

# Comhairle Cathrach Chorcaí Cork City Council

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

Mark Vincent O'Brien,  
c/o Camilla Botto Poala,  
DL Group Consulting Engineers,  
1 Hodders Villas,  
Ballincollig,  
Cork.

29/11/2023

**RE: Section 5 Declaration R801/23 Mark Vincent Hair Salon at  
Unit I/II Main Street, Ballincollig, Cork P31 YY93.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 21<sup>st</sup> September 2023, I wish to advise as follows:

In view of the above and having regard to:

- a. Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- b. Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- c. Classes 1, 8 and 14 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001;
- d. The definition of a shop which specifically excludes consumption on the premises;
- e. The permitted use of the unit as a shop (Class 1) and the subsequent use as a beauty salon (Class 8);
- f. The amalgamation of Units 1 and 2 and use as a beauty salon;
- g. The scale, nature and layout of the café, the range of goods to be sold for consumption on and off the premises and the layout and services provided to visiting members of the public, in particular, customer toilet facilities, independent access/egress from the unit, and the extent of seating provided;
- h. Further Information details received on 08.11.2023.



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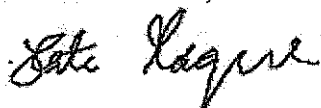
The Planning Authority has concluded that:

- a. the use of the subject premises as a cafe does not constitute use as a “shop” as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the scale, nature and layout of the café is akin to a restaurant use which is expressly excluded from the definition of ‘shop’ under Article 5(1) of the said Regulations;
- b. the use is not considered to be ancillary to the authorised use as a shop;
- c. the change of use of the subject premises, from use as a shop to use as a café raises issues that are material in terms of the proper planning and sustainable development of the area and is, therefore, material and is, therefore, “development” within the meaning of section 3 of the Planning and Development Act, 2000’.
- d. there are no exemptions in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, by which this change of use would constitute exempted development.

Therefore, the Planning Authority has decided that *the change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises use* **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, 29<sup>th</sup> November 2023.

Is mise le meas,



**Kate Magner**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**

## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R 801/23  
**Description:** Whether the *change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises* use is or is not development and/is or is not exempted development.  
**Applicant:** Mark Vincent O’Brien  
**Location:** Unit 1 & 2 Main Street, Ballincollig

### 1. REQUEST FOR FURTHER INFORMATION

This report should be read in conjunction with my previous report of 18.10.2023 which recommended that Further Information be sought. A request for Further Information was made in respect of this application as per the following:

1. Please clarify the permitted use of Units 1 and 2 in terms of the Classes of Use as outlined in the Planning and Development Regulations 2001 (as amended) and having regard to the governing permission for the site/any conditions of same and uses operating since the construction of the units. Please note that a beauty salon is considered to fall under Class 2 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended) rather than Class 1. Please clarify when the amalgamation of Units 1 and 2 took place. Should the existing premises be an unauthorised premises then please be advised that no exemptions would apply to such a unit.

2(a) Please clarify the proposed end user of the unit/type of café use proposed. Please clarify the nature of the intended use in terms of food/beverage products (i.e. hot/cold) as well as whether consumption of same will take place on or off the premises.

(b) Please clarify whether any air conditioning/extraction units are proposed and where these would be located. Please clarify whether any grease traps will be required.

### 2. FURTHER ENVIRONMENTAL ASSESSMENT

~~Pursuant to article 103(1) of the Planning and Development Regulations 2001 as amended, having regard to the nature and scale of the proposed development and following a preliminary examination of, at the least, the nature, size or location of the proposed development, it is considered that there is no real likelihood of significant effects on the environment and it is consequently concluded that E.I.A. is not required.~~

It is not considered that the response to the F.I. gives rise to a significant change or modification to the proposed development so that it would now have a significant impact on a European Site, or that it would require environmental impact assessment. Consequently, it is considered that appropriate assessment and environment impact assessment are not required.

### 3. FURTHER PLANNING RESPONSE

The applicant responded to the F.I. request on 08.11.2023 as follows:

- Item 1 - In relation to this item it is stated that the permitted use of Units 1 and 2 is Class 1 (shop) as per the governing permission 03/0122.

- Item 2(a) it is stated that the proposal is a sui generis use subsidiary to the main hair salon use with foodstuff sold on site prepared off site – hot and cold beverages sandwiches, pastries and cakes – for the benefit of clientele of the hair salon or sold for consumption off the premises. It is stated that it is proposed to include a small element of seating in the premises, to primarily serve the customers of the hair salon. There will be no kitchen, cookers, raw food prep area – just reheating equipment (for sandwiches) – opening hours will match the current business operation with no late night use.
- Item 2 (b) it is stated that no additional air conditioning/extraction units are proposed and no grease trap will be required.

The applicant’s agent states that they believe the ancillary coffee shop can be defined as a shop subsidiary to the main purpose of the premises. The proposed ancillary coffee shop will not be a restaurant and it will comprise a shop as the principal use will be the retail sale of goods.

#### 4. OTHER RELEVANT SECTION 5 REFERRALS

I note a number of Section 5 references to An Bord Pleanála where a *partial* change of use to a coffee shop within a retail area was considered to be an ancillary use to the main retail use and as such were not considered to be development.

**RL 3023** A proposed coffee sales area (16.8 sq.m. of 78 sq.m. – 21.5%) within an existing retail unit at Keane’s garden centre, Kilcolgan Village, Co. Galway.

- Is not development.

**RL 2941** The partial change of use of a shop to use as a coffee shop at West Street, Drogheda (no floor areas given).

- Is not development. (Inspector recommended ‘is development which is not exempted development).

**RL 61.RL 3315** The partial change of use of a shop (2.1 sq.m. of 18.3 sq.m. or 11% of ground floor area) to use as a coffee shop, Quay Street, Galway:

- Is not development. (Inspector recommended ‘is development and is exempted development).

**RL06S.303153**: Whether the change of use of a shop for use as a coffee shop at Dunnes Stores, Liffey Valley Shopping Centre Clondalkin (79 sq.m. of a g.f.a. of 5,976 sq.m. or 1.3%) is or is not development or is or is not exempted development.

- Is not development.

**RL93.RL3444** –Whether the partial change of use of part of a shop as a coffee shop at Pennys 31-37 Barronstrand St, Waterford is or is not development or is or is not exempted development (120 sq.m. out of a total of circa 5,000 sq.m. i.e. 2.4%)

- is not development.

In the following cases of a partial change of use the Bord reached a different conclusion regarding such partial change of uses:

**63.RL2821:** Incorporation of a juice bar/coffee station as part of a retail pharmacy unit (3.9% of floor area) at Reeks Gateway, Killarney.

- is development and is not exempted development.

The Bord concluded the use as a cafe was not ancillary to use as a pharmacy and that a cafe does not come within the same use class as a shop and therefore was not exempted development.

