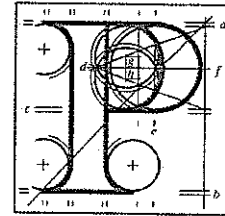


Our Case Number: ABP-305107-19

Planning Authority Reference Number: R520/19



An
Bord
Pleanála



Cork City Council
City Hall
Cork

15 NOV 2019

Re: Whether the alterations to the internal layout of the permitted licensed premises at 52/53 North Main Street, Cork are or are not development or are or are not exempted development.

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2019. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

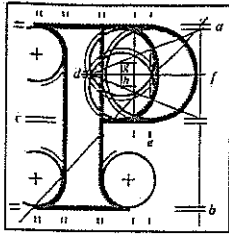


Brid McManus
Executive Officer

RL100n

Tel (01) 858 8100
Glao Áitiúil LoCall 1890 275 175
Facs (01) 872 2684
Láithreán Gréasáin Website www.pleanala.ie
Ríomhphost Email bord@pleanala.ie

64 Sráid Maoilbhríde 64 Marlborough Street
Baile Átha Cliath 1 Dublin 1
D01 V902 D01 V902



An
Bord
Pleanála

Board Order
ABP-305107-19

Planning and Development Acts 2000 to 2019

Planning Authority: Cork City Council

Planning Register Reference Number: R520/19

WHEREAS a question has arisen as to whether the alterations to the internal layout of the permitted licensed premises at numbers 52/53 North Main Street, Cork are or are not development or are or are not exempted development:

AND WHEREAS Black Dog Bar and Nightclub Limited care of McCutcheon Halley of 6 Joyce House, Barrack Square, Ballincollig, County Cork requested a declaration on this question from Cork City Council and the Council issued a declaration on the 15th day of July, 2019 stating that the proposed service kitchen located in the existing beer garden at number 53 North Main Street currently operating as a public house and late night bar is development and is not exempted development:

AND WHEREAS Black Dog Bar and Nightclub Limited referred the declaration for review to An Bord Pleanála on the 6th day of August, 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3, 4 and 32 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5 to 11 of the Planning and Development Regulations, 2001, as amended, with particular reference to Articles 6(1) and 9(1)(a)(viii),
- (c) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, with particular reference to Class 14,
- (d) the planning history of numbers 52 and 53 North Main Street, with particular reference to planning permissions, planning register reference numbers TP12/35314 and TP13/35544, and noting that the current use of number 53 North Main Street presents as a public house whose permitted use is as a licensed café/restaurant and for which no planning permission appears to exist for use as a public house either independently or associated with the public house use at number 52 North Main Street,
- (e) the submissions of the parties to the referral, and
- (f) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the internal alterations carried out to number 53 North Main Street, including alterations in the form of stairway provision, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, are development and are exempted development in accordance with the provisions of section 4(1)(h) of the Planning and Development Act, 2000, as amended, and
- (b) the alteration to the layout of number 53 North Main Street, in the form of the provision of a 'Service Kitchen' to the rear of the premises, constitutes development which is material for the purposes of the Planning and Development Act, 2000, as amended, and is not exempted development as no planning permission currently exists for this extended floorspace:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that:

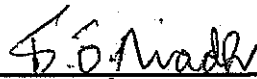
- (a) the alterations in the form of staircase provision and other minor alterations are development and are exempted development, and
- (b) the alterations in the form of a 'Service Kitchen' to the layout of the permitted licensed premises are development and are not exempted development,

all at numbers 52/53 North Main Street, Cork.



Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Terry Ó Niadh

Member of An Bord Pleanála

duly authorised to authenticate
the seal of the Board.

Dated this 11th day of November, 2019.



Comhairle Cathrach Chorcaí Cork City Council

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

Brian McCutcheon
6 Joyce House
Barrack Square
Ballincollig
Cork

15/07/19

RE **Section 5 Declaration R520/19 52/53 North Main Street**

Dear Sir/Madam,

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

having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed service kitchen located in the existing beer garden of No. 53 North Main Street currently operating as a public house and late night bar, **Is Development** and is **Not Exempted Development**.

