# Comhairle Cathrach Chorcaí Cork City Council



Halla na Cathrach Corcaigh T12 T997 City Hall Cork T12 T997

Deka Immobilien Gmbh c/o Orla O'Callaghan Cunnane Stratton Reynolds Cotters Street Cork

07/09/18

Reference:	Ref. R480 /18
Application type	SECTION 5 DECLARATION
Question	Whether the subdivision of three units to form five units at units 33-36 Mahon Point Shopping Centre is development or is exempted development.
Location	Unit 33-36, Mahon Point Shopping Centre
Applicant	Deka Immobilien Gmbh (owners) c/o Cunnane Stratton Reynolds (agent)

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

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

the planning authority has concluded that —

- the proposal comes within the scope of the definition of 'development' as defined in section 3 of the Planning and Development Act, 2000 as amended,
- the proposal involves the internal subdivision of unit 34/35 into two units and internal subdivision of unit 36 into two units with other internal alterations,
- the proposal involves minor rearranging of the partition between unit 33 and unit 34/35, however this is considered to be *de minimis*,
- the proposal affects only the interior of a structure and does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures,
- no new or material planning impacts will arise as a consequence of the proposal, and
- the proposal therefore comes within the scope of section 4(1)(h) of the Planning and Development Act 2000, as amended,

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PLANNER'S REPORT

Ref. R 480/18

Cork City Council

Development Management
Strategic Planning and
Economic Development

Application type SECTION 5 DECLARATION

Question Whether the subdivision of three units to form five units at units 33-

36 Mahon Point Shopping Centre is development or is exempted

development.

Location Unit 33-36, Mahon Point Shopping Centre

Applicant Deka Immobilien Gmbh (owners) c/o Cunnane Stratton Reynolds

(agent)

Date 03/09/2018

Recommendation Is development and is 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,

"Whether the subdivision three no. units (namely Carraig Dunn, Pamela Scott and Trespass) to form five no. units is or is not exempted development at Units 33-36 Mahon Point Shopping Centre, Mahon, Cork?"

In my opinion the intention of the request is clear.

# 3. SITE DESCRIPTION

The subject property comprises three units on the first (upper) floor of the Mahon Point Shopping Centre. The permitted and established use of these units are all as a shop.

# 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development comprises changing 3 existing shop units within the shopping centre into 5 units.

#### 5. RELEVANT PLANNING HISTORY

The shopping centre has an extensive planning history however the following are of note:

#### 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 as amended

#### Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

#### Article 9

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

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

#### CONCLUSION

Is development

#### 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).

I not the nature and scale of the existing units, the proposed units and the overall shopping centre itself, and I do not consider that in this case any material or new planning impacts would arise.

Essentially this issue involves the internal subdivision of unit 34/35 into two units and unit 36 into two units, with other internal alterations. It also involves internal alterations to unit 33. It also involves the "ceding" of part of unit 33 to unit 34/35, however as set out above I consider this to be *de minimis* having regard to the relatively minor scale and scope of these works within the context of the proposal at hand and the existing shopping centre itself. Having regard to the interpretations and decisions of An Bord Pleanála set out in the precedent cases above, I consider that the proposed works as set out in the question accompanying documentation submitted, is exempted development under section 4(1)(h) of the Act.

#### Section 4(2)

I do not consider that the proposal comes within the scope of section 4(2) of the Act.

#### Restrictions on exemption

I do not consider that any apply in this instance.

#### CONCLUSION

Is 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**.

in Charcal noit Horac.

CUNNANE STRATTON REYNOLDS

CSR Ref: 18xxx/ooc/140618

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



By Hand

14th June 2018

Section 5 Reference with respect to the units occupied by Carraig Donn, Re: Pamela Scott and Trespass (units 33-36) at Mahon Point Shopping Centre, Mahon, Cork as to:

1. Whether the subdivision of three no. units to form 5 no. units is or is not exempted development.

#### 1.0 Introduction

We make the following submission to Cork City Council under the provisions of Section 5 of the Planning and Development Act 2000 (as amended). This submission is made on behalf of Deka Immobilien Investment Gmbh, owners of Mahon Point Shopping Centre.

The submission is accompanied by a cheque made payable to Cork City Council in respect of the prescribed fee of €80.

We are of the view that the subdivision of 3 no. units to form 5 no. units, is exempted development under the provisions of Section 4(1) (h) of the Planning and Development Act 2000 (as amended) which states that the following shall be exempted developments for the purposes of the Act:

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

We submit that it is exempted development given the context of the location of the units within an existing shopping centre and the minor external alterations proposed.

