



# Comhairle Cathrach Chorcaí Cork City Council

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

Kieran j Barry  
Consulting Engineers  
Ferney Road  
Carrigaline  
Cork

07/05/2019

## RE: Section 5 R510/19 25 Earlwood Estate, Cork

Dear Sir/Madam,

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

The proposed change of use relates to the ground floor only and proposes a change from an existing bookmakers shop/office to a pharmacy /retail use.

The proposed use comes within the definition of a shop within Article 5 (1) (a) (i) of the Regulations (as amended).

I note Class 14 of Part 1 of Schedule 2 which outlines the following exempted development:

*'Development consisting of a change of use*

*(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop'.*

*It is concluded that the change of use proposed is Exempted Development by virtue of it being a change from Class 2 to Class 1 of the Classes of Use as outlined in of the Planning and Development Regulations 2001 (as amended) and particular reference to Class 14 of Part 1 of Schedule 2 of the Regulations.*

The proposed change of use from a bookmakers to use as a pharmacy (shop) therefore 'is development and is exempted development.

Yours Faithfully,

**Paul Hartnett**  
Assistant Staff Officer  
Strategic Planning & Economic



**We are Cork.**

## SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 510/19

Description: Whether the change of use of a bookmakers shop to use as a pharmacy (shop) is or is not development and is or is not exempted development.

Applicant: Tom Treacy

Location: 25 Earlwood Estate, The Lough Cork

### 1. PURPOSE OF REPORT

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

### 2. SITE LOCATION

The site is located at 25 Earlwood Estate, on the corner of the estate entrance with Togher Road.

### 3. SITE HISTORY

*On this site:*

T.P. 03/27906: Permission granted to demolish 2 no. existing retail units and replace with 1 no. retail unit with an apartment on first floor above. Also for change of use of ground floor of existing residential house to commercial surgery and extend first floor to 2 bed apartment

T.P. 05/29894: Permission granted (a) extension and alterations to ground floor retail units; (b) extensions and alterations to apartment 1, over retail unit, including alterations to roof design at rear; (c) alterations to window and door opens at first floor, rear of apartment 1 & 2; (d) change of external render to smooth plaster finish; (e) permission for disability access ramp to front and balcony railing at rear of apts 1 & 2.

T.P. 06/30471: Permission granted for a change of use from retail to turf accountants and provision of satellite dish on southern gable at No. 25 Earlwood Estate, The Lough.

### 4. RELEVANT PLANNING POLICY/OBJECTIVES

***Cork City Development Plan 2015-2021***

The subject site is zoned ZO 9 (Neighbourhood Centre), with the objective 'to protect, provide for and/or improve the retail function of neighbourhood centres and provide a focus for local services. 15.16 Neighbourhood Centres are listed in Table 4.1 and shown in the suburban zoning maps in Volume 2.

*The primary purpose of these centres is to fulfil a local shopping function, providing a mix of convenience shopping, lower order comparison shopping, and local services to residential and employment areas. Some of these centres need to be enhanced significantly in terms of their retail offering, mix of uses, public realm, and overall viability and vitality. Limited retail offices will be acceptable in these centres to serve local needs and are subject to guidance on size and extent (paragraph 3.28) including a limit of 100sq.m. per unit. Residential uses are also acceptable within this zone..'*

## 5. RELEVANT LEGISLATION

### ***Planning and Development Act, 2000 as amended***

Section 2(1) of the Act Planning and Development Act, 2000 as amended proffers the following interpretations:

Article 3 (1) of the Act offers the following meaning of "development":  
'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) of the Act relates to 'exempted development and lists exempted development for the purposes of the Act including (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;'

### ***Planning and Development Regulations, 2001 (as amended)***

Article 5(1) of Part 2 'Exempted Development' defines 'shop' as follows:

'Shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,
- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;'

Class 14 of Part 1 of Schedule 2 outlines the following exempted development:

'Development consisting of a change of use  
(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop.'

Part 4 of the Second Schedule outlines 'Classes of Use' with:

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.'*

Article 6(1) of the Regulations states as follows:-

*"Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."*

Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, (a) if the carrying out of such development would:-

*(i) "Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"...*

*(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,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.'*

## **6. PLANNING ASSESSMENT & RECOMMENDATION**

The proposed change of use relates to the ground floor only and proposes a change from an existing bookmakers shop/office to a pharmacy /retail use.

The proposed use comes within the definition of a shop within Article 5 (1) (a) (i) of the Regulations (as amended).

I note Class 14 of Part 1 of Schedule 2 which outlines the following exempted development:

*'Development consisting of a change of use*

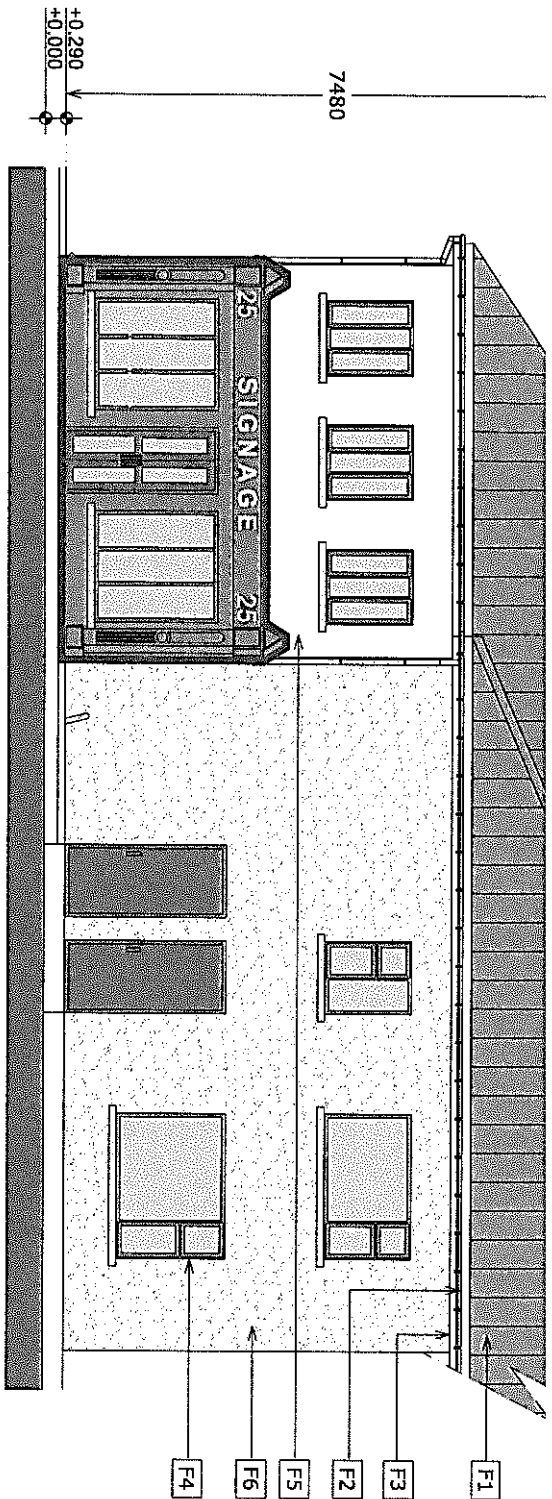
*(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop'.*

