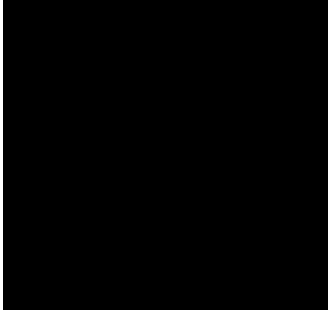




Comhairle Cathrach Chorcaí Cork City Council

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

Eddie Irwin



26/02/2025

RE: Section 5 Declaration:
Unit 1, The Village, Togher Road, Togher, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 27th January 2025, I wish to advise as follows:

The Planning Authority in view of the above and having regard to whether a change of use of Unit 1 from "shop" to use as a "medical centre" is or is not development and is or is not exempted development.

The Planning Authority decides that the change of use of Unit 1, The Village, Togher from a retail unit/shop to use as a health centre or for the provision of any medical or health services, **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 26th of February 2025.

Is mise le meas,

Anthony Angelini

Anthony Angelini
Assistant Staff Officer
Planning & Integrated Development
Cork City Council



We are Cork.

Section 5 Declaration – Planner’s Report

File Reference:	914.25
Description:	Whether a change of use of Unit 1 from “shop” to use as a “medical centre” is or is not development and is or is not exempted development.
Applicant:	Eddie Irwin
Location:	Unit 1, The Village, Togher Road, Togher, Cork
Site inspection:	18.02.2025

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.

Site Location

The site is located at the north east corner of the junction of Togher Road and Tramore Road, Cork. On the site there is part two storey and three storey mix-use building. On the ground floor there is an existing pharmacy and a vacant unit, Unit 1, which faces onto Tramore Road. Unit 1 is the subject matter of this referral. At upper levels there is a dental practice, a medical practice (doctors’ surgery operating as Village Medical Centre) and an apartment.



Screenshot from Google Maps (image capture May 2024) showing Unit 1 at ground floor

The Question before the Planning Authority

It is proposed that the Village Medical Centre who are the current leaseholders of the first floor units will take over the lease of Unit 1 on the ground floor, which was previously in use as a flower shop.

The Planning Authority is asked to determine whether a change of use of Unit 1 from "shop" to use as a "medical centre" is or is not development and is or is not exempted development.

Planning History

05/29254

Demolition of the existing dwelling at No. 1 Tramore Road, and of Togher Stores / Post Office, Togher Road. Construction of 2 no. GF commercial / retail units, 1 no. GF pharmacy, 1 no. 2 bed first floor apartment, 2 no. FF surgery / medical units, store and 1 no. 2nd floor surgery / medical unit and parking

Grant conditional – condition no 4

4.(a)	The uses of the ground floor units shall be restricted to uses falling within the definition of a shop under the Planning and Development Regulations 2001 subject to (b) below.	4.	In the interests of the amenities of the area having regard to parking demand and the site zoning.
(b)	There shall be no sale of any hot food for consumption off the premises from either retail unit, notwithstanding any exemptions contained within the Planning and Development Regulations 2001.		
4 cont'd....			
(c)	On the upper floors permission is granted for 3 no. medical consulting practises only with a maximum of 3 no. practitioners operating from the overall site.		
(d)	Full details of the days and hours of operation of the commercial units on site shall be submitted to and agreed in writing with the Planning Authority prior to development commencing.		

06/31515

Change of use from 2 No. first floor surgery/medical units (planning reference no. 05 29254) to 1 no. architects office

Refuse

Planning Legislation

Planning and Development Act, 2000 as amended

Section 2(1),

“exempted development” has the meaning specified in section 4.

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—

*any of the developments specified in subsection (1), or
development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Planning and Development Regulations, 2001 as amended

Part 2 Exempted Development

Article 5(1) of the Planning and Development Regulations, 2001 provides interpretations for the purposes of exempted development. The following is relevant in the context of the subject referral:

“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 laundrette 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.

Article 10 legislates for a change of use.

Article 10(1) states the following: "Development which consists of a change of use within any one of the classes of use 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—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."