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Curnana Stration Reynolds registered business name of Curnana Stration Reynolds Ltd. Reg No; 354188 Reg Office: 3 Molesworth Plate Dublin 2

The proposed development in this case could not be described as "materially affecting the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of the neighbouring structures".

#### 2.0 Site Location

The relevant units are located on the first floor of Mahon Point Shopping Centre, Mahon, Cork. Mahon Point plays an important role in the City's retail hierarchy. There have been a number of planning applications since the parent permission (Cork City Council ref 99/23033/ An Bord Pleanála ref PL28.124788) for the shopping centre was permitted. We note that the parent consent does not restrict the subdivision of units.

Under Cork City Council ref 16/37147 planning permission was granted for the reconfiguration and amalgamation of units 33-36 and the provision of mezzanine level floorspace. This permission which would have resulted in additional floorspace of 389.8 sq. m. was not implemented.

The current proposal provides for a reduction in floorspace over that which is on site (a reduction of 399.99 sq. m.) as the development provides for removal of internal mezzanine floorspaces areas (including minor reconfigurations of back of house partitions. All these works are entirely in keeping with provisions of Section 4(1)(h) of the Planning and Development Act.

### 3.0 Planning Policy Context

The proposal is in accordance with the planning policy for Mahon as set out in the Cork City Development Plan 2015.

Mahon is designated as a District Centre in the Cork City retail hierarchy. Zoning objective Z08 which relates is "to provide for and/or improve district centres as mixed use centres, with a primary retail function which also act as a focus for a range of services".

Objective 4.4 of the Development Plan seeks

"to support the vitality and viability of Suburban District Centres to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas, with an emphasis on convenience and appropriate (lower order) comparison shopping, in order to protect the primacy of Cork City Centre".

The Cork Joint Retail Strategy recognises the particular role of Mahon Point in the retail hierarchy

"Mahon District Centre which has a wider and higher order range of comparison floorspace and an adjacent retail warehouse park, and performs a different role and function to the other district centres within the Metropolitan Area".

The role of Mahon as an important location for comparison shopping was also confirmed by the Metropolitan Cork Joint Retail Study 2013 in which survey feedback revealed:

"The highest percentage of respondents who were surveyed in the City Centre (34.2%) and Mahon Shopping Centre (28.6%) were in these centres for comparison shopping purposes. A further 19.8% of respondents interviewed within the City Centre and 18.2% of respondents interviewed within Mahon Shopping Centre were 'browsing around the shops'. The results for Cork City

identify its role as the main centre for comparison shopping within the catchment area and the high proportion of respondents who were carrying out comparison shopping within Mahon demonstrate the role of this district centre as an important location for comparison shopping".

#### 4.0 Section 5 Question

As set out above, we ask Cork City Council to accept that the subdivision of the three no. units to form 5 no. units (with associated internal alterations) at Mahon Point Shopping Centre is or is not exempted development. We are of the view that no change of use is occurring and that the internal works that are occurring are exempted in that they do not effect he external appearance of the structure (the Shopping Centre).

Section 3 Part 1 of the Planning and Development Act 2000 (as amended) states that:

"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".

Works are defined under Section 2 of the Act as "includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Works are proposed to take place in this instance. However we submit that they are exempt as per Section 4 (1) which goes on to state that "The following shall be exempted development for the purposes of this Act –

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

The alterations proposed are mostly internal with minor alterations to the shopfronts internal mall elevation to allow for the operation of 5 no. physically separate retail units.

#### 5.0 Subdivision

The works necessary for the subdivision can be seen on the enclosed drawings by PM Group and will include:

- The provision of additional internal walls to subdivide three no units into 5 no. units;
- Minor alterations to the front elevations including two additional unit entrances to serve the two additional units and new shopfronts.

The proposed alterations are considered to be minor in nature. The proposal will result in a reduction in floorspace due to the removal of existing mezzanine that is not required by the future occupants but the provision of two additional units which will contribute to retail diversity within the district centre.

#### 6.0 Precedent

There are a number of precedent cases which we can refer to:

An Bord Pleanála under ref. PL29N.RL2308 decided that the proposed subdivision of an existing anchor retail unit, to create two new retail units plus an internal shared lobby service

area, at Block K, The River Centre, Pelletstown, Dublin 15, is development and is exempted development.