Yours Faithfully,

Paul Hartnett

Assistant Staff Officer

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Development Management Strategic Planning and Economic Development
Ref. R520/19		
Application type	Section 5 Declaration	
Description	<i>Whether the alterations to the internal layout of the permitted licensed premises at 52 & 53 North Main Street Cork, are, or are not, development and are, or are not, exempted development. The planning status of the signage on the front elevation of No. 53 North Main Street is outside the scope of this request.</i>	
Location	52 & 53 "BDSM" North Main Street	
Applicant	Brian McCutcheon (Chartered Planning Consultants)	
Date	27/06/2019	
Recommendation	<i>Is Development and Is Not Exempted Development</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

Section 5(1) of the Planning and Development Act 2000 (as amended) states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q2 of the application form:

"Whether the alterations to the internal layout of the permitted licensed premises at 52 & 53 North Main Street Cork, are, or are not, development and are, or are not, exempted development. The planning status of the signage on the front elevation of No. 53 North Main Street is outside the scope of this request."

3. Site Description

The property in question is a two storey terrace structure located within the commercial core area of the city currently operating as a public house and late night bar.

4. Planning History

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

TP12/35314: Permission granted for change of use of ground floor from retail to a licensed cafe/restuaruant use, the widening of the front entry doors and provision of awnings to the front of No. 52 & 53; the removal of the rear float roof and installation of a new preparation kitchen within No. 53. No. 52 is a protected structure. (No permission for awning has granted.)

TP13/35544: Permission granted to change front window type to 52 North Main street, a protected structure. To change the front window type, front signage and to erect a new vent flue on the gable end of the eastern elevation of 53 North Main Street, Cork amended under application TP 12/35314

TP17/37500: Permission refused for retention permission for the front lit signage above ground floor window. These works are within the curtilage of a protected structure.

There is a somewhat extensive enforcement planning history on file. The most relevant (i.e. active) and recent of those being as follows:

E7464: Active Enforcement file. Enforcement Notice issued (6th June 2019) re:

- (1) Unauthorised sign on front elevation; and
- (2) Unauthorised use as a public house and late night bar.

5. Legislative Provisions

5.1 The Planning and Development Act 2000 (as amended)

Section 2(1),

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or ‘the making of any material change in the use of any structures or other land’

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act—development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

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

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

5.2 The Planning and Development Regulations 2000 (as amended)

Article 9 (1)

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

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

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

6. ASSESSMENT**5.1 Development**

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

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

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’.

I consider that the proposed element constitutes development as it comprises of works.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

Section 4 (1) (h) The following shall be exempted developments 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 neighbouring structures.

I consider the proposed service kitchen to be located in an external area (the existing beer garden), notwithstanding the slight overhanging roof. The additional service kitchen involves an extension to the existing floor area of the public house by constructing it externally in the current rear yard of No. 53. the proposal is not considered to come under the terms of 4(1)(h).

Article 9(1) (a) (viii) states 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...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.

It is evident that the current and operational use is as a public house and late night bar. There are no exemptions in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) to permit the change of use from a shop (which was the previous use) to that of a public house.

The property had the benefit of planning permission under TP12/35314 for the change of use of the ground floor retail to a licensed cafe/restaurant use. Class 14 of the Planning and Development Regulations 2001 (as amended) refer to change of use for which exemptions exist. It is noted that there are specifically different listing for the change of use from a public house, to use as a shop; and from the use of a restaurant, to use as a shop. See box below:

Class 14: Development consisting of a change of use -
(b) From use as a public house, to use as a shop
(c) From use..as...a restaurant, to use as a shop

There is clearly a different understanding to the use as a restaurant; and use as a public house. In the case before us, the structure was previously in operation as a shop and received permission for change of use to a cafe/restaurant. However, it has been in use solely as a public house and late night bar since with the exception of offering pizza ancillary to its public house and late night bar use for a short period of 7/8months whereby they closed down that and began preparing pizzas at another premises off site and brought it to the business premises “BDSM” in question.