Class 14 – development consisting of the following changes of use would be exempted development –

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,
- (aa) from use for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises
- (b) from use as a public house to use as a shop,
- (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or as a restaurant, to use as a shop,
- (d) from use to which class 2 of Part 4 of this Schedule applies to use as a shop
- (e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,
- (f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.
- (g) from use as a hotel, to use as a hostel (other than a hostel where care is provided),
- (h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,
- (i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons,
- (j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or both

Schedule 2, Part 4 Exempted Development – Classes of Use

Class 1 – Use as a shop

Class 2 – Use for the provision of –

- (a) Financial services,
- (b) Professional services (other than health or medical services),
- (c) Any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

CLASS 8 Use

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

Assessment

The permitted use of Unit 1 of the subject building is a retail/commercial, and a condition was attached restricting the use of the ground floor units to that within the definition of a shop under the Planning and Development Regulations 2001.

Unit 1 was previously used as a flower shop. The signage associated with the previous use has been removed from the façade.

The proposed use is for medical centre, in conjunction with the existing medical centre at first floor of the building.

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'.

As noted above Section 3 (1) of the Planning and Development Act states that: 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

The proposal will involve the change of use from a retail unit to a medical centre. It will be an extension to the existing medical centre operating from the building, with the potential for differing pedestrian and vehicular traffic as compared to the permitted use. The change of use would give rise to material planning considerations.

As the proposal comprises a material change of use, it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION — is development

Exempted Development

The next issue for consideration is whether the change of use is or is not exempted development.

The question is whether the change of use from retail unit (permitted under planning reference 94/58001) to a medical centre use is or is not exempt under Article 10(1) of the Planning and Development Regulations, 2001 (as amended).

The proposed use is medical centre and falls within Class 8(a). The permitted use is Class 1. The permitted use and the proposed use are within different classes and not the same class.

A condition re use of the ground floor unit was attached to the permission, restricting the use to a shop as defined in the planning legislation. The change of use would contravene this condition.

There are no other relevant provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) provide exempted development status on the change of use which is proposed.

CONCLUSION — is not exempted development

Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 10 of the Regulations.

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.

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.

The proposed change of use would come within the scope of Article 10(1)(b), as it contravenes condition no 4 (a) attached to the grant of planning permission.

Recommendation

It is recommended that the applicant is advised as follows:

The Planning Authority in considering this referral, had regard particularly to:

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Article 5(1) and Article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Schedule 2 Part 1 of the Planning and Development Regulations, 2001, as amended,
- (e) Schedule 2 Part 4 of the Planning and Development Regulations, 2001, as amended,
- (f) the grant of permission made under planning register reference number 05/29254 and, in particular, the provisions of condition number 4 attached thereto
- (g) the nature of the permitted use as a shop and the proposed use as a medical centre

Permission was granted under Cork City Council Register Reference Number 05/29254 for a mix use development, with Unit 1 permitted as a retail unit, and a condition was attached restricting its uses falling within the definition of a shop of the Planning and Development Regulations 2001 (as amended).

The proposed change of use from the permitted use as a retail unit/shop to use as a health centre or clinic or for the provision of any medical or health services, would constitute a change of use from a use under Class 1 of Part 1 to the Second Schedule of the Planning and Development Regulations, 2001 (as amended) to use under Class 8(a) of Part 1 to the Second Schedule of the Planning and Development Regulations, 2001 (as amended).

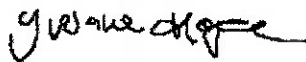
The proposed change of use from the permitted and established use as a shop to use as a health centre or clinic for the provision of any medical or health services, would constitute development in accordance with Section 3(1) of the Planning and Development Act, 2000 (as amended).

The proposed change of use by reason of the change from Class 1 to Class 8(a) as described above, is deemed material within the meaning of Section 3 of the Planning and Development Act, 2000 as amended.

The proposed change of use would contravene condition no 4(a) of the grant of planning permission reference number 05/29254.

There are no provisions within the Planning and Development Act 2000, as amended or the Planning and Development Regulations 2001, as amended, by which such development would be classified as exempted development.

The Planning Authority decides that the change of use of Unit 1, The Village, Togher from a retail unit/shop to use as a health centre or for the provision of any medical or health services, is development and is not exempted development.