*It is concluded that the change of use proposed is Exempted Development by virtue of it being a change from Class 2 to Class 1 of the Classes of Use as outlined in of the Planning and Development Regulations 2001 (as amended) and particular reference to Class 14 of Part 1 of Schedule 2 of the Regulations.*

The proposed change of use from a bookmakers to use as a pharmacy (shop) therefore 'is **development and is exempted development.'**

  
Lucy Teehan

Senior Executive Planner.



# Existing North Elevation

Scale 1:100

## LEGEND:

- Application for Section 5, Declaration of Exemption outlined in Red
- F1** Low Profile Concrete Tiles
- F2** White P.V.C. RWP & Gutter
- F3** White P.V.C. Fascia & Soffit
- F4** White P.V.C. Windows
- F5** Smooth Plaster Finish
- F6** Marble Dash Finish

Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019

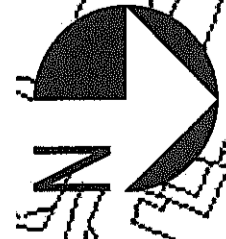
**Kieran J. Barry & Associates Ltd.**  
**CONSULTING ENGINEERS**  
 CILDARRAGH HOUSE, FERNEY ROAD, CARRIGALINE, CO. CORK  
 T: +353 21 4371375 F: +353 21 4373627 E: info@kjbarry.ie



Client: **Tom Tracey**

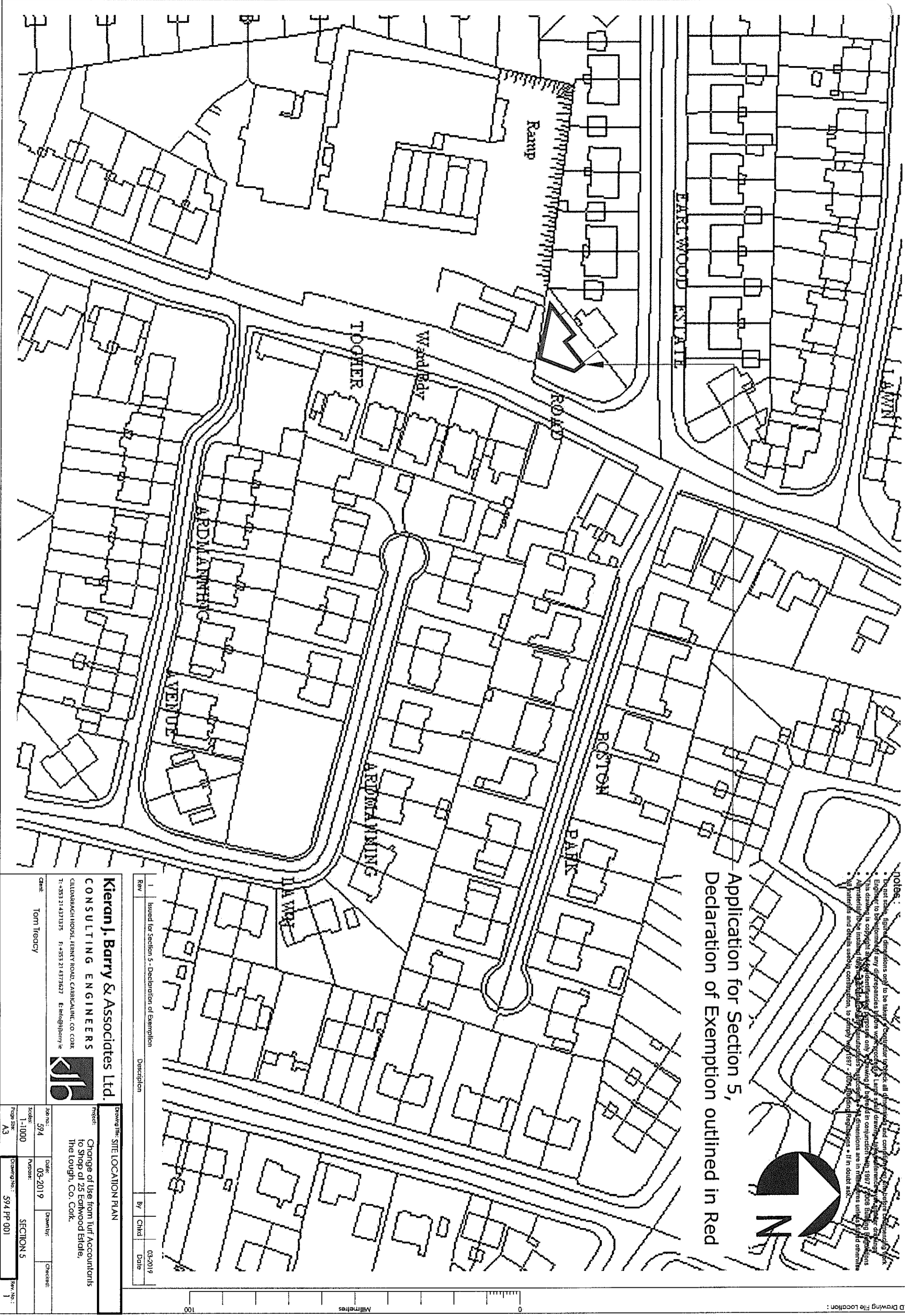
Drawing Title: **EXISTING ELEVATIONS**  
 Project: **Change of Use from Turf Accountants to Shop at 25 Feitwood Estate, The Lough, Co. Cork**