**RL61.303989:** Whether the partial change of use from shop to coffee shop and maintenance and conservation works to the upper floor facade is or is development or is or is not exempted development. (Protected Structures) at 12 Cross St Upper and 1 High Street Galway

- is development and is not exempted development.

The Inspector considered the partial change of use of the ground floor (20%) to a coffee dock did not constitute development however the Bord concluded it was development and not exempt as:

**(d) The partial change of use of the ground floor of the subject premises as a “coffee shop” does not constitute use as a “shop” as defined in Article 5 (1) of the Planning and Development Regulations 2001, as amended, because the nature and range of goods sold, as outlined in the documentation submitted as part of the referral, consists primarily of the sale of sandwiches, cold/package ready-made food and other food (including beverages) for consumption off the premises, and the remaining area, as indicated in the inspection of the premises by the Inspector, is used primarily for the sale of similar items. Accordingly, the partial change of use is not subsidiary to any other retail use, and therefore does not come within the scope of paragraph (d) of Article 5 (1).**

The Bord stated that:

**In not accepting the recommendation of the Inspector that the subject partial change of use is not development, the Board had regard to his inspection of the subject premises, and noted that the nature and range of goods sold on the premises involves primarily the sale of sandwiches and other food (including beverages) for consumption off the premises, and that such sale is the main retail use and is not a subsidiary use, and that therefore the use of the premises in question as a “coffee shop” is not within the scope of the**

definition of a “shop” as set out in the Regulations. The Board was also satisfied that the change of use from the former retail use to the use as a “coffee shop”, as has taken place, raises external matters that are material in planning terms, and that therefore the change of use in this instance constitutes development. Furthermore, the Board noted the reliance, by the Inspector and by the referrer’s agent, on previous referral decisions by the Board, under file reference numbers RL3315 and RL2940, both of which had decided that a “coffee shop” was within the definition of a “shop”, but had not adverted to more recent decisions by the Board, in a large number of cases, whereby the Board had subsequently determined that use of a premises as a “coffee shop” was not within the definition of use as a “shop”, including file reference numbers RL3424, RL3425, RL3426 and RL3515, and that the nature and range of goods sold on the premises is a significant factor, and the presence, or absence, of customer seating and toilet facilities is not a determining factor in this regard.

**RL06F.RL3481:** Whether the change of use of part of the unit from a toy shop (Airside Retail Park, Swords) (192 sq.m. out of a total of 3,269 sq.m. – approx. 6%) to use as a coffee shop by Starbucks is or is not development or is or is not exempted development.

- Is development and is not exempted development.

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Some other referrals are outlined below which relate to the principal of changing an *entire* shop/bank premises to a coffee shop including:

**28.RL.2516** The use of a former camera shop as a juice bar at 55 St. Patrick’s Street, Cork.

- Is not development.

I note that in relation to this site that the Inspector at the time considered that a juice bar incorporating the sale of sandwiches made to order could not be considered to be consistent with the description of a shop provided in Article 5(1)(d) because it was *the primary use as opposed to the subsidiary use*. Thus a material change of use constituting development has occurred. She accordingly recommended that the development was ‘development and not exempted development’ although the Bord subsequently decided it was ‘not development’.

**54.RL2940** The change of use of a bank (Protected Structure) to use as a coffee shop at 13, West Street, Drogheda.

- is development which is exempted development.

In this case the Inspector argued that the use fell under Class 2 and as such was exempt as the bank use also fell under Class 2. However the Bord decided that the use falls within the scope of a shop (Class 1) therefore is a material change of use which is exempt under Class 14(d) which allows for a change of use from Class 2 to use as a shop.

- 29S.RL.3072** Change of use of premises from banking use to coffee shop, Stephen’s Green, Dublin.
- is development and is not exempted development.

The Inspector in this case concluded that:

- (a) the change of use of the subject premises, from use for banking to use as a coffee shop is material and is therefore “development” within the meaning of Section 3 of the Act,
- (b) the previous use as a bank and the proposed use as a coffee shop do not fall within the same Class of Use under Part 4 of Schedule 2 to the said regulations, and in particular the proposed use would not be within the meaning of Class 2 (c) of Part 4,
- (c) the proposed use as a coffee shop does not constitute use as a “shop” as defined in Article 5 (1), as amended, of the said Regulations, and is a *sui generis* use which is not within any of the use classes under Part 4 of Schedule 2,

The Bord slightly altered (c) as follows:

- (a) the change of use of the subject premises, from use for banking to use as a coffee shop is material and is therefore “development” within the meaning of Section 3 of the Planning and Development Act, 2000,
- (b) the previous use as a bank and the proposed use as a coffee shop do not fall within the same Class of Use under Part 4 of Schedule 2 to the Planning and Development Regulations, 2001 and, in particular, the proposed use would not be within the meaning of Class 2 (c) of the said Part 4,
- (c) the proposed use as a coffee shop does not constitute use as a “shop” as defined in Article 5 (1), as amended, because the scale, nature and layout of the proposed coffee shop is more akin to a restaurant use which is expressly excluded from the definition of ‘shop’ under Article 5 (1) of the said Regulations, as amended,

**54.RL.2939:** Change of use of a shop to use as a coffee shop/bistro at Shop Street and North Quay, Drogheda.

- Is development and is not exempted development.

**RL28.RL2887:** Change of use from retail to use as a milkshake bar of Unit 23B, Wilton Shopping Centre, Cork,

- Is development and is not exempted development.

**RL28.RL3424:** Change of use of premises at 11 Emmett Place, Cork, from retail use to a coffee shop.

- is development and is not exempted development.

**RL28.RL3426:** Change of use of premises at 39 Princes Street, Cork, from retail use to a coffee shop.

- is development and is not exempted development.

**28.RL.3425:** Whether the use of No. 11 St. Patrick’s Street Cork as a coffee shop, having regard to its current nature, layout and scale comprises a material change of use from retail use and is or is not development and is or is not exempted development.

- is development and is not exempted development.

**RL3515:** Whether the use of No. 11 St. Patrick’s Street Cork as a coffee shop, having regard to its current nature, layout and scale comprises a material change of use from retail use and is or is not development and is or is not exempted development.

- is development and is not exempted development.

**RL3810:** Whether the use of No. 11 Saint Patrick's Street, Cork currently operating as a Starbucks coffee shop is or is not development or is or is not exempted development.

- is development and is not exempted development.

Since the determination of the several Starbucks case referrals (Cork City Council area) the issue of subsidiarity has come to the fore and the Bord appears to accept that a distinction exists between use as an ancillary ‘coffee shop’ similar to those operated in local shops/petrol stations (where consumption of food/drink takes place off the premises and the sale is subsidiary to the main retail use and use as a café/restaurant, with support food prep areas/toilets/seating and own door access.