It is therefore clear that the relevant planning permission TP12/35314 has never been implemented. The 5 year lifetime of planning permission has now lapsed. Hence the property is considered in its current use as unauthorised.

There are no exemptions for extensions to commercial premises.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked whether the alterations to the internal layout of the permitted licensed premises at 52 & 53 North Main Street Cork, are, or are not, development and are, or are not, exempted development.

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is **not** exempted development

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed service kitchen located in the existing beer garden of No. 53 North Main Street currently operating as a public house and late night bar, **Is Development** and is **Not Exempted Development**.

M Doyle 27/06/2019
Mary Doyle
Executive Planner

*Agreed S. Niham (SEI)
04.07.2019.*

Appendix A: Site Photographs (25/06/2019)

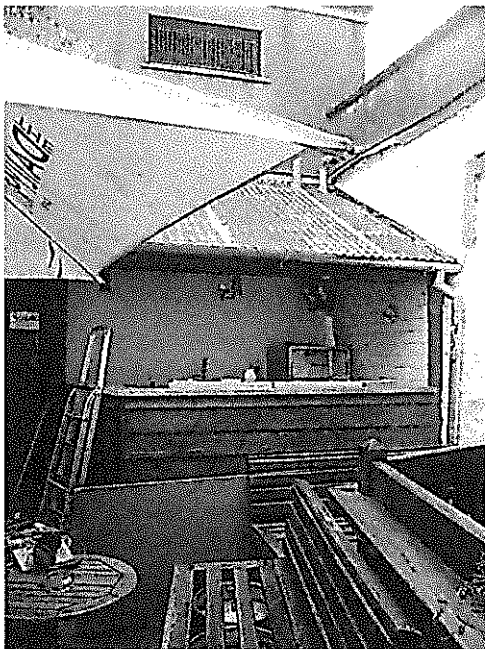


Photo No. 1: Existing beer garden to the rear of No. 53. New service kitchen for sale of pizzas under construction.



Photo No. 2: New service kitchen located to the rear of No. 53 North Main Street in the existing beer garden. Previous outdoor stools and seating for patrons of the public house and late night bar were provided in this corner (see photos from Google Maps 2013 further below).



Photo No. 3



Photo No. 4.

Appendix B: Images on Google Maps dated 2013.



Photo No. 5

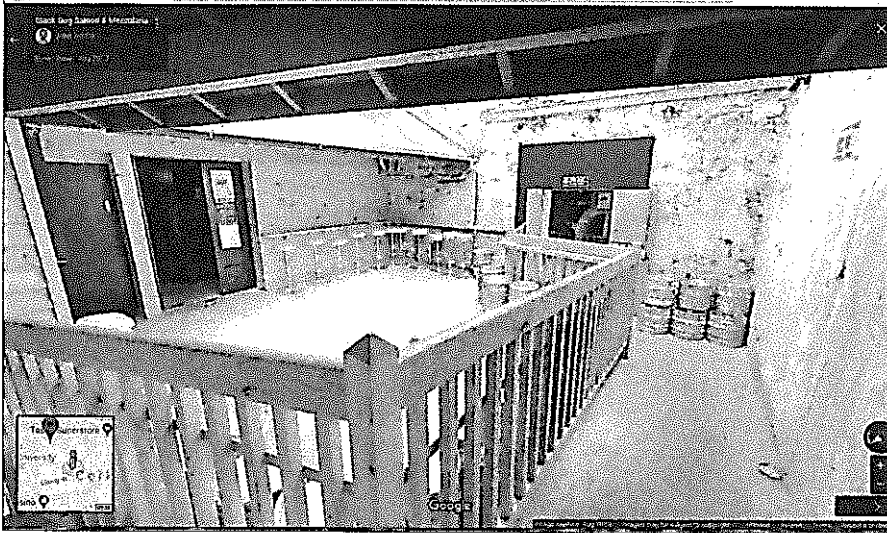


Photo No. 6

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	470 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 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)

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Black Dog Bar and Nightclub Ltd.	
Applicants Address	c/o McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack square, Ballincollig, Co. Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Brian McCutcheon
	Address:	McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack square, Ballincollig, Cork.
	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		

6.1 / We confirm that the information contained in the application is true and accurate:

Signature: _____

Bin McEnthen

Date: 13/06/2019

.....