Job no.:	594	Date:	03-2019	Drawn by:		Checked:	
Scale:	1:100	Purpose:					
Page Size:	A3	Drawing No.:	594 EX 200	SECTION 5		Rev. No.:	1



Application for Section 5,  
Declaration of Exemption outlined in Red

- Notes:**
- Do not scale, find dimensions only to be taken. Contractor to check all dimensions and conditions on site before commencing work.
  - Eminent to Development of any discrepancies upon work on site. Large scale drawings and dimensions are shown on every sheet.
  - This drawing is copyright and the design property of Kieran J. Barry & Associates Ltd. No part of this drawing is to be reproduced without the written consent of Kieran J. Barry & Associates Ltd.
  - All dimensions are in millimetre unless stated otherwise.
  - All materials and details used in construction, to comply with 1997 - 2006 Building Regulations.
  - If in doubt ask.



Rev	Description	By	CHKD	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019

**Kieran J. Barry & Associates Ltd.**  
**CONSULTING ENGINEERS**  
 CILLANBARACH HOUSE, FERRY ROAD, CARRICKLINE, CO. DUB.  
 T: +353 21 4371375 F: +353 21 4371627 E: info@kjbarry.ie

**Project:** Change of Use from Tuff Accountants to Shop at 25 Earlwood Estate, The Lough, Co. Cork.  
**Drawing No.:** 594 PP 001  
**Rev. No.:** 1

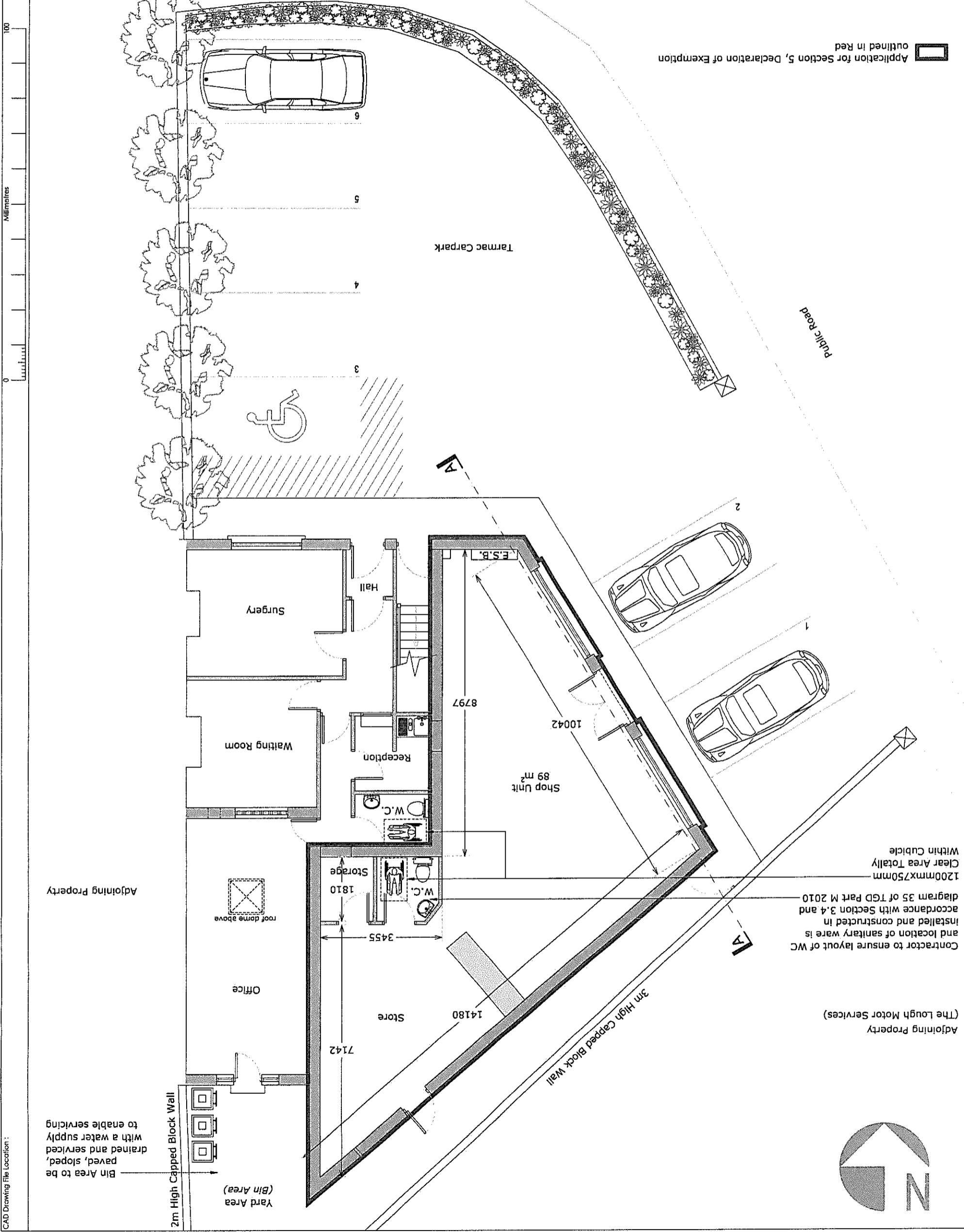
**Proposed Ground Floor Plan**  
 Total Area Ground Floor Plan = 175.84 m<sup>2</sup> / 1892.81 Ft<sup>2</sup>

**Kieran J. Barry & Associates Ltd.**  
 CONSULTING ENGINEERS  
 CILLDARACH HOUSE, FERNEY ROAD, CARRIGALINE, CO. CORK  
 T: +353 21 4371975 F: +353 21 4373627 E: info@kjberry.ie