Yvonne Hogan, EP
25 February 2025



Evelyn Mitchell (SEP)
25.02.2025



Sean Desmond Consulting Engineers Limited

Chartered Civil & Structural Engineers,

The Granary, The Glen, Kinsale, Co Cork

Tel 021 4773288 Mob [REDACTED]

21st January 2025

Community, Culture & Placemaking Directorate,
Cork City Council,
Planning Department,
City Hall,
Anglesea Street,
Cork

Section 5 Declaration of Exemption – Unit 1, The Village, Togher Road, Togher, Cork

A Chara,

Please find attached the Section 5 application including copies of the following:

1. Application form x 2 no
2. 1:2500 map x 2 no
3. 2 no copies of drawings of existing development
4. Cheque for €80 – application fee

Please contact the undersigned if you have any queries.

Yours Faithfully,

[REDACTED]

Sean Desmond BE CEng MIEI DipEng

Chartered Engineer

Mobile [REDACTED]

CORK CITY COUNCIL
PLANNING & DEVELOPMENT

27 JAN 2025

DEVELOPMENT MANAGEMENT

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

CORK CITY COUNCIL
PLANNING & DEVELOPMENT

27 JAN 2025

DEVELOPMENT MANAGEMENT

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

Fón/Tel: 021-4924029

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM

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

1. NAME OF PERSON MAKING THE REQUEST

EDDIE IRWIN

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

UNIT 1, THE VILLAGE,
TOGHER ROAD, TOGHER, CORK.

3. 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.

IT IS PROPOSED THAT THE VILLAGE MEDICAL CENTRE (DOCTORS SURGERY) WHO ARE THE CURRENT LEASEHOLDER OF THE FIRST FLOOR UNIT AT THIS DEVELOPMENT WILL TAKE OVER THE LEASE OF UNIT 01 ON THE GROUND FLOOR - THE PREVIOUS LEASEHOLDER WAS A FLOWER SHOP. IS THIS EXEMPT DEVELOPMENT OR WILL A CHANGE OF USE

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

PLANNING APPLICATION BE REQUIRED?

4. Are you aware of any enforcement proceedings connected to this site? ☒ NO
If so please supply details:

5. Is this a Protected Structure or within the curtilage of a Protected Structure? ☐ NO
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? ☐

6. Was there previous relevant planning application/s on this site? ☐ YES
If so please supply details:

CS 7 13 24

7. 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 UNIT 1 35 m²
(b) If a domestic extension, have any previous extension/s/structures been erected at this location after 1st October, 1964, (including those for which planning permission has been obtained)? Yes ☐ No ☒
If yes, please provide floor areas (sq. m) NOT RELEVANT

- (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)

Flower Shop

MEDICAL CENTRE
(DOCTORS SURGERY)

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure

A. Owner ☒

B. Other ☐

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 of the owner if available

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

Signature

Date

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, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

- 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

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protection policy is available at <https://www.corkcitycouncil.com/en/privacy-policy>

We request that you read these as they contain important information about how we process personal data.

56596

568131 559688

ITEM CENTRE PT COORDS
566014 569522

DESCRIPTION

MAP SHEETS
1:1000
6427-03 6427-08

**CORK CITY COUNCIL
PLANNING & DEVELOPMENT**

27 JAN 2025

DEVELOPMENT MANAGEMENT

FOLIO
CK72645F

GROUND
UNIT 01

FOLIO
CK58490

FOLIO
CK58490

[illegible]