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

The Secretary
Planning Department
Cork City Council
City Hall
Cork

Comhairle Cathrach Chorcaí
Cork City Council
10 JUN 2019
Strategic Planning & Economic
Development Directorate

Comhairle Cathrach Chorcaí
Cork City Council
13 JUN 2019
Strategic Planning & Economic
Development Directorate

Re: Internal Alterations to the Licensed Premises at 52 & 53 North Main Street, Cork

Dear Sir/Madam,

We act for Black Dog Bar and Nightclub Ltd. and submit on their behalf this request for a Declaration under Section 5 of the Planning and Development Acts, 2000 – 2018¹. We enclose the required fee of €80.00.

The question on which the Declaration is sought is whether the alterations to the internal layout of the permitted licensed premises at 52 & 53 North Main Street Cork, which are shown on the drawings attached as Appendix 1, are, or are not, development and are, or are not, exempted development. The planning status of the signage on the front elevation of No. 53 North Main Street is outside the scope of this request.

1. Exempted Status of the Works

The alterations which were carried out to the internal layout of the permitted licenced premises fall within the definition of 'development' as they involved 'works' to remove, relocate or replace some of the partitions, furnishings and fittings shown on the layouts permitted under Planning Register Ref Nos. 12/35314 and 13/35534. However, these works are also 'exempted development' as they fall within the scope of Section 4(1)(h) of the Planning Acts which provides an exemption for:

"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 works were required to improve the internal layout of the premises so that it can compete with the other licensed premises in the area. The alterations also reflect the fact that, since the grant of permission for the Cork Heritage Brewery at Cornmarket (Planning Register Ref. No. 13/35664), the applicants have been able to centralise the food preparation for their licenced premises in this area. As a result, the food preparation areas which were shown on the layouts permitted under 12/35314 and 13/35534 have been replaced with a

¹ Hereafter referred to as "the Planning Acts"

www.mhplanning.ie

service kitchen located to the rear of the premises. These changes will allow a wider range of food to be served on the premises.

As the alteration works were confined to the interior of the premises, they do not affect the external appearance of the structure and are therefore exempt under Section 4(1)(h) of the Planning Acts.

2. Planning Status of the Current Use of the Premises

The planning unit comprises the combined areas of 52 and 53 North Main Street and was established by the permissions granted by Cork City Council under Planning Register Ref Nos. 12/35314 and 13/35534. Prior to the grant of permission under 12/35314, the site comprised of two separate planning units: No. 52 North Main Street was an established licenced premises with a dance license and No. 53 was a vacant retail unit.

2.1 Planning Register Ref No. 12/35314

The effect of the permission granted under 12/35314 was to allow 52 and 53 North Main Street to be linked together through a common outdoor seating area and for the combined area to be used as a single, licensed premises which included an ancillary use as a licensed café/restaurant. While the application form and the cover letter submitted under 12/35314 referred to the proposed hours of operation of the café, this information was provided to clarify the ancillary nature of the licensed café use which was envisaged at that point in time.

No condition was attached to the permission which regulated the mix of uses; the location of any café use within the overall licensed premises; or the hours of operation of any part of the licenced premises. Since the grant of permission under 12/35314, the entire planning unit has been governed by a single licence under the Licencing Acts. As a result, the internal layout and use of the premises is regulated by the terms of the licence which is issued annually by the Court having due regard to the planning status and established use of the property and the way the premises has been managed during the preceding period.