Project: Change of Use from Turf Accountants to Shop at 25 Earwood Estate, The Lough, Co. Cork  
 Job no.: 594  
 Date: 03-2019  
 Drawn by: [ ]  
 Checked: [ ]

Client: Tom Tracey  
 Scale: 1:100  
 Drawing No.: 594 PP 100  
 Rev. No.: 1

Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019



Bin Area to be paved, sloped, drained and serviced with a water supply to enable servicing

Adjoining Property

Adjoining Property (The Lough Motor Services)

Contractor to ensure layout of WC and location of sanitary ware is installed and constructed in accordance with Section 3.4 and diagram 35 of TGD Part M 2010  
 1200mmx750mm Clear Area Totally Within Cubicle

CAD Drawing File Location :

Millimetres

THIS DRAWING IS COPYRIGHT ©



Total Area Ground Floor Plan = 175.84 m<sup>2</sup> / 1892.81 Ft<sup>2</sup>

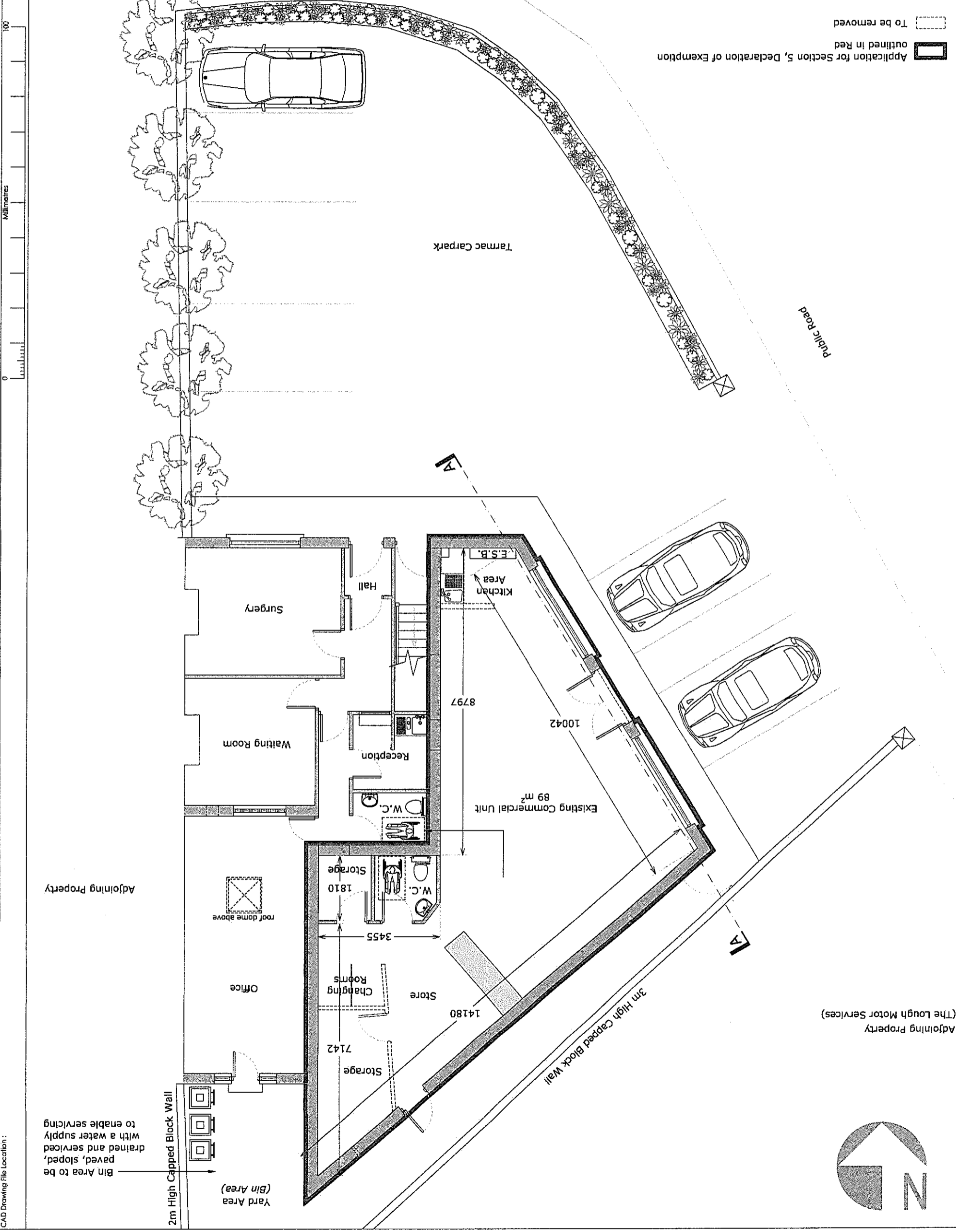
# Existing Ground Floor Plan

**Kieran J. Barry & Associates Ltd.**  
**CONSULTING ENGINEERS**  
 GILDARRAGH HOUSE, FERRY ROAD, CARRIGALINE, CO. CORK  
 T: +353 21 4371875 F: +353 21 4373627 E: info@kjbarry.ie

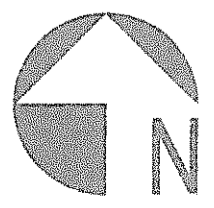
Page Size: A3	Drawing No.: 594 EX 100
Scale: 1:100	Section: SECTION 5
Job No.: 594	Date: 03-2019
Client: Tom Tracey	Project: Change of Use from Turf Accountants to Shop at 25 Earwood Estate, The Lough, Co. Cork

Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019

-  Application for Section 5, Declaration of Exemption
-  To be removed

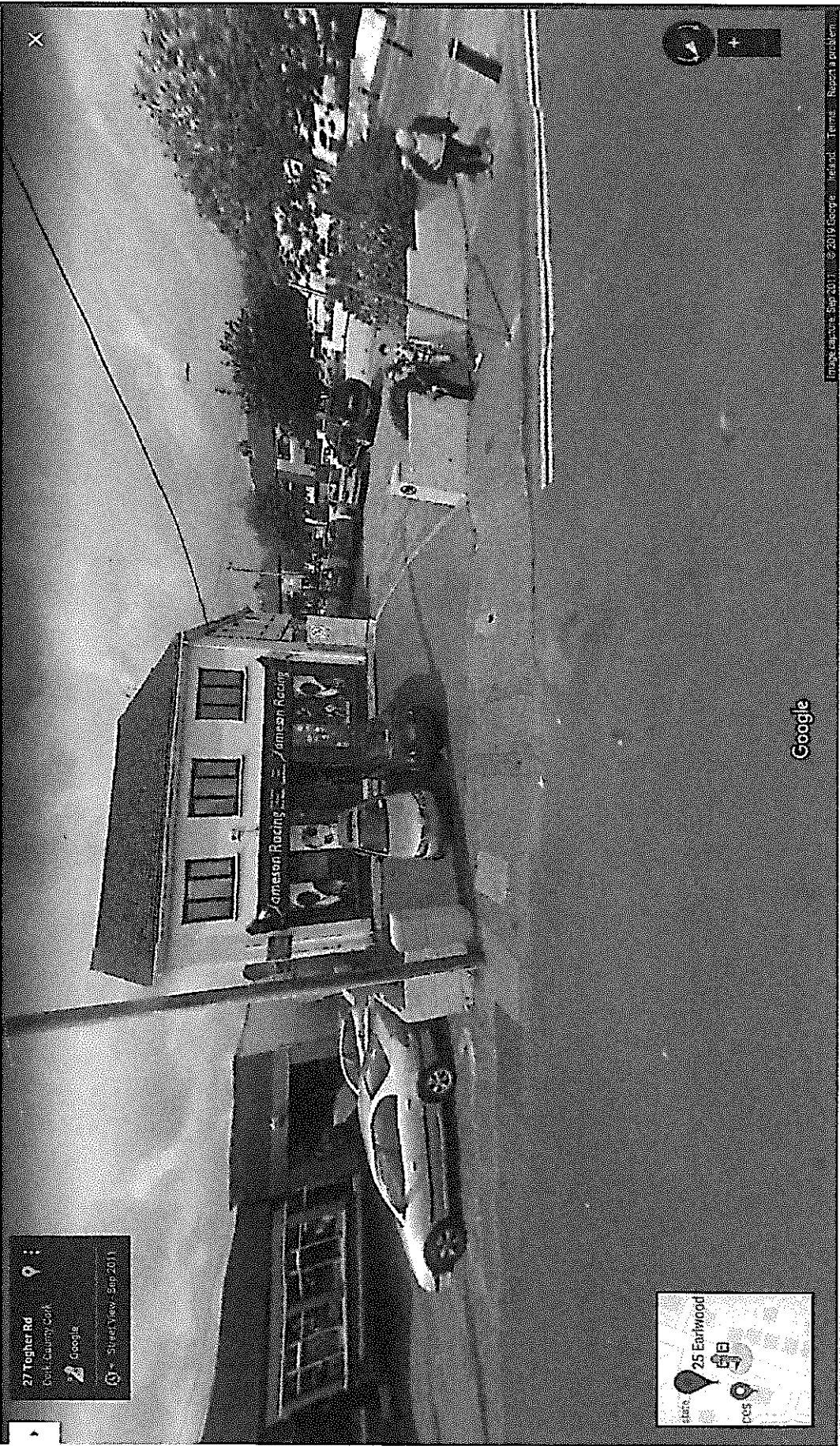


Adjoining Property (The Lough Motor Services)

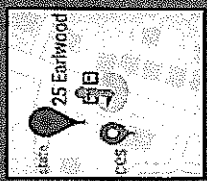


CAD Drawing File Location:





27 Toigher Rd  
Cork, County Cork  
Google  
Street View (Sep 2011)



Google



Images: 101 - Sep 2011 © 2015 Google Ireland. Terms - Report a problem

# Kieran J. Barry & Associates Ltd.

CONSULTING ENGINEERS

CILLDARRAGH HOUSE, FERNEY ROAD, CARRIGALINE, CO. CORK

T: +353 21 4371375 F: +353 21 4373627 E: info@kjbarry.ie



Date:

22<sup>nd</sup> March 2019

594

Attention: Planning Department,  
Cork City Council,  
City Hall,  
Cork.

RE: Tom Treacy,  
Premises 25 Earlwood Estate, The Lough, Cork.  
Declaration of Exemption



Dear Sirs,

I refer to above premises and more particularly delineated on attached floor plans elevations.

I refer also to previous planning history set out hereunder.

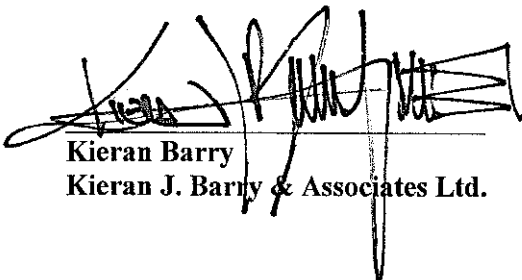
- Planning Permission Ref. No. 0327906:  
Permission to Demolish 2 No. existing Retail Units and replace with 1 No. Retail Unit with an Apartment on first floor above. Also for change of use of ground floor of existing residential house to commercial.
- Planning Permission Ref. No. 0529894 :  
Permission for Retention of Extension and Alterations to ground floor retail units, extension and alterations to Apartment 1 over Retail Unit, including alterations to roof design at rear and alterations to window.
- Planning Permission Ref. No. 0630471 :  
Permission for change of use from Retail to Turf Accounts and provision of satellite dish on southern gable.

I refer to Planning and Development Regulations 2001 (Amended) Statutory Instruments S.I.No. 600 of 2001, Schedule 2 Part 1: Exempted Development Class 14 (d) **“from use to which Class 2 of Part 4 of this Schedule applies, to use as a shop”**.

It is proposed to reopen the ground floor commercial unit for use as a Pharmacy i.e. Class 1 Shop. Accordingly, I would be obliged for official Declaration of Exemption under Section 5 of the Planning & Development Act 2000 from Class 2 to Class 1.

€80 fee is herewith attached together with relevant layout plans, elevations and location maps.