I again note the definition of a shop as outlined in Article 5(1) of the Planning and Development Regulations:

“... ‘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;



I also note as per Article 10(1) Change of Use, of the Planning and Development Regulations, 2001, as amended:

‘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<sup>1</sup>, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.’

A café would not be normally associated with a hairdressing use and as such it not considered to be a subsidiary use to that function. From the above referrals the scale of the café space is of significance in the determination also of whether it is subsidiary to the main retail use. In this case I note the following:

- The café use would take up the majority of Unit 2 - the floor area shown on the drawings for the café use is 110 sq.m. The floor area of Unit 2 is approx. 137 sq.m. therefore the café use would take up approx. 80% of Unit 2 or 40% of the combined areas of Units 1 and 2 (combined floor area of 275 sq.m.). There is a substantial seating area therefore consumption of food and drink will take place on site i.e. a café use. I note that sale of goods for consumption on the premises i.e. restaurant use is specifically excluded in the definition of a shop under Article 5(1) of the Planning and Development Regulations (as amended);
- the change of use of the subject premises from use as a shop to use as a café raises issues that are material in terms of the proper planning and sustainable development of the area i.e. littering/waste disposal/storage/presentation potential odour general etc; and the potential for differing pedestrian and vehicular traffic as compared to the permitted retail use,
- The café use would have its own/separate entrance door to the hairdressing unit as well as a separate food preparation area and customer toilets.

I also note that:

- Units 1 and 2 were amalgamated into one planning unit without the benefit of planning permission;
- The beauty salon element of Unit 2 appears to be unauthorised – the majority of the unit has been converted to a beauty salon (Class 8 of the Regulations as opposed to Class 1 -hairdressers);
- Unit 1 would as a result of the development become a combined hair/beauty salon – which would involve a partial change of use from Class 1 to Class 8.

The development proposed has all of the elements to operate as a café, with a kitchen for food preparation on the premises, an independent and separate access/egress and a substantial sit-down area. Accordingly, in my opinion, the use would not be subsidiary to the authorised Class 1 use, the change of use is ‘material’, and a sui generis use more akin to a restaurant and thus constitutes development (a material change of use) within the meaning of Section 3 of the Planning and Development Act, 2000, as amended and the change of use is, therefore, “development” within the meaning of Section 3 of the Planning and Development Act, 2000, as amended, and (d) there are no exemptions in the Planning and Development Act 2000, as amended, or in the Planning and

<sup>1</sup> My highlighting

Development Regulations, 2001, as amended, by which this change of use would constitute exempted development.

It also appears that the existing premises may be unauthorised, functioning as a single planning unit with a combined Class 1 and Class 8 use rather than as two separate Class 1 uses. I note from case law that if changes to a planning unit give rise to fresh planning considerations, this is considered material. Similarly, were intensification of use to occur such that new planning issues are produced this could be considered a material change of use.

## CONCLUSION

The applicant has submitted the following as the question to be answered by the Planning Authority:

*‘Whether the change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises use is or is not development and/is or is not exempted development.’*

In considering this referral the Planning Authority had regard to:


- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- (c) Classes 1, 8 and 14 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001;
- (d) The definition of a shop which specifically excludes consumption on the premises;
- (e) The permitted use of the unit as a shop (Class 1) and the subsequent use as a beauty salon (Class 8);
- (f) The amalgamation of Units 1 and 2 and use as a beauty salon;
- (g) The scale, nature and layout of the café, the range of goods to be sold for consumption on and off the premises and the layout and services provided to visiting members of the public, in particular, customer toilet facilities, independent access/egress from the unit, and the extent of seating provided;
- (h) Further Information details received on 08.11 2023.

The Planning Authority has concluded that:

- (a) the use of the subject premises as a café does not constitute use as a “shop” as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the scale, nature and layout of the café is akin to a restaurant use which is expressly excluded from the definition of ‘shop’ under Article 5(1) of the said Regulations;*
- (b) the use is not considered to be ancillary to the authorised use as a shop;*
- (c) the change of use of the subject premises, from use as a shop to use as a café raises issues that are material in terms of the proper planning and sustainable development of the area and is, therefore, material and is, therefore, “development” within the meaning of section 3 of the Planning and Development Act, 2000’.*
- (d) there are no exemptions in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, by which this change of use would constitute exempted development.*

Therefore, the Planning Authority had decided that the change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises use

- is development and is not exempted development.

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**Evelyn Mitchell,**  
**Senior Executive Planner,**  
**28.11.2023**



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Ballincollig  
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Your Ref:



**The Planning Department,  
Cork City Council,  
City Hall,  
Cork.**

**Re: Response to further information request  
Section 5 Declaration R801/23 Mark Vincent Hair Salon, Unit1&2, Main Street, Ballincollig,  
Cork.**

Dear Sir/Madam,

We act on behalf of our client, Mark Vincent of Mark Vincent Hair Salon, and further to your letter dated 18/10/23, we wish to respond to Cork City Council's request for further information regarding the above Section 5.

In the interest of clarity, we will respond to items in the order that they were raised by the Planning Authority in their request for further information.

- 1) The permitted use of Units 1 and 2 is Class 1, as per the governing planning application, on site and attached planning conditions (planning application no. 03/0122).  
Our client was the first occupier of Unit 1 since the construction of the premises. He established the hair salon in 2011.  
Later in 2017, he started leasing the adjoining Unit 2, vacant at the time, and expanded the hair salon over Units 1 and 2. The reconfiguration of the hair salon was granted a Fire Safety Certificate on 06/03/2018 (Ref. no. 18/FSC/S/1051).

At present, the salon offers hairdresser and barber services. A section of the units was intended for beauty treatments, but this offer was later deemed not financially viable. The proposed coffee shop offer is intended to replace these treatment rooms.

- 2) The subject proposal is a *sui generis* coffee shop, subsidiary to the main hair salon use. The offer will be of small scale, and ancillary to the main use of the premises. All foodstuff sold on site will be prepared off-site and sold on the premises. The proposed ancillary coffee shop will comprise the retail sale of the following:  
-hot and cold beverages; sandwiches, pastries and cakes.  
It is intended that the goods sold will be for the benefit of the clientele of the hair salon, or sold for the consumption off the premises.

Directors: Tim O' Leary BSc(Eng), C.Eng, M.I.E.I. Chris Donovan BSc(Eng), MSc(Eng), C.Eng, F.I.E.I.  
Donlea Consulting Engineers Ltd., trading as D.L. Group is regulated by the Central Bank of Ireland.

Registered Office: 1, Hodders Villas, Ballincollig, Co. Cork.  
Registered No.: 65403

It is proposed to include a small element of seating in the premises, to primarily serve the customers of the hair salon.

There will be no kitchen, cookers, raw food preparation area, mechanical extraction system and no back of the house on site.

The only equipment that will be installed will be re-heating equipment's.