The Board in this case concluded that:

- a) The proposed subdivision of an existing anchor retail unit, to create two new retail units plus an internal shared lobby service area, does not constitute a material change in the use of any structure or other land.
- b) The proposed subdivision involves the carrying out of works and is, therefore, development.
- c) The said works affect only the interior of the structure or so 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, and
- d) The said subdivision of the shop unit comes within the scope of the exempted development provisions of section 4(1)(h) of the Planning and Development Act, 2000.

An Board Pleanála ref PL62RL713 related to the subdivision of shop units at Market Cross, Kilkenny. The Board determined that the subdivision of the shop units came within the scope of Section 4(1)(g) of the 1963 Act (which has the same wording as Section 4(1)(h) of the current PDA) and hence was exempted development. Although this was under the previous Act, we submit that the principle of the determination still applies. As noted on the file for ref. 52RL2241, it would appear that there is no Inspectors report on file for ref. PL62RL713 but that the Inspector concerned, Mr. Liam Byrne, attended the initial stages of the Boards meeting, and he advised –

- That the subdivision did not involve a material change of use, and
- That the subdivision came within the scope of Section 4 (1)(g) of the Act

The Board in ref PL06S.RL3420 determined that the subdivision of Unit 16 is development and is exempted development at Cherry Orchard Industrial Estate, Ballyfermot, Dublin. The Inspector in this case noted that the subdivision per se has not led to change of use in Unit 16. We note that there will be no change of use in the proposal currently before the Council.

The Board's rulings in the above cases makes it clear in our view that there is sufficient scope under established statute to consider the proposal as set out herein to be exempt under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

We also respectfully direct the Council to the matter of a Section 5 in Opera Lane, Cork City, which considered amalgamation of units and found same as exempted development. This decision is included as Appendix A for reference purposes.

#### 7.0 Conclusion

In summary, it is our view that the subdivision of 3 no. units to from 5 no. units at Mahon Point Shopping Centre should be regarded as exempted development under:

Section 4(1) (h) of the Planning and Development Act 2000 (as amended).

I trust that you will have regard to the above in your deliberations and I look forward to a favourable outcome in due course. Please do not hesitate to contact me should you require any additional information.

Yours sincerely,

Orle O'Callaghan

Orla O'Callaghan BA MPlan
Executive Planner
Cunnane Stratton Reynolds

#### Encl.

- Completed Section 5 Declaration Application Form
- Site location map and drawings by PM Group

Drwg no. IE0310053-48-DR-0001 Site Location Plan

Drwg no. IE0310053-48-DR-0011 Ground Floor Plan

Drwg no. IE0310053-48-DR-004 Part Upper Ground Floor Plan as existing

Drwg no. IE0310053-48-DR-0014 Part Upper Ground Floor Mezzanine as existing

Drwg no. IE0310053-48-DR-0012 Proposed Part Upper Ground Floor Plan

Dwrg no. IE0310053-48-DR-0013 Existing and Proposed Sections

Cheque for €80 in respect of Section 5 Declaration Fee

#### Appendix A

# Compairle Cathrach Chorcal Cork City Council



Halla na Cathrach Corcaigh

Fón/Tel: Facs/Fax: 021-4924000 021-4314238

Gréasán/Web:

www.corkcity.ie

Tag/Ref

Claudine Mahu Cunnane Stratton Reynolds Copley Hall Cotters Street Cork

10<sup>th</sup> May2016

De.

R414/16 - Section 5 Declaration

Property: H&M, Unit No. 7, Opera Lane, Cork

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request received on the 22<sup>rd</sup> April 2016 for a Section 5 Declaration regarding whether amalgamation of the existing H&M Unit at Opera Lane with adjoining units, through the removal of Internal walls at Lower Ground, Ground, First & Mozzanine level to allow for the expansion of H&M into permitted retail floor space is considered development and whether it is or is not exempted development?

#### Having regard to:-

- Section 3 and 4 of the Planning and Development Act 2000 as amended, and
- The definition of 'structure' in Section 2 of the Planning and Development Act 2000 as amended,

#### The Planning Authority concludes that:-

- The proposed development comes within the scope of the definition of 'development; as defined in Section 3 of the Planning and Development Act 2000 as amended;
- The proposed development only affects the Interior of the structure and does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures:
- 3. There is no relevant restrictions on amalgametion, and
- Therefore constitutes exempted development in accordance with Section 4(i)(h) of the Act.