Yours faithfully,



Kieran Barry  
Kieran J. Barry & Associates Ltd.

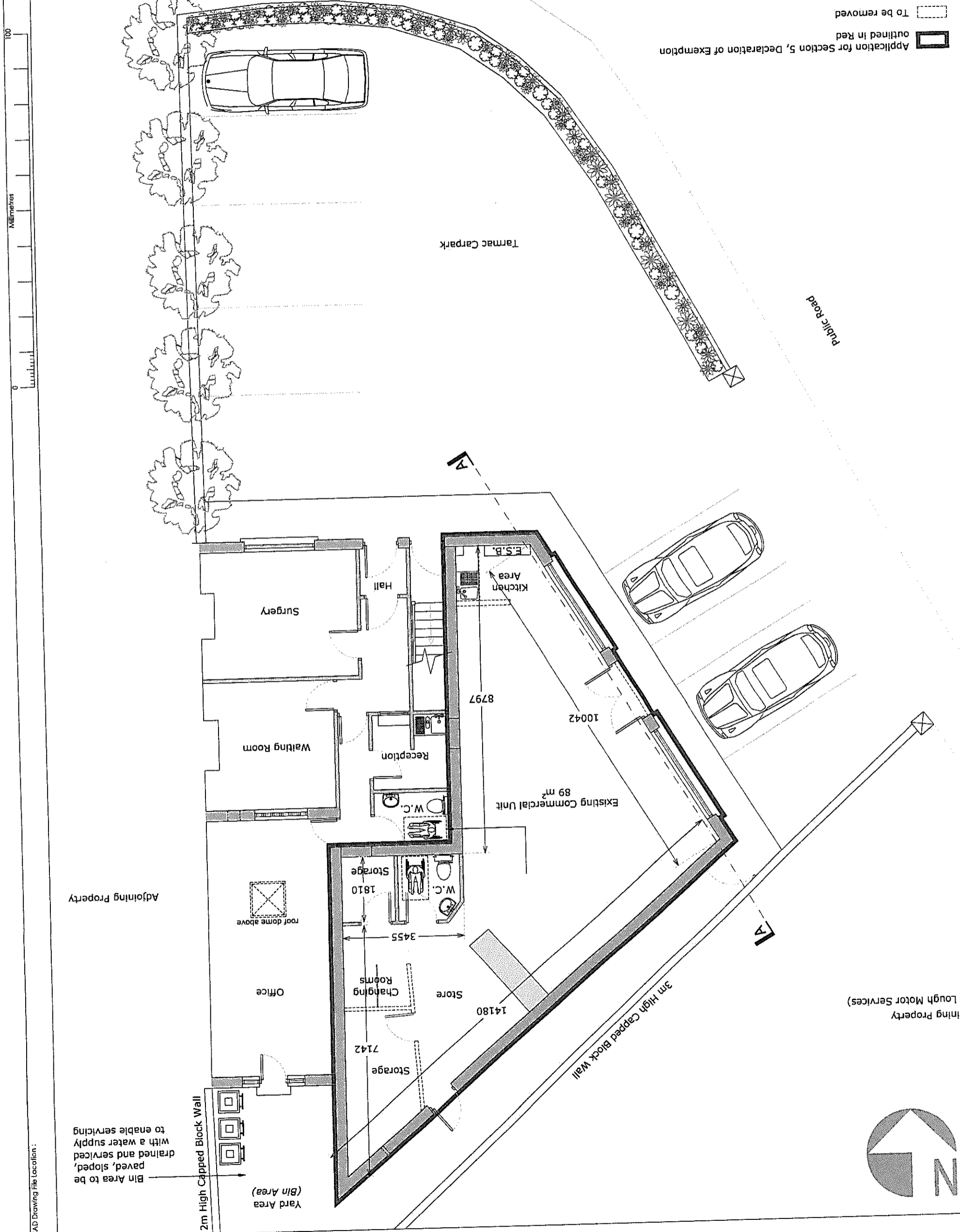


# Existing Ground Floor Plan

Total Area Ground Floor Plan = 175.84 m<sup>2</sup> / 1892.81 F<sup>2</sup>

<b>Kieran J. Barry &amp; Associates Ltd.</b> CONSULTING ENGINEERS GILDARRAGH HOUSE, FERNY ROAD, CARRIGALINE, CO. CORK T: +353 21 4371375 F: +353 21 4373627 E: info@kjbarrylee.com	
Client: Tom Tracey Job No.: 594 Date: 03-2019 Drawn by: [Blank] Checked: [Blank]	Drawing Title: EXISTING FLOOR PLAN Project: Change of Use from Turf Accountants to Shop at 25 Fortwood Estate, The Lough, Co. Cork
Scale: 1:100 Drawing No.: 594 EX 100 Rev. No.: 1	Page Size: A3

Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019

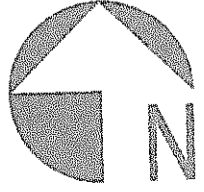


CAD Drawing File Location:

Millimetres

0

100



Adjoining Property (The Lough Motor Services)

Adjoining Property

Bin Area to be paved, sloped, drained and serviced, with a water supply to enable servicing

2m High Capped Block Wall

Yard Area (Bin Area)

3m High Capped Block Wall

Existing Commercial Unit 89 m<sup>2</sup>

Application for Section 5, Declaration of Exemption outlined in Red  
To be removed