There will be no odours generated that would not be associated with the retail use.

Whilst sandwiches could be heated, they will be prepared off-site and the heating will not require any extraction equipment. Such equipment for heating sandwiches is commonly found in convenience stores and sandwich shops which fall within the definition of shops.

The coffee shop is ancillary to the main hair salon and the opening hours/days will match the current business operation. There is no late-night use.

- 3) As stated above, no additional air conditioning/extraction units are proposed, and no grease trap will be required on site.

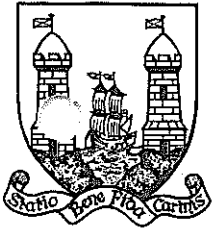
On the basis of the foregoing, we believe that the ancillary coffee shop proposed can be defined as a shop, subsidiary to the primary purpose of the premises, in this case hair salon. The proposed ancillary coffee shop will not be a restaurant and it will comprise a shop as the principal use will be the retail sale of goods.

We trust that the information provided for this application is sufficient. If you have any queries regarding the above, please do not hesitate to contact our office.

Yours sincerely,

*Camilla Botto Poala*

**Ms. Arch**



# Comhairle Cathrach Chorcaí Cork City Council

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

O'Flynn Construction,  
Beckett House,  
Barrack Square,  
Main Street,  
Ballincollig,  
Cork.

19/10/2023

**RE: Section 5 Declaration R801/23 Mark Vincent Hair Salon, Unit 1  
& 2, Main Street, Ballincollig, Cork.**

A Chara,

A Section 5 Declaration application has been submitted in which you have been identified as the owner of the property:

**Applicant:** Mark Vincent O'Brien

**Postal Address of Land or Structure for which Declaration is sought:** Mark Vincent Hair Salon at Unit 1 and 2 of Main Street, Ballincollig, Cork P31 YY93.

**Question/Declaration Details:** Is the change of use of a portion of an existing hair & beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair & beauty salon premises, considered a development, and if so, is it exempted development?

The Planning Authority requests the following:

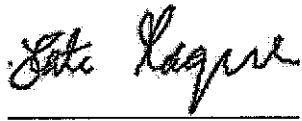
- evidence of your consent to any amalgamation of units which has already occurred, or
- evidence of your consent to the proposed change of use/occupant/activity on site proposed.

Please submit any information which you consider may be relevant in order to enable the Planning Authority to determine this Section 5 declaration request.



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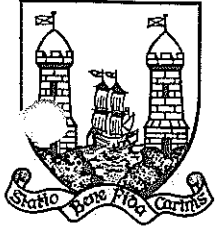
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**Kate Wagner**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**





# Comhairle Cathrach Chorcaí Cork City Council

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

Mark Vincent O'Brien,  
c/o Camilla Botto Poala,  
DL Group Consulting Engineers,  
1 Hodders Villas,  
Ballincollig,  
Cork.

18/10/2023

**RE: Section 5 Declaration R801/23 Mark Vincent Hair Salon, Unit 1  
& 2, Main Street, Ballincollig, Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 21<sup>st</sup> September 2023, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that further information is required in order to properly assess this application.

- 1) Please clarify the permitted use of Units 1 and 2 in terms of the Classes of Use as outlined in the Planning and Development Regulations 2001 (as amended) and having regard to the governing permission for the site/any conditions of same and uses operating since the construction of the units. Please note that a beauty salon is considered to fall under Class 2 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended) rather than Class 1. Please clarify when the amalgamation of Units 1 and 2 took place. Should the existing premises be an unauthorised premises then please be advised that no exemptions would apply to such a unit.
- 2)
  - a) Please clarify the proposed end user of the unit/type of café use proposed. Please clarify the nature of the intended use in terms of food/beverage products (i.e. hot/cold) as well as whether consumption of same will take place on or off the premises.



We are Cork.



b) Please clarify whether any air conditioning/extraction units are proposed and where these could be located. Please clarify whether any grease traps will be required.

Is mise le meas,



---

**Kate Magner**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**



## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R 801/23  
**Description:** Whether the *change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises* use is or is not development and/is or is not exempted development.  
**Applicant:** Mark Vincent O’Brien  
**Location:** Unit 1 & 2 Main Street, Ballincollig

### 1. PURPOSE OF REPORT/QUESTION BEFORE THE PLANNING AUTHORITY

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.

The applicant has asked that the following question to be determined:

*‘Is the change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises, considered a development, and if so, is it exempted development?’*

The question can be reframed as follows:

*Whether the change of use of a portion of an existing hair and beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair and beauty salon premises, is or is not development and/is or is not exempted development.’*

### 2. SITE LOCATION/ZONING

The site is located at Units 1 and 2 Main St, Ballincollig and is zoned within the Cork City Development Plan 2022-2028 as ZO6 Urban Town Centre.

### 3. SITE HISTORY

03/121: Parent permission for the development of the Ballincollig Town Centre.

### 4. RELEVANT LEGISLATION

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

Section 2(1),

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

*“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.*

**4.2 Planning and Development Regulations, 2001 as amended**

Article 5 (1) of the Regulations includes the following definition of a shop:-

"... '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;

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"*

Article 10(1) Change of Use, of the Planning and Development Regulations, 2001, as amended states as follows:

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 of Part 1 of the Second Schedule outlines the following exempted development:

‘Development consisting of a change of use

- (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.
- (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..’

Part 4 of the Second Schedule includes classes of use – with Class 1 being ‘Use as a shop’.

## 5. PLANNING ASSESSMENT

The application form states as follows:

- *‘The current use of the premises is a hair and beauty salon.*
- *It is proposed to dedicate part of the existing floor area to café use, ancillary to the existing hair and beauty salon.*
- *The proposed café section will be connected and integrated with the hair and beauty salon floor area, and it will be run and managed as part of the salon.*
- *The number of staff will not increase from the current.*
- *The days/hours of operation will match the existing.*
- *No material changes to the existing elevations are proposed.’*

The existing plans show Unit 1 and Unit 2 amalgamated into 1 unit with the hairdressing use taking place mainly in Unit 1 and the beauty salon use (nail bar/4 No. beauty rooms and a tanning room occupying most of Unit 2. A barbering area is also located in Unit 2. The proposed plans show the majority of Unit 2 as the proposed café use with a smaller barbering area. The proposed café would include a preparation area, a service area, a café/seating area, storage and W.C. There would be direct access from the street to the unit, with another external door access to the hair and beauty salon, which would predominantly be within Unit 1.

The floorplan for proposed Unit 2 shows seating for approx. 16 persons with 10 tables. There are no details whether the food sold would include hot food or whether food/drinks would be available for consumption off the premises.

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development.

Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under Section 5.

### **5.1 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'.

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."

While there is no statutory definition for 'material change' of use, the question of whether a such a change has occurred can be determined by identifying the existing or established use and the subsequent use and determining the different impact such uses would have in planning terms.

