



Comhairle Cathrach Chorcaí Cork City Council

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

Cillian read
76 Southbury Road
Wilton
Cork

28/01/2018

RE: Section 5 R495/18 1 Friar Street Cork

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.

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

It is considered that Further Information is required in order for the Planning Authority to assess the proposal further. In this regard it is recommended that the following Further Information be sought:

1. Please submit drawings/details of proposed development to enable the Planning Authority to assess the proposal further.
 - Please note that the proposed *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.*
2. Please confirm the use of the building prior to it becoming vacant.



We are Cork.

- Please note that to comply with Article 10 of the Planning and Development Regulations 2001 to 2018 the structure concerned must have been in use as a use specified in Class 1, 2, 3 or 6 of Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018 at the time the building became vacant.
- 3. Please clarify when the building became vacant and provide confirmation that the building was vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,
- 4. Please clarify intended commencement and completion dates noting the relevant period in the Regulations.

Yours Faithfully,



Paul Hartnett
Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council

Application type	SECTION 5 DECLARATION
Question	<i>Whether the change of use of the premises from a vacant commercial unit to an apartment at 1 Friar Street, Cork is development or is exempted development.</i>
Location	1 Friar Street, Cork
Applicant	Cillian Read (owner)
Date	25/01/2019
Recommendation	Further Information Required

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 stated as: *"Is the conversion of a vacant commercial unit at 1 Friar st. To an apartment exempted from the need for planning permission under Action 5.9 (Government action plan for housing and homelessness) of the amendment no. 2 regulations 2018 (S.I. No. 30 2018)".*

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 vacant commercial unit to an apartment at 1 Friar Street, Cork is development or is exempted development.

3. SITE DESCRIPTION

The subject property is a two-storey corner/end-of-terrace building in the Inner City Residential Neighbourhood zoning area. The area is predominantly characterised by residential uses.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the premises from a vacant unit into an apartment. It is not clear from the documents submitted whether this relates to the ground floor unit only or the full building. From a site inspection it appears that the upper floor

of the building is already in use as a single, residential unit. It is therefore assumed that this application related only to the ground floor unit.

5. RELEVANT PLANNING HISTORY

PL.28.097249 TP 95/1987 Permission REFUSED to retain an advertising panel at 1 Friar Street, Cork.

Adjoining & Nearby Properties

TP 17/37381 Permission GRANTED for construction of a new front dormer window to replace existing, minor internal alterations, and construction of a first floor (dormer level) rear extension at 104 Friar Street, Cork.

TP 04/29191 Permission GRANTED to retain and complete 2 storey extension to the rear at 100 Friar Street, Cork.

TP 03/26997 Permission GRANTED to demolish existing ground floor extensions and construct 2-storey extension at rear of dwelling. Remove existing dormer windows and replace with 2 no. dormer windows to front of dwelling and internal alterations at 100 Friar Street, Cork.

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:

“Works proposed are a change of use of the premises from a vacant commercial unit to a proposed single dwelling unit”

Essentially this proposal involves the change of use of 1 Friar Street from a “vacant commercial unit” into 1 no. apartment.

I note that this exemption is being 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) subject to the conditions and limitations set out in paragraph (d). 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,*

(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 affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*
- iii) *Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*
- iv) *No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*
- v) *No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*
- vi) *Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.*
- vii) *Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*
- 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:*
 - (1) *an area to which a special amenity area order relates;*
 - (2) *an area of special planning control;*
 - (3) *within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*
- xi) *No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*
- xii) *No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

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 that planning history as stated in section 5 of this report. Permissions have been applied for, and subsequently refused, for the retention of an advertising panel previously on 1 Friar Street. I also note that the structure is visible on Google Street View in an image dated as June 2009. 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. I note, based on a site inspection, that the final use of the building appears to have been as a ‘cafe’ or ‘coffee house’. This use would not be considered to be use specified in Class 1, 2, 3 or 6 of Part 4 of Schedule 1.

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. However, I note that the previous use of the building, from reviewing previous planning applications for the subject site, was as that of a hairdresser/beauty clinic which would be considered to be Class 2 (c) of the uses specified in Part 4 of Schedule 1. This use would be considered to meet the requirement of section 6 (c) (ii) above. Clarification should be sought relating to the final use of the building.

- 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. 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.

Restrictions on exemption

I do not consider that any apply in this instance.

Assessment of documents submitted

I do not consider that adequate drawings and documentation have been submitted to be able to accurately assess this application in accordance with Article 10(6)(d) of the Planning and Development Regulations 2001 to 2018. Further information should be sought to include scaled and dimensioned floor plans and elevations of the proposed development.

CONCLUSION

Further Information Required

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**.

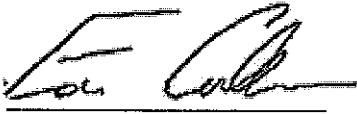
9. RECOMMENDATION

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

It is considered that Further Information is required in order for the Planning Authority to assess the proposal further. In this regard it is recommended that the following Further Information be sought:

1. Please submit drawings/details of proposed development to enable the Planning Authority to assess the proposal further.
 - Please note that the proposed *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.*
2. Please confirm the use of the building prior to it becoming vacant.
 - Please note that to comply with Article 10 of the Planning and Development Regulations 2001 to 2018 the structure concerned must have been in use as a use specified in Class 1, 2, 3 or 6 of Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018 at the time the building became vacant.
3. Please clarify when the building became vacant and provide confirmation that the building ~~will be~~ vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,
4. Please clarify intended commencement and completion dates noting the relevant period in the Regulations.