Condition 1 of the decision to permit under 12/35314 stated that:

"The Development shall be carried out in accordance with the drawings and specifications submitted to the Planning Authority on 27/06/12 except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed"

The use of the term "drawings and specifications" rather than "plans and particulars" means that the condition refers to the dimensions and materials of the permitted works and not to any non-technical information submitted in regard to the intended operation and use of the premises. Furthermore, the reason given for Condition 1 confirms that the purpose was to allow the Planning Authority to check compliance with the terms of the permission at the point in time when the works had been completed and before the use had commenced. The condition does not regulate the use of the premises after the permitted works have been completed.

The nature and extent of the permitted use as a licenced premises was confirmed when the decision to permit under 12/35314 was appealed by a third party under ABP Case No. PL 28.241086. The appeal, which was submitted by Noonan Linehan Carroll Coffey Solicitors, highlighted the fact that:

"No 52 North Main Street is a public house, and the proposed development will be an extension to that licensed premises. It is clear from the planning application that the proposed development will require the premises at 53 North Main Street to be licensed for the sale of alcohol".

On 11/10/2012, the City Council's responded to the grounds of the third-party appeal by stating that:

"the Planning Authority has no further comments to make on this matter".

This implies that the Planning Authority agreed with the appellant's assessment of the nature and extent of the permitted use as a licensed premises and did not consider that the issues raised in the appeal required any amendment to the conditions attached to the decision to permit.

2.2 Planning Register Ref No. 13/35534

The permission granted under 13/35534 also applies to the entire planning unit. Although the development description refers to elevational changes to Nos 52 and 53 North Main Street and the installation of a flue, the ground floor plan which was submitted and approved showed a number of changes to the internal layout of 52 and 53 as compared to the permission granted under 12/35314.

No issues were raised in regard to these internal alterations in the planning reports or the planning conditions. This indicates that the changes to the internal layout were:

- (a) not considered to be of any planning consequence, and/or
- (b) were deemed to be exempt under Section 4(1)(h).

In our opinion this conclusion also applies to the alterations shown in Appendix 1 which are the subject of this request. These represent relatively minor further changes to the ground floor plan which is deemed to have been approved under 13/35534.

3. Request

As noted in the first part of this submission, our clients were entitled under Section 4(1)(h) of the Planning Acts to carry out exempted alterations to the interior of the premises as soon as the permitted works had been completed in accordance with Condition 1. As this exemption is provided under the Planning Acts rather than the Planning and Development Regulations, 2001 (as amended), it is not subject to the restrictions in Articles 9 or 10 of the Regulations. As a result, the conditions attached to the planning permissions cannot be used to restrict our clients' right to use the exemption available under Section 4(1)(h) to carry out further alterations and improvements to the internal layout and use of the licenced premises.

We therefore request the Planning Authority to issue a Declaration under Section 5 of the Planning Acts confirming that the alterations to the internal layouts permitted under Planning Register Ref Nos. 12/35314 and 13/35534, which are shown on the drawings attached as Appendix 1, are 'development' and are 'exempted development' under Section 4(1)(h) of the Planning Acts.