The proposal comprises a material change of use, as the impacts of a café use versus a shop use would be different in terms of footfall/waste generation/possible noise/smell generation etc. It is therefore considered to be 'development' within the meaning of the Act.

### **CONCLUSION — is development**

### **5.2 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 subsection (2) of Section 4.

Units 1 and 2 were originally developed as two separate units. From Google Maps it appears that the two units were amalgamated sometime between 2017 and 2019. In 2009 Unit 1 was vacant and Unit 2 was in use as a photography studio. In 2011 a hairdresser (Mark Vincent) occupied Unit 1 and the photography studio remained in Unit 2. In 2017 the hairdressers remained in Unit 1 and a menswear shop was located in Unit 2. In 2019 the 2 units are shown amalgamated and are operating as a hairdresser/beauty salon.

In general amalgamation of units would require planning permission. I have ordered the governing permission file for the Ballincollig Town Centre as it is unclear what the permitted use was for each of the units.

The beauty salon use is considered to fall under Class 2 of Part 4 of Schedule 2 of the Regulations rather than Class 1 - use as a shop. See below extract from the An Bord Pleanála Inspector's report on file PL83.238365.

**The subject development relates to a change of use from medical centre to beauty salon and in accordance with Schedule 2, Part 4 of the Planning and Development Regulations, 2001, the proposed change of use would represent a change from a use Class 8 to use Class 2.**

There is therefore a question mark over whether the existing premises is an authorised premises containing an authorised use.

I note that if the permitted use is as a retail unit that a café use is not considered to fall under the definition of a shop – it is a 'sui generis' use – i.e. an individual use. Given the proposed food prep and serving areas and the sit down element shown the use is considered to be akin to that of a restaurant use. The definition of a shop specifically excludes use as a restaurant. I also note that there is no specific exemption for a change of use from an (authorised) beauty salon or from a shop to a café use. I do not consider that the café use could be considered ancillary to the hair/beauty salon in this case as it would occupy most of Unit 2 and would have a separate door access from the street.

## **6. ENVIRONMENTAL ASSESSMENT**

### **6.1 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.

### **6.2 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.

## **7. CONCLUSION/RECOMMENDATION**

It is considered that insufficient information has been provided in order for the Planning Authority to make a decision on the application. The applicant is not the owner of the premises but a lessee.

As a result I recommend that:

(a) the Planning Authority write to the owners of the property (stated to be O'Flynn Construction) notifying them that a Section 5 declaration request has been made on the property, requesting evidence of their consent to any amalgamation of units which has already occurred or to the proposed change of use/occupant/activity on site proposed and requesting them to submit any information that they consider may be relevant in order to enable the Planning Authority to determine the Section 5 declaration request;

(b) a request for Further Information issue to the applicant as per the following:

The Planning Authority is unable to make a determination based on the information submitted. In this regard you should submit the following Further Information:

1. Please clarify the permitted use of Units 1 and 2 in terms of the Classes of Use as outlined in the Planning and Development Regulations 2001 (as amended) and having regard to the governing permission for the site/any conditions of same and uses operating since the construction of the units. Please note that a beauty salon is considered to fall under Class 2 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended) rather than Class 1. Please clarify when the amalgamation of Units 1 and 2 took place. Should the existing premises be an unauthorised premises then please be advised that no exemptions would apply to such a unit.

2(a) Please clarify the proposed end user of the unit/type of café use proposed. Please clarify the nature of the intended use in terms of food/beverage products (i.e. hot/cold) as well as whether consumption of same will take place on or off the premises.

(b) Please clarify whether any air conditioning/extraction units are proposed and where these would be located. Please clarify whether any grease traps will be required.

---

Evelyn Mitchell,  
Senior Executive Planner,  
18.10.2023

# COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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

R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924709  
Líonra/Web: [www.corkcity.ie](http://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

MARK VINCENT O'BRIEN

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

MARK VINCENT HAIR SALON AT UNIT I/II MAIN STREET, BALLINCOLLIG, CORK P31 YY93

### 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.*

Is the change of use of a portion of an existing hair&beauty salon, from retail use (hair and beauty salon) to café use, ancillary to the hair&beauty salon premises, considered a development, and if so, is it exempted development?

#### ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

*(Use additional sheets if required).*

The current use of the premises is a hair and beauty salon.

It is proposed to dedicate part of the existing floor area to café use, ancillary to the existing hair& beauty salon.

The proposed café section will be connected and integrated with the hair & beauty salon floor area, and it will be run and managed as part of the salon.

The number of staff will not increase from the current.

The days/ hours of operation will match the existing.

No material changes to the existing elevations are proposed.

DEVELOPMENT MANAGEMENT

ECP

21 SEP 2023

CORK CITY COUNCIL



4. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

NA

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?  NA

6. Was there previous relevant planning application/s on this site?  Y

If so please supply details:

03/121 – Permission for Shopping Centre Development

**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	Existing floor area= 275 m2
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> <u>NA</u> 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:	
<u>Existing</u> previous use (please circle) Existing use = hair & beauty salon (275 m2 )	<u>Proposed</u> /existing use (please circle) Proposed change of use to café use, integrated in the hair&beauty salon (110m2) - Use to be ancillary to hair salon

**7. LEGAL INTEREST**

Please tick appropriate box to show applicant's legal interest in the land or structure	<input type="checkbox"/> A. Owner	<input checked="" type="checkbox"/> B. Other x
Where legal interest is 'Other', please state your interest in the land/structure in question	The property is leased by the applicant	
If you are not the legal owner, please state the name of the owner if available	O Flynn Construction	

