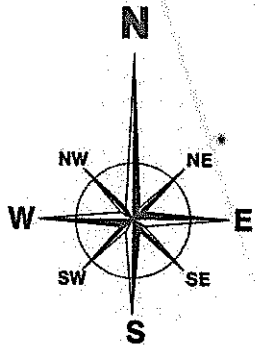
DATA PROTECTION

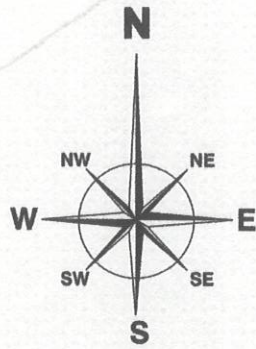
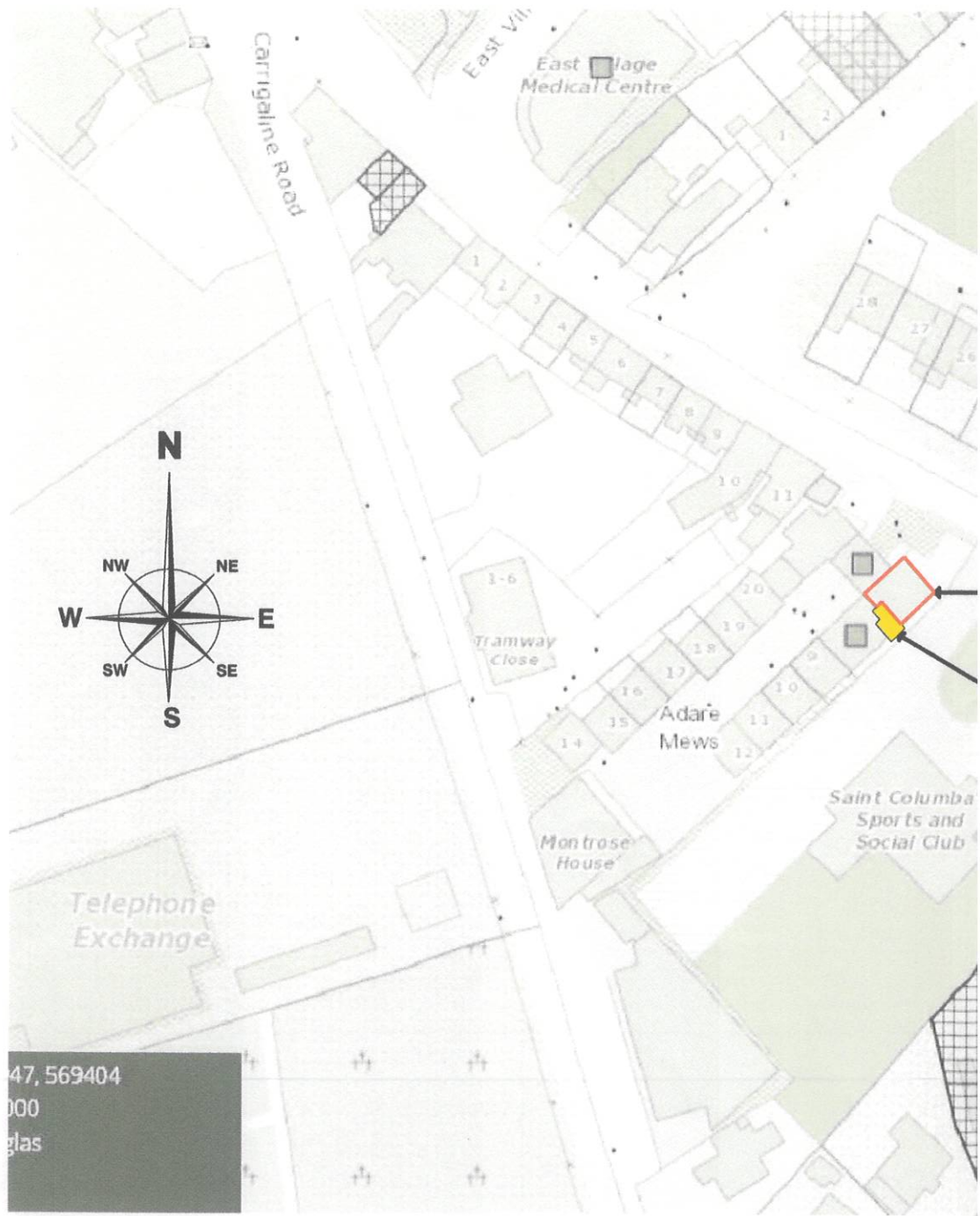
The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
 3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.





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