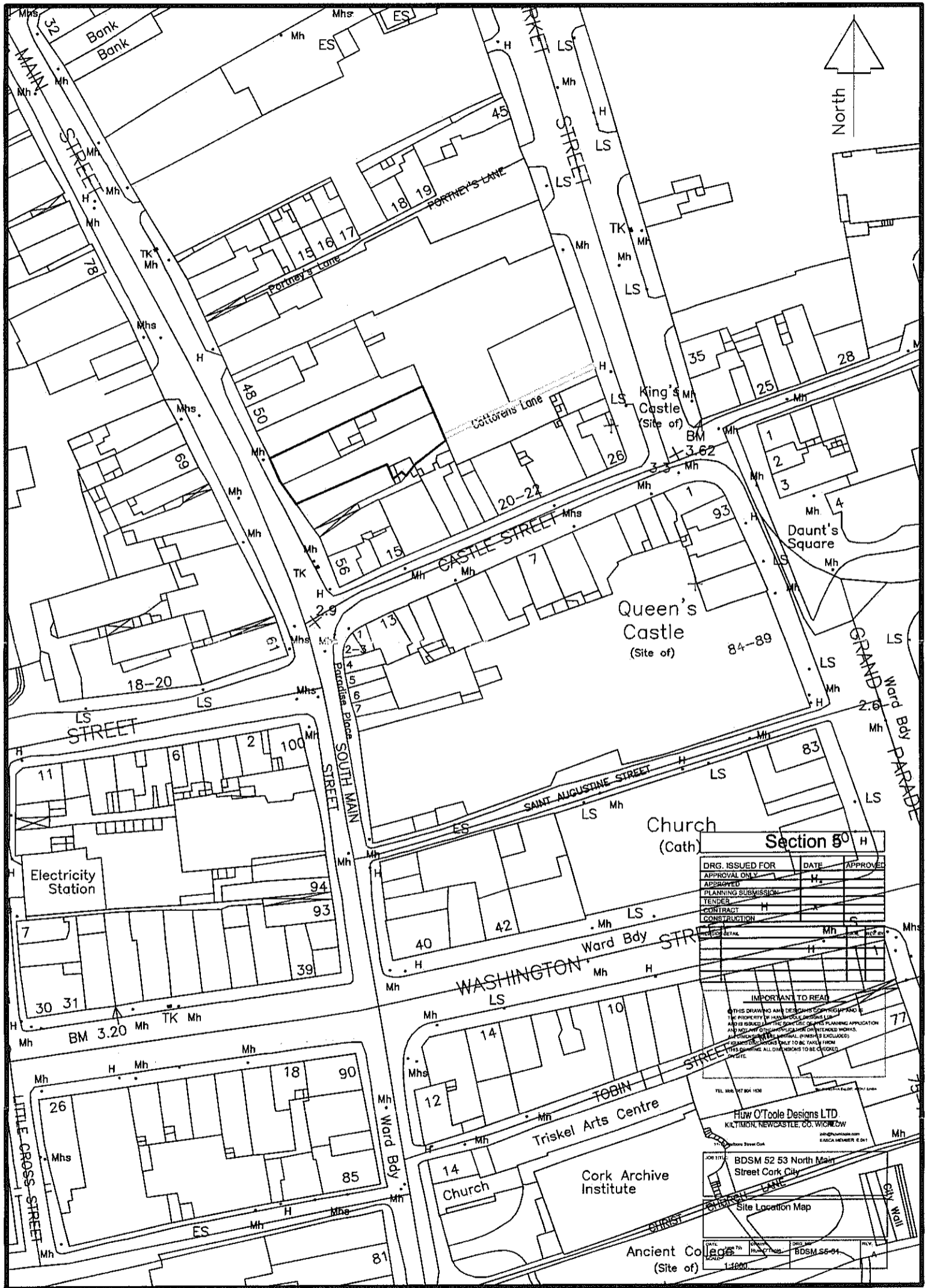
Yours sincerely,



Brian McCutcheon
McCutcheon Halley

Appendix 1: Drawings showing the alterations to the permitted floor plans

- 1.1 Site Location Map @ 1:1,000
- 1.2 Site Location Map @ 1:500
- 1.3 Ground Floor Plan @ 1:100