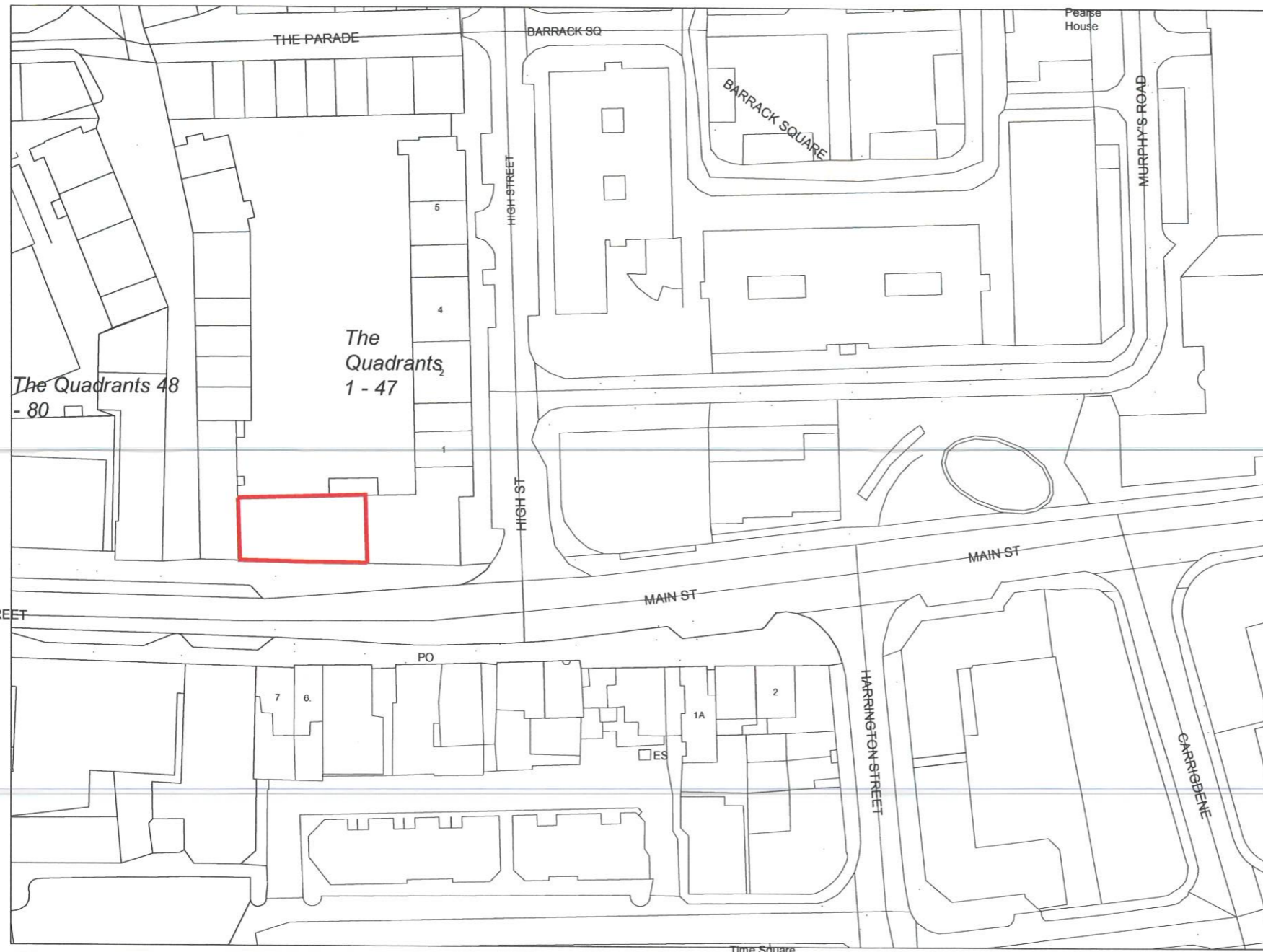
8. I / We confirm that the information contained in the application is true and accurate:

Signature: Cailla Botta Poole (Agent)

Date: 13/9/23

**CONFIDENTIAL CONTACT DETAILS**

These details will not be made available to the public.



**SITE LOCATION MAP**  
SCALE 1:1000



PROPOSED SITE MARKED IN RED

Description:  
=====

Digital Landscape Model (DLM)

Publisher / Source:  
=====

Ordnance Survey Ireland (OSi)

Data Source / Reference:  
=====

PRIME2

File Format:  
=====

Autodesk AutoCAD (DWG\_R2013)

File Name:  
=====

v\_50352067\_1.dwg

Clip Extent / Area of Interest (AOI):  
=====

LLX,LLY= 559388.5,570752.0  
LRX,LRX= 559621.5,570752.0  
ULX,ULY= 559388.5,570924.0  
URX,URY= 559621.5,570924.0

Projection / Spatial Reference:  
=====

Projection= IREN95\_Irish\_Transverse\_Mercator

Centre Point Coordinates:  
=====

X,Y= 559505.0,570838.0

Reference Index:  
=====

Map Series | Map Sheets  
1:1,000 | 6380-20

Data Extraction Date:  
=====

Date= 17-Aug-2023

Source Data Release:  
=====

DCMLS Release V1.167.116

Product Version:  
=====

Version= 1.4

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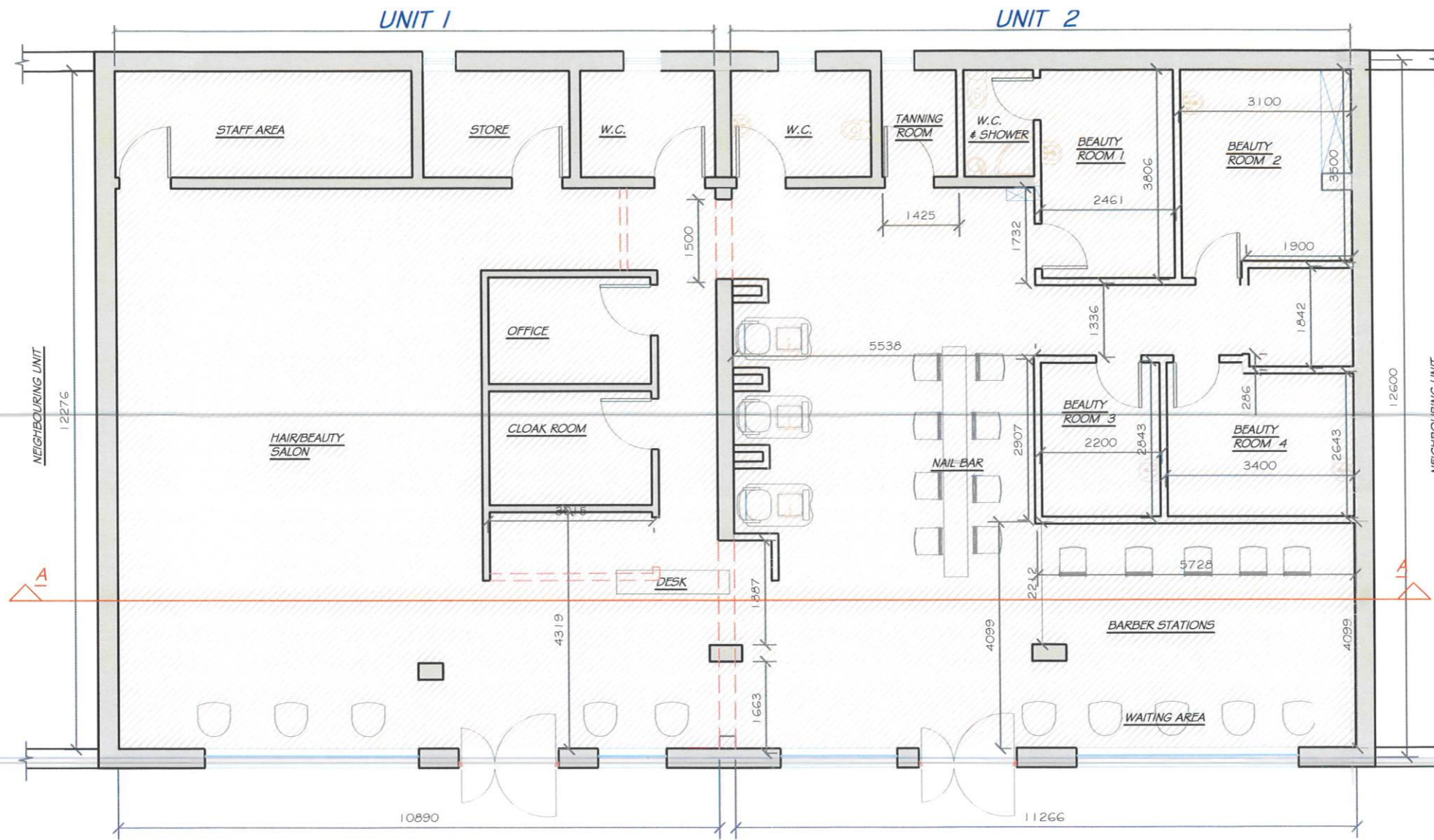
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FOR SECTIONS	A	13.9.23	CBP
Revision	Issue	Date	By
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 I HODDERS VILLAS, BALLINCOLLING, CO. CORK. PHONE: (021) 4876650 FAX: (021) 4876651 info@dlgroup.ie			
CLIENT: MARK O'BRIEN			
PROJECT: <b>ALTERATIONS TO SALON</b> AT MARK VINCENT HAIR & BEAUTY, UNITS 1 & 2 MAIN STREET, BALLINCOLLING, CO. CORK.			
DRAWING: SITE LOCATION MAP			
JOB NO.	DRAWING NO.	DATE	
40323 C	01	13.9.23	
SCALE	DRAWN BY	CHECKED BY	SIZE
1:1000	CBP	T.O.L.	A3