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# COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork. R-Phost/E-Mail <u>planning@corkcity.ie</u> Fón/Tel: 021-4924564/4321

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#### **SECTION 5 DECLARATION APPLICATION FORM**

under Section 5 of the Planning & Development Acts 2000 (as amended)

# 1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Units 33-36, Mahon Point Shopping Centre, Mahon, Cork

# 2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SP	ECIFIC 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 ar	nd described under this section will be assessed under the section 5 declaration.
Whether the subdivision	on of three no. units (namely Carraig Donn, Pamela Scott and Trespass) to
form 5 no. units is or is	s not exempted development at Units 33-36, Mahon Point Shopping Centre,
Nahan Carle	
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ADDITIONAL DETAILS	REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if i	required).
Please refer to cover I	letter by Cunnane Stratton Reynolds and drawings by PM Group submitted
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# 3. APPLICATION DETAILS

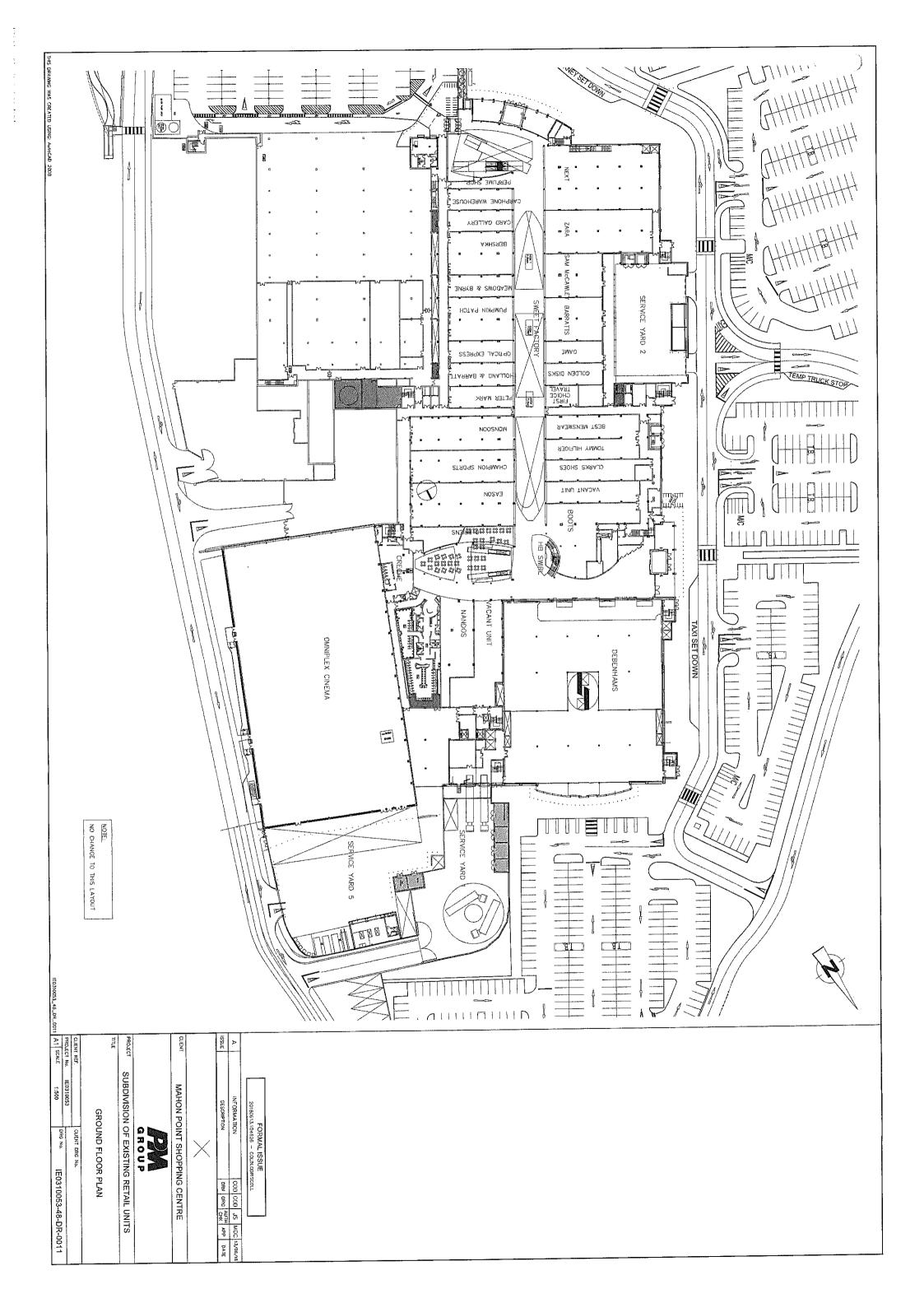
Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