553425

Plot Ref No 25326600_1_1
Plot Date 24-APR-2018

100 Meires

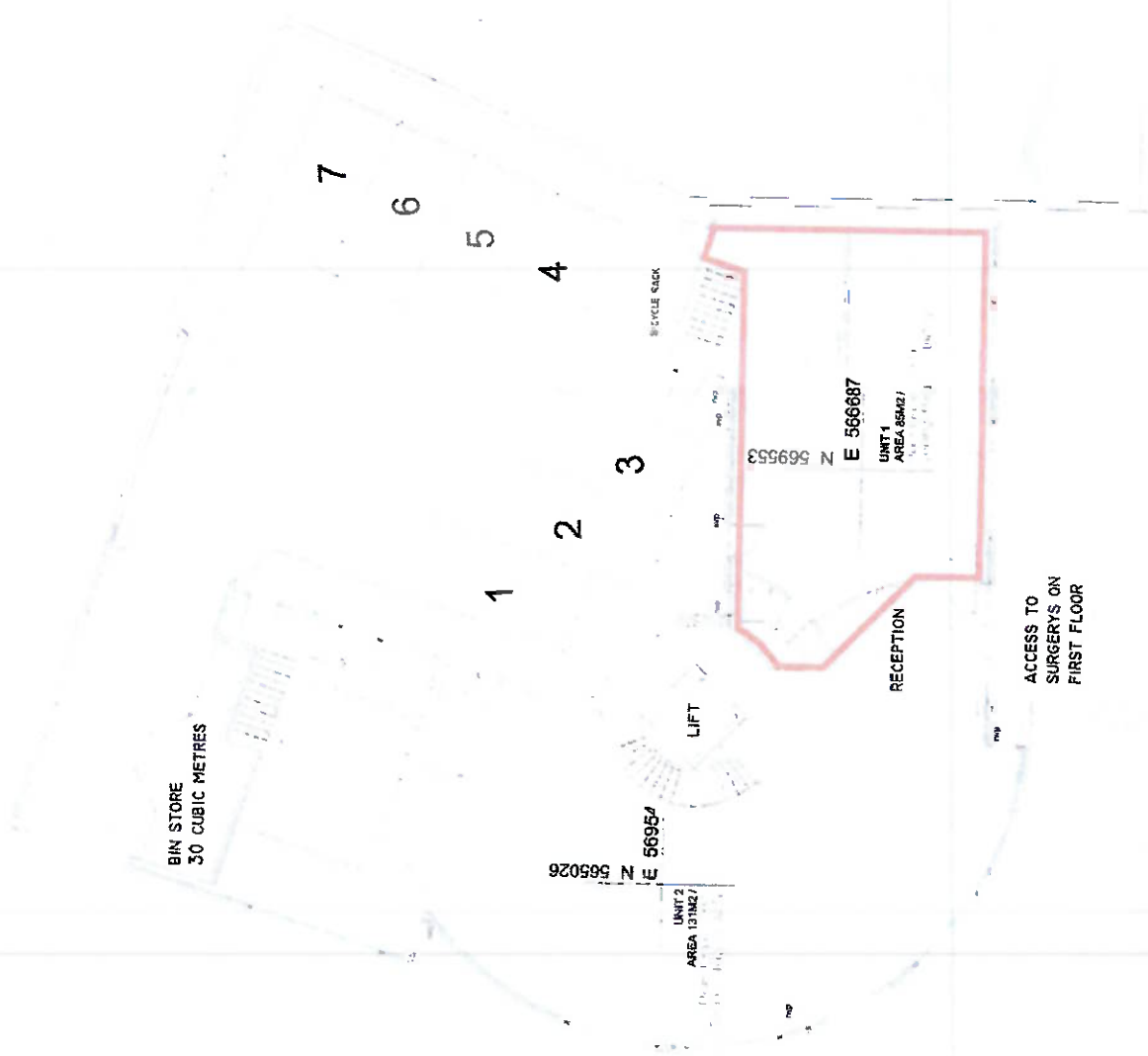
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565898

CORK CITY COUNCIL
PLANNING & DEVELOPMENT
27 JAN 2025
DEVELOPMENT MANAGEMENT



BIN STORE
 30 CUBIC METRES

UNIT 2
 AREA 131M2
 N 565026 E 56954

UNIT 1
 AREA 55M2

UNIT 1
 AREA 56M2
 N 56953 E 56687

LIFT

RECEPTION

ACCESS TO
 SURGERYS ON
 FIRST FLOOR

GROUND FLOOR PLAN UNIT 01 & 02
scale 1:150

Revisions	Date	By
1 FIRST ISSUE	11.01.25	SD

Project	
LAND REGISTRY MAP TOGHER VILLAGE CENTRE	

Title	
Ground Floor Plan - Unit 01	

Drawn: SD	Check: SD	Issue Not To Scale
Date: 11.01.24	Date: 11.01.24	DO NOT SCALE

DESMOND CONSULTING
 THE CHAIRMAN, THE CLERK,
 KESWILL COUNTY COUNCIL
 Tel: 051 63 21 477205
 Email: info@desmondconsulting.ie

Fig. No.	Revision
1624-02	A