**EXISTING PLANS**  
SCALE 1:100



EXISTING RETAIL USE (HAIR & BEAUTY SALON)  
GFA= 275 m<sup>2</sup>

FOR SECTIONS	A	13.9.23	CBP
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**DL GROUP**  
CONSULTING ENGINEERS

1 HODDERS VILLAS,  
BALLINCOLLING,  
CO. CORK.

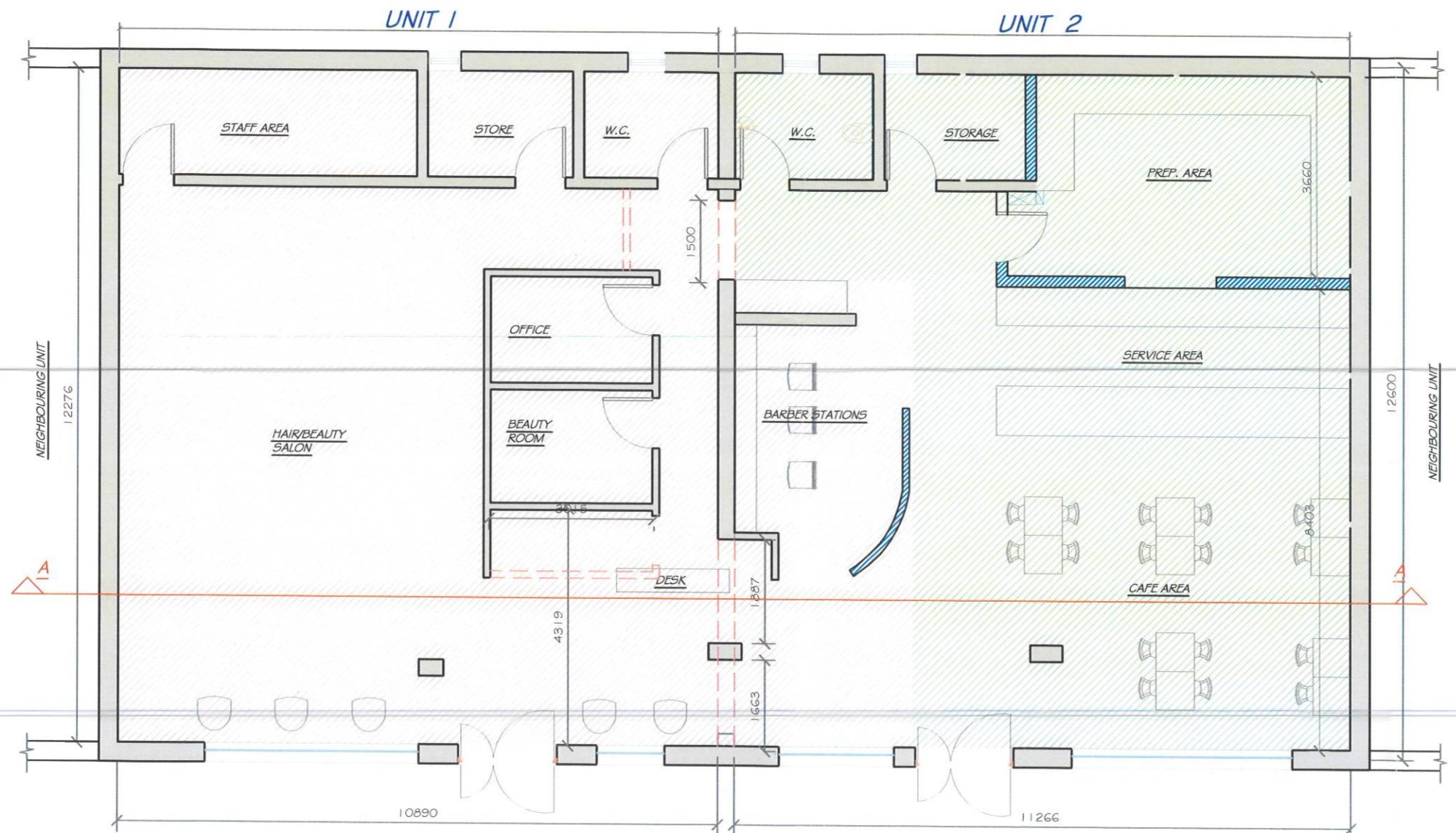
PHONE: (021) 4876650  
FAX: (021) 4876651  
info@dlgroup.ie

CLIENT:  
MARK O'BRIEN

PROJECT:  
**ALTERATIONS TO SALON**  
AT MARK VINCENT HAIR & BEAUTY,  
UNITS 1 & 2 MAIN STREET,  
BALLINCOLLING, CO. CORK.