DRG. ISSUED FOR	DATE	APPROVED
APPROVAL ONLY		
APPROVED		
PLANNING SUBMISSION		
TENDER		
CONTRACT		
CONSTRUCTION		

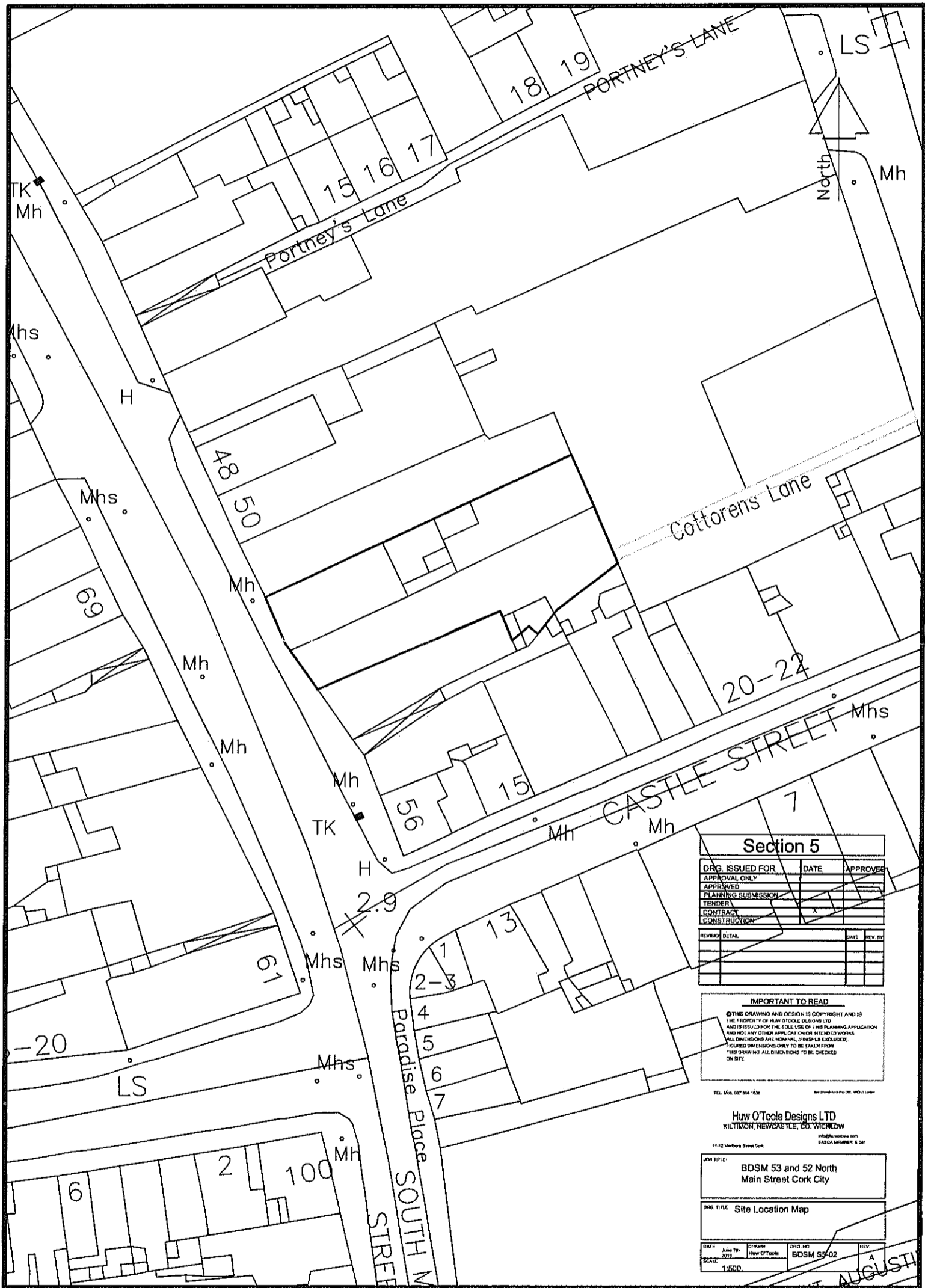
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TEL: 021 494 1011
 HUW O'TOOLE DESIGNS LTD
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JOB TITLE: BDSM 52 53 North Main Street Cork City
 Site Location Map

DATE: 11/01/2008
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Section 5

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Tel: 091 857 804 1026 Fax: 091 857 804 1027

Huw O'Toole Designs LTD
 KILTMOON, NEWCASTLE, CO. WICKLOW
 huw@o-tooledesigns.com
 11-12 Markers Street Cork

JOB TITLE: **BDSM 53 and 52 North
 Main Street Cork City**

DRG. TITLE: **Site Location Map**

DATE	DATE	DATE	DRG. NO.	REV.
June 19	June 19	June 19	BDSM 53-02	A
2023	2023	2023		
SCALE: 1:500				

AUGUST