Tarmac Carpark

Public Road

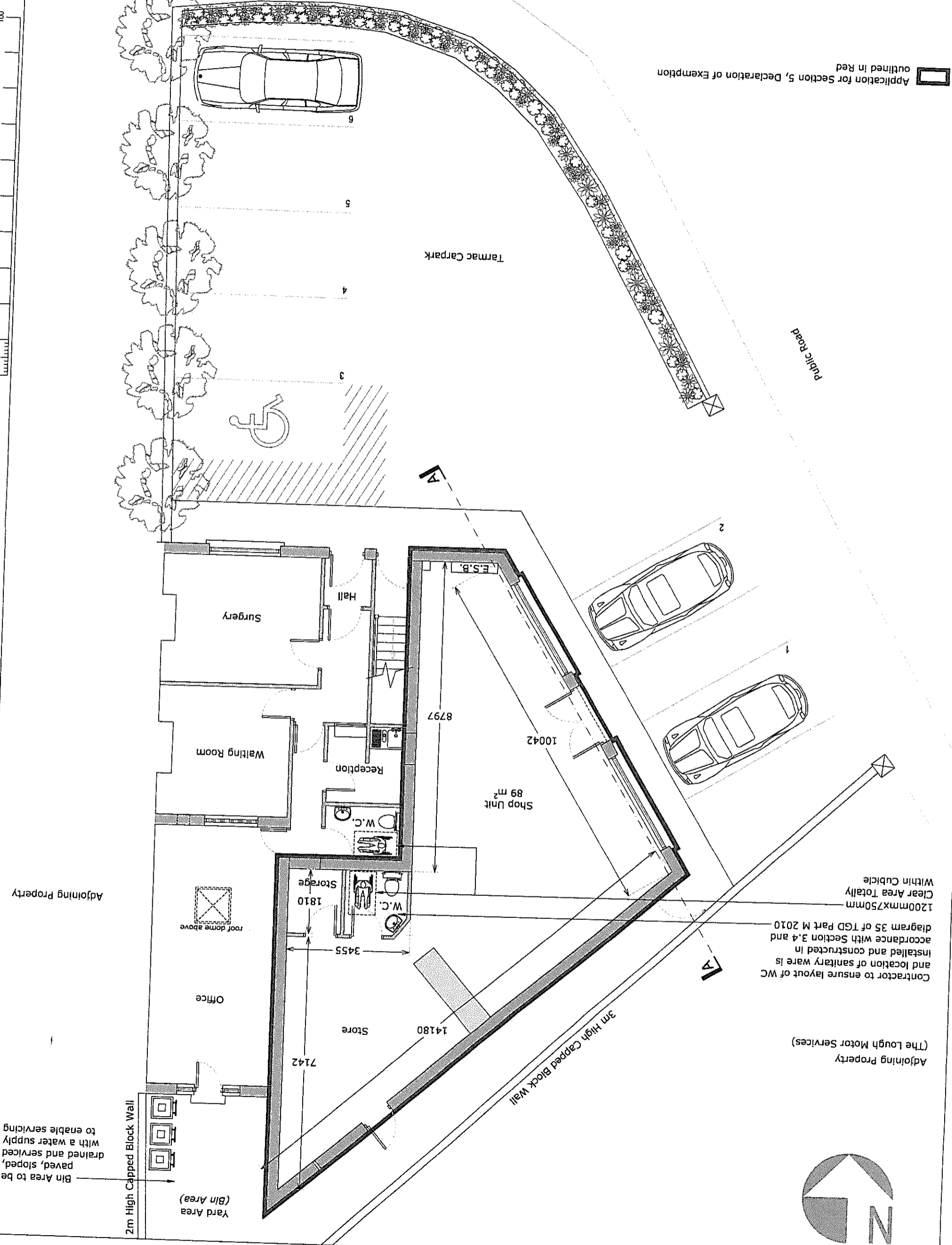
A-A

B-B

**Proposed Ground Floor Plan**  
 Total Area Ground Floor Plan = 175.84 m<sup>2</sup> / 1892.81 Ft<sup>2</sup>

**Kieran J. Barry & Associates Ltd.**  
 CONSULTING ENGINEERS  
 GILDARAGH HOUSE, FERNEY ROAD, CARRIGALINE, CO. CORK  
 T: +353 21 4371375 F: +353 21 4373627 E: info@kjbarryle.com  
 Client: Tom Tracey  
 Job no.: 594  
 Date: 03-2019  
 Purpose: 1:100  
 Project: Change of Use from Turf Accountants to Shop at 25 Edwood Estate, The Lough, Co. Cork

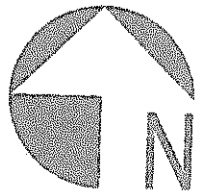
Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019



Bin Area to be paved, sloped, drained and serviced with a water supply to enable servicing

Contractor to ensure layout of WC and location of sanitary ware is installed and constructed in accordance with Section 3.4 and diagram 35 of TGD Part M 2010  
 1200mmx750mm  
 Clear Area Totally  
 Within Cubicle

Adjoining Property (The Lough Motor Services)