DRAWING:  
EXISTING PLAN

JOB NO.	DRAWING NO.	DATE	
40323 C	02	13.9.23	
SCALE	DRAWN BY	CHECKED BY	SIZE
1:100	CBP	T.O.L.	A3



**PROPOSED PLANS**  
SCALE 1:100



- EXISTING RETAIL USE (HAIR & BEAUTY SALON) = 165 m<sup>2</sup>
- PROPOSED CAFE USE, ANCILLARY TO EXISTING HAIR&BEAUTY SALON = 110 m<sup>2</sup>

FOR SECTIONS	A	13.9.23	CBP
Revision	Issue	Date	By

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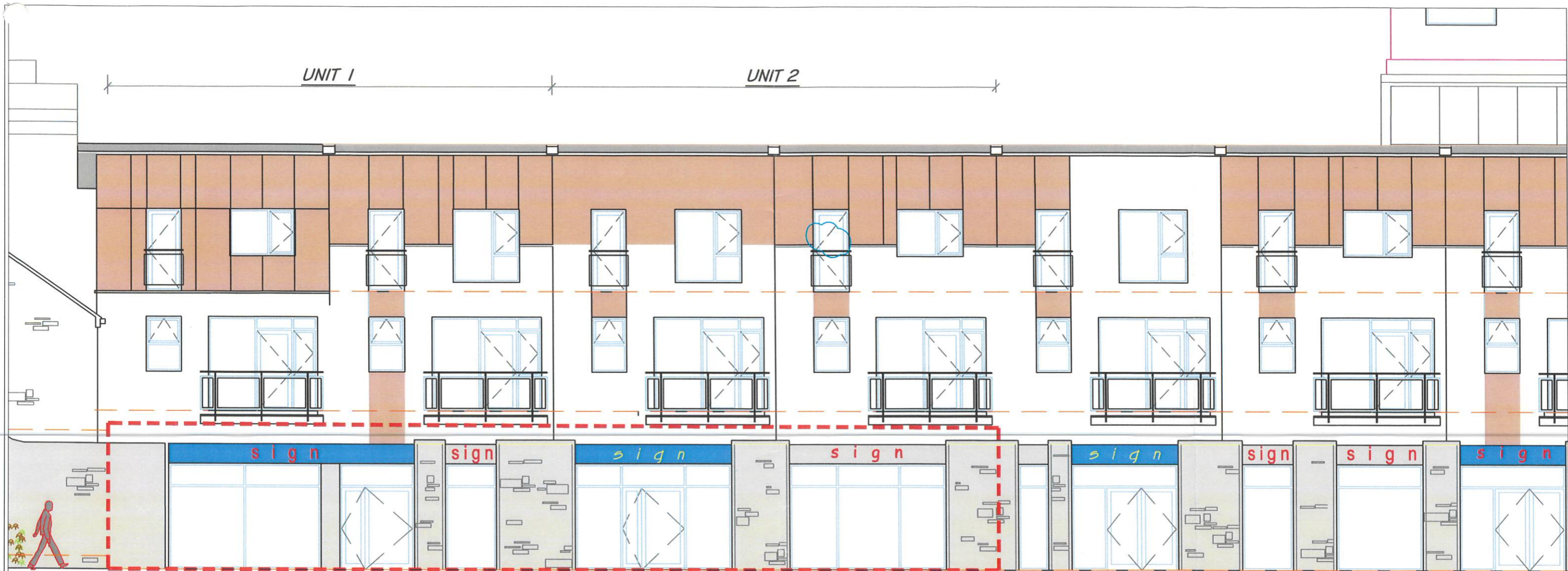
CLIENT:  
MARK O'BRIEN

PROJECT:  
**ALTERATIONS TO SALON**  
AT MARK VINCENT HAIR & BEAUTY,  
UNITS 1 & 2 MAIN STREET,  
BALLINCOLLIG, CO. CORK.

DRAWING:  
PROPOSED PLAN

JOB NO.	DRAWING NO.	DATE
40323 C	03	13.9.23

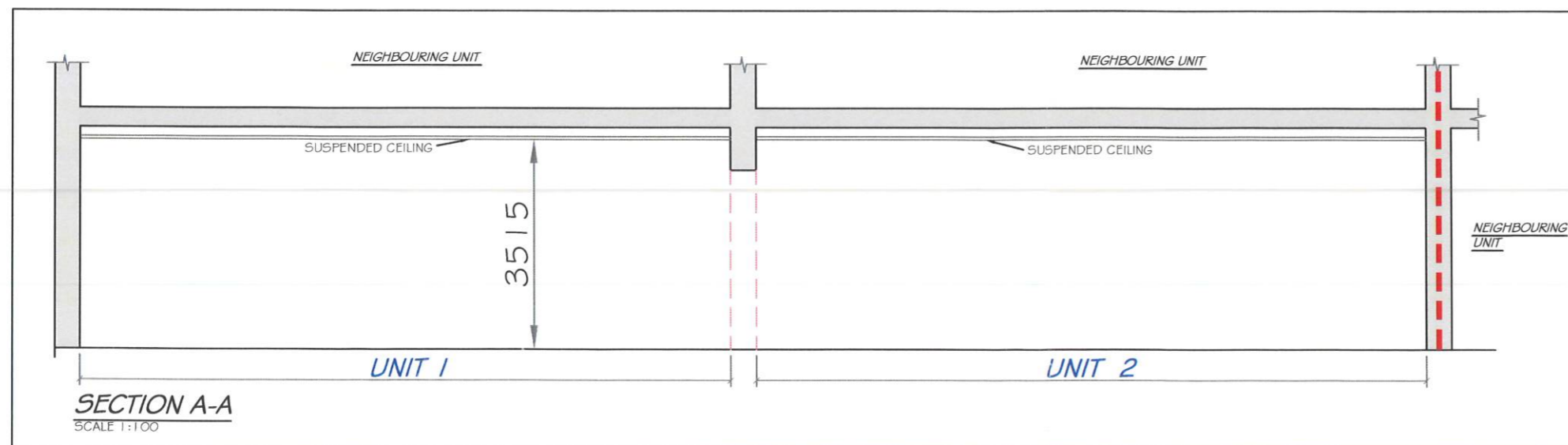
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**EXISTING ELEVATIONS**  
SCALE 1:100



= OUTLINE OF UNITS APPLICABLE TO THIS APPLICATION  
NOTE: THERE ARE NO PROPOSED CHANGES TO ANY ELEVATIONS



**SECTION A-A**  
SCALE 1:100

FOR SECTIONS	A	13.9.23	CBP
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Revision	Issue	Date	By
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CLIENT:  
MARK O'BRIEN

PROJECT:  
**ALTERATIONS TO SALON**  
AT MARK VINCENT HAIR & BEAUTY,  
UNITS 1 & 2 MAIN STREET,  
BALLINCOLLIG, CO. CORK.

DRAWING:  
EXISTING FRONT ELEVATION  
AND SECTION

JOB NO.	DRAWING NO.	DATE
40323 C	04	13.9.23

SCALE	DRAWN BY	CHECKED BY	SHEET
1:100	CBP	T.O.L.	A3