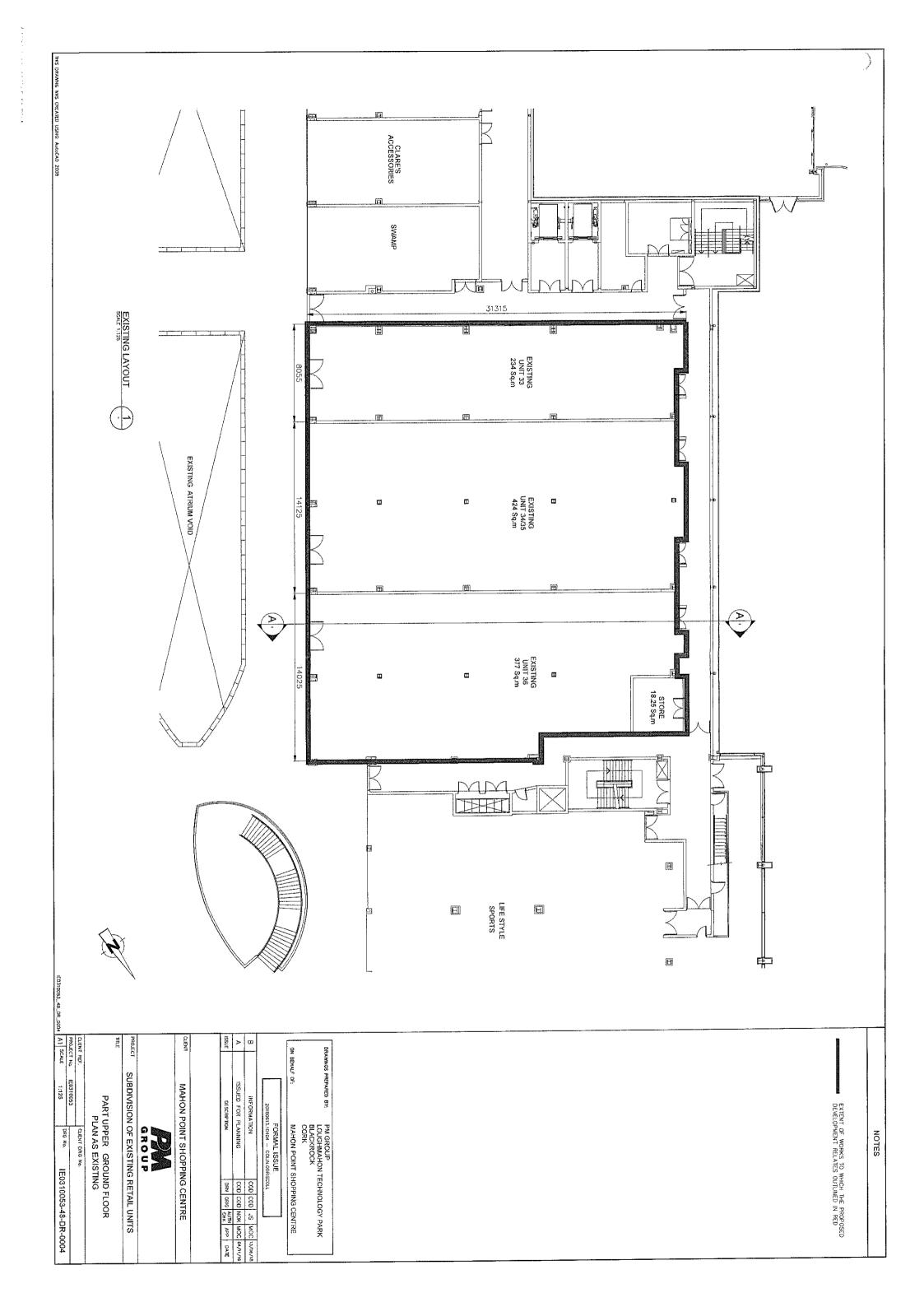
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Applicants Address	Data Insurability O				*******	
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5. LEGAL INTEREST						
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your interest in the land/s		N/A				
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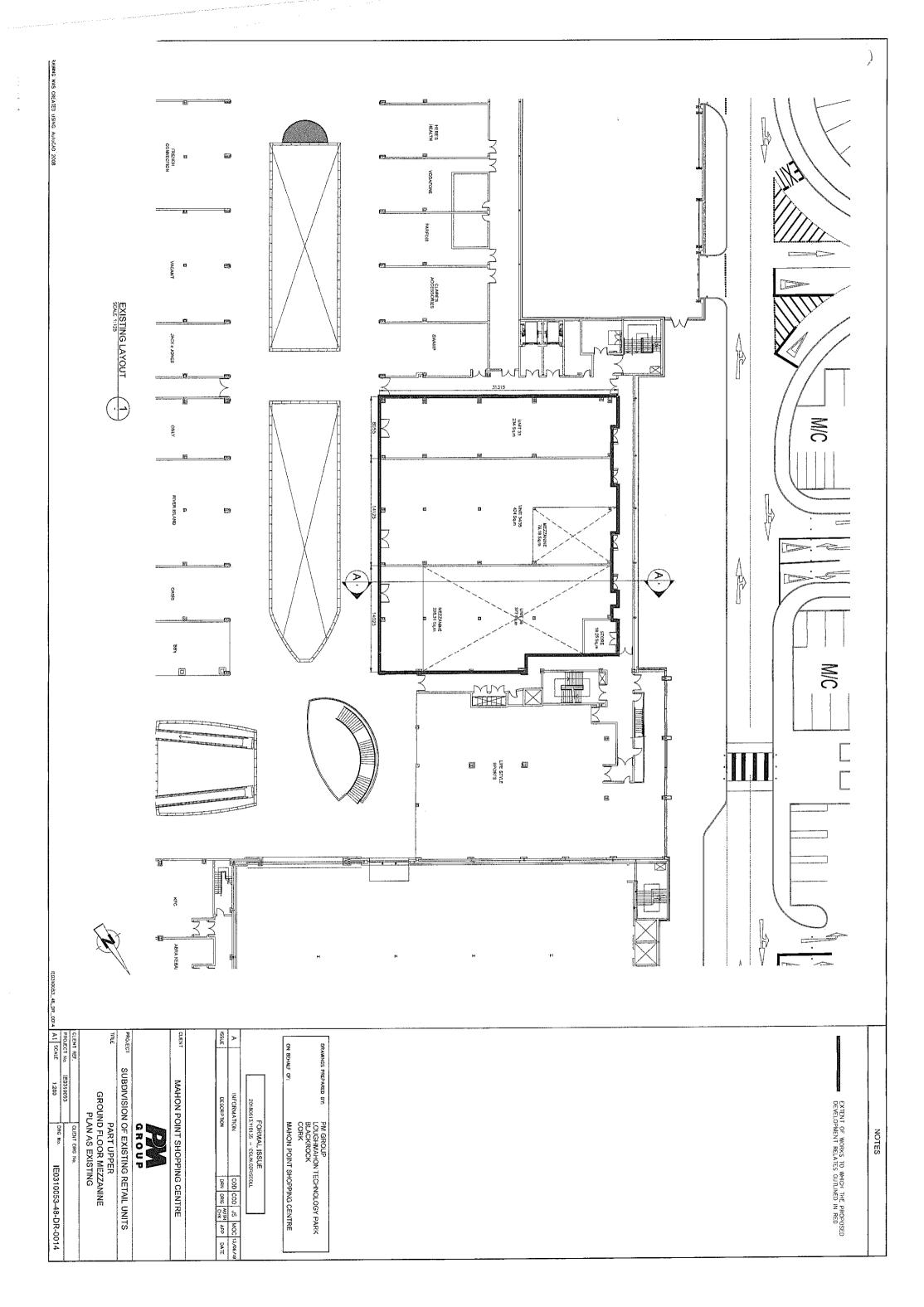