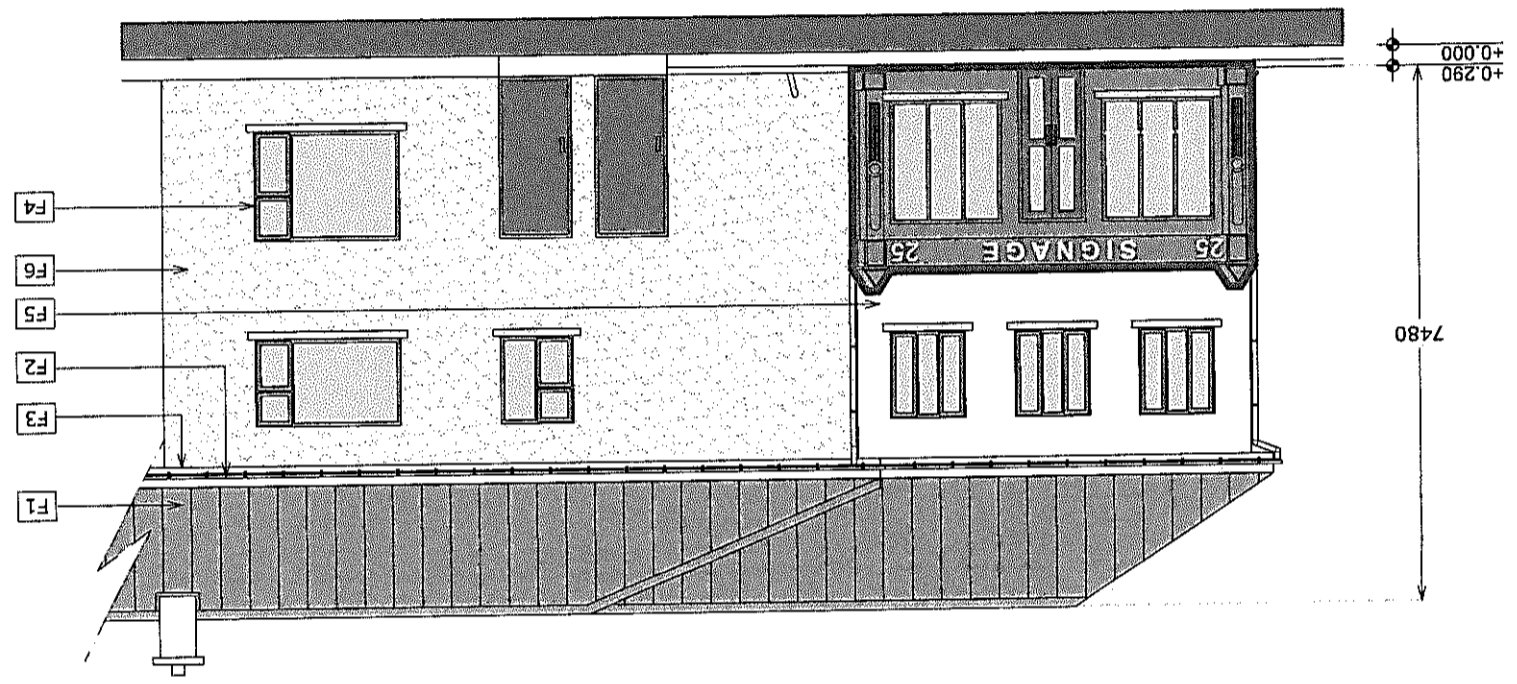
Page Size: A3	Drawing No.: 594 EX 200
Scale: 1:100	Section: SECTION 5
Job No: 594	Date: 03-2019
Client: Tom Tracey	Project: Change of Use from Turf Accountants to Shop at 25 Fortwood Estate, The Lough, Co. Cork
<b>Kieran J. Barry &amp; Associates Ltd.</b> CONSULTING ENGINEERS GILBARACH HOUSE, FERNEY ROAD, CARRIGALINE, CO. CORK T: +353 21 4371375 F: +353 21 4373627 E: info@kjbarry.ie	

Rev	Description	By	Chkd	Date
1	Issued for Section 5 - Declaration of Exemption			03-2019

Millimetres  
0 100

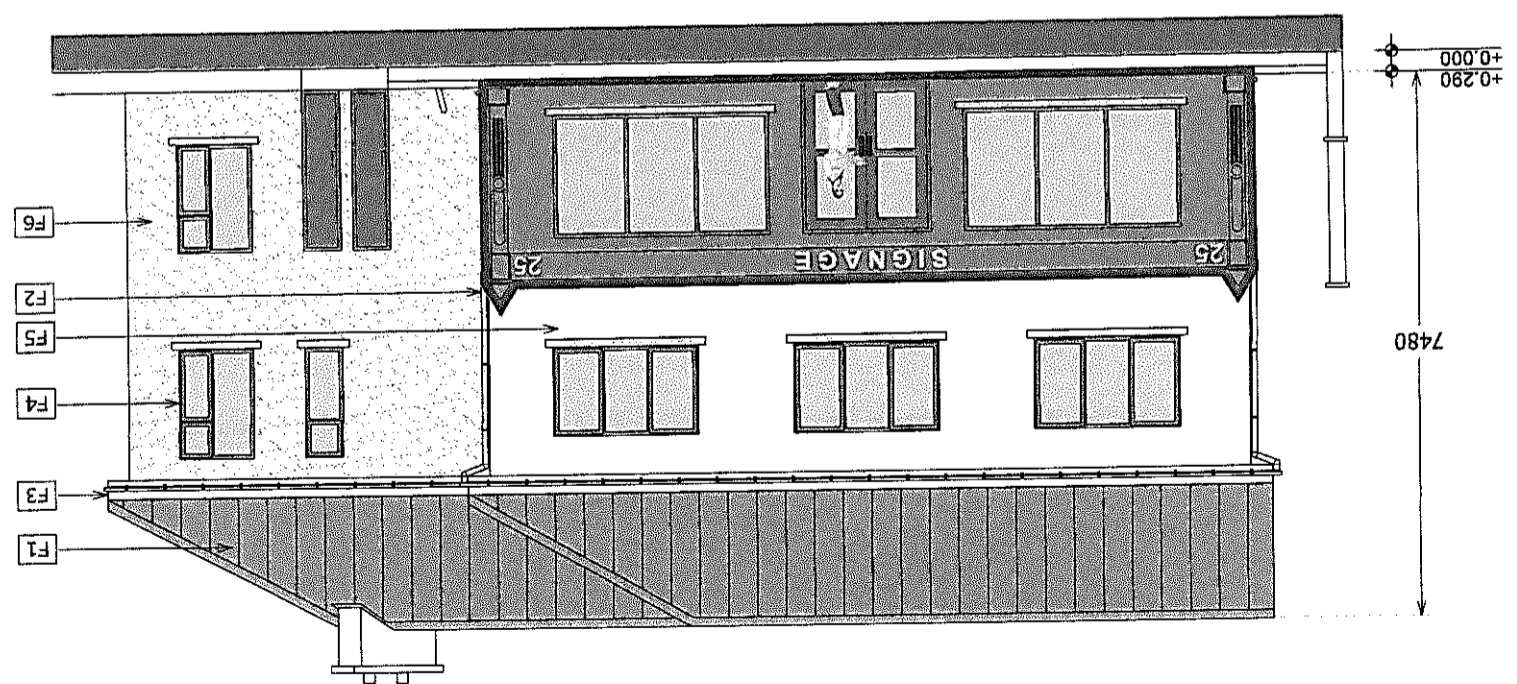
### Existing North Elevation

Scale 1:100



### Existing Front Elevation

Scale 1:100



- LEGEND:**
- Application for Section 5, Declaration of Exemption
  - outlined in Red
  - F1 Low Profile Concrete Tiles
  - F2 White P.V.C. RWP & Gutter
  - F3 White P.V.C. Fascia & Soffit
  - F4 White P.V.C. Windows
  - F5 Smooth Plaster Finish
  - F6 Marble Dash Finish