Eoin Cullinane
Assistant Planner

~~02/10/2018~~

25/1/2019.

~~Agreed~~ Subject
to small
change of text
to item 3
of F.I.

J. Deal
SEP.
25/1/2019.

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

1 FRIAR STREET, CORK CITY.

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 a vacant commercial unit at 1 Friar st to an apartment exempted from the need for planning permission under Action 5.9 (Government action plan for housing and homelessness) of the amendment no. 2 regulations 2018 (S.I. No 30. 2018)

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The unit has 2 commercial rate numbers. 141188
141196.

Vacant rates have been paid on the premises and are up to date.

Comhairle Cathrach Chorcaí
Cork City Council

19 DEC 2018

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	76 Sqm
(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)
Commercial	Residential

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		LILLIAN READ	
Applicants Address		76 Southbury rd, Wilton, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	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 <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: 

Date: 18/12/18

.....

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.

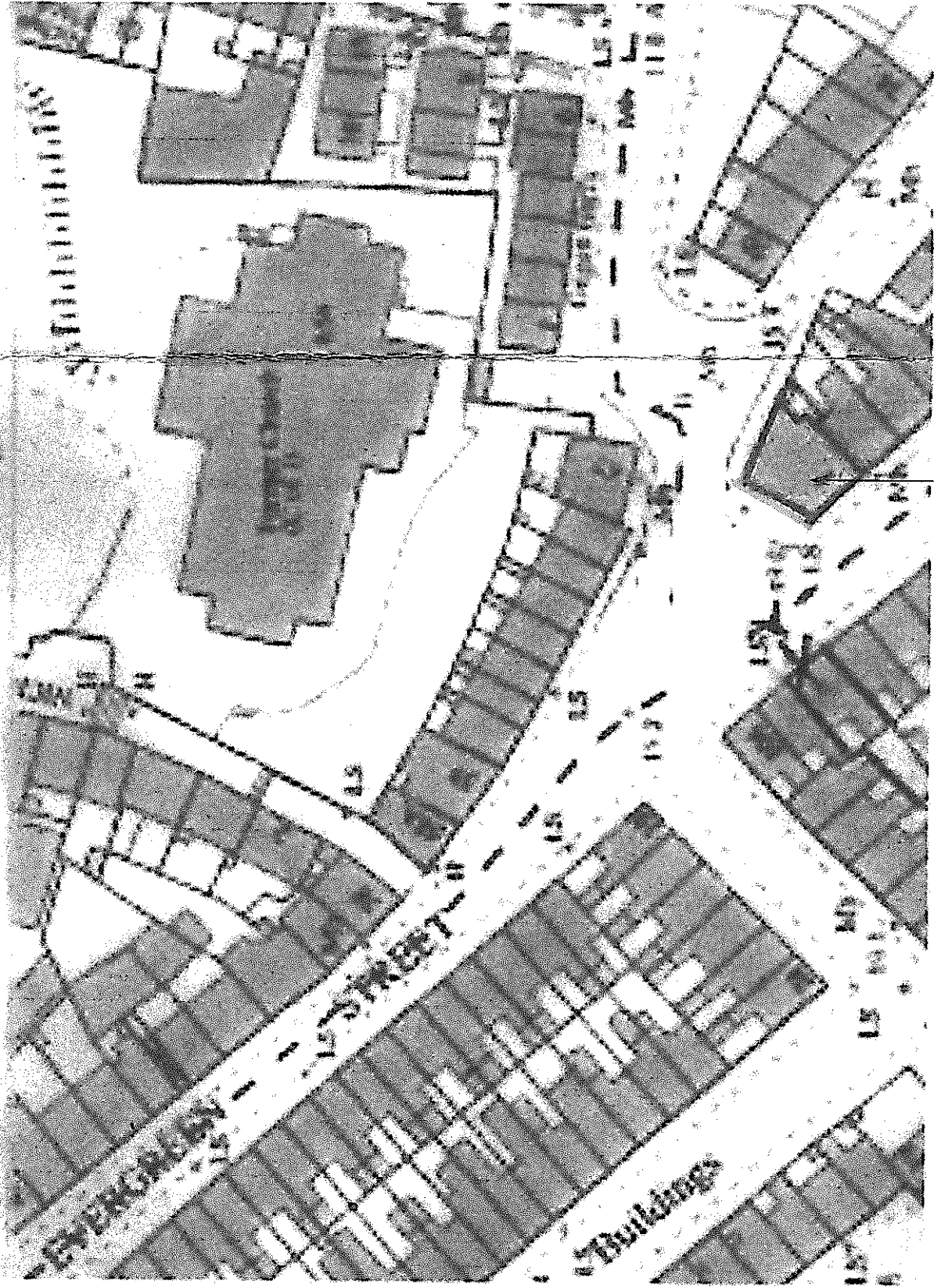
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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

Urban PLACE Map



SITE LOCATION MAP

— PROPERTY OUTLINED IN