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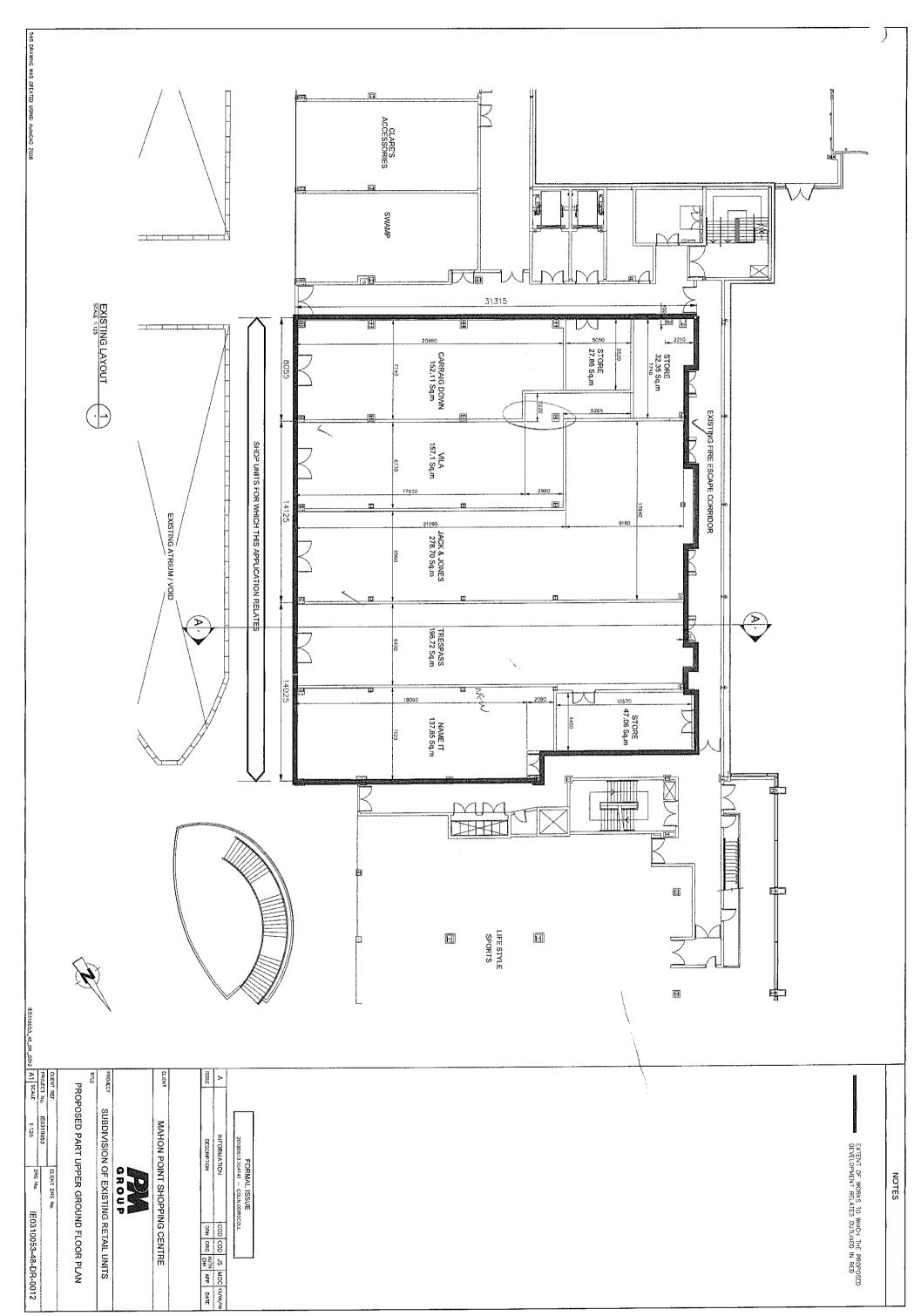
6. I / We confirm that the information contained in the application is true and accurate:

Ordnance Survey Ireland Licence No. EN 0003416
© Ordnance Survey Ireland/Government of Ireland TO JACK LYNC! TUNNE DRAWINGS PREPARED BY: SUBDIVISION OF EXISTING RETAIL UNITS FORMAL ISSUE 20180613.103939 - COLIN.ODRISCOLL MAHON POINT SHOPPING CENTRE SITE LOCATION / LAYOUT SSUED FOR PLANNING MAHON POINT SHOPPING CENTRE INFORMATION SITE OUTLINE IN RED LANDS OUTLINED IN BLUE IN SAME OWNERSHIP OF APPLICANT GROUP PM GROUP LOUGHMAHON TECHNOLOGY PARK BLACKROCK CORK MAHON POINT SHOPPING CENTRE DRG No. NOTES IE0310053-48-DR-0001 CÓD COD JS MOC 13/08/18
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