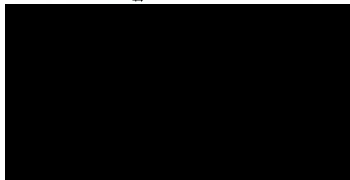




# Comhairle Cathrach Chorcaí Cork City Council

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

The Douglas Court Partnership



11/12/2024

**RE: Section 5 Declaration R893/24 Douglas Court Shopping Centre,  
Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 12<sup>th</sup> November, 2024, I wish to advise as follows:

The Planning Authority, 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, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

It is considered that the *the specific question for which a declaration is sought* **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT** at Douglas Court Shopping Centre, Douglas, Cork

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, 11<sup>th</sup> December, 2024.

Is mise le meas,

  
David Foley



**We are Cork.**

**Development Management Section  
Planning & Integrated Development  
Cork City Council**

**PLANNER'S REPORT**  
**Ref. R 893/24**

Cork City  
Council  
Development Management  
Planning & Integrated  
Development Directorate

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Whether the internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floor space constitutes development and, if so, is it exempted development?</i>
Location	Douglas Court Shopping Centre, Douglas, Cork.
Applicant	The Douglas Court Partnership
Date	20/06/2025
Recommendation	<b>Is development and is exempted development</b>

**INTERPRETATION**

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

**1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION**

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

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

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

**2. THE QUESTION BEFORE THE PLANNING AUTHORITY**

The question to the planning authority is framed using the phrasing of section 5. The applicant states in the request, "Section 5 Declaration seeking confirmation that internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floor space is exempted development Douglas Court Shopping Centre, Douglas, Cork".

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

*Whether the internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floor space constitutes development and, if so, is it exempted development?*

**3. SITE DESCRIPTION**

The subject property is located within the Douglas Court Shopping Centre in Douglas, Cork.

**4. DESCRIPTION OF THE DEVELOPMENT**

The proposed development proposes the relocation of Retail Units 10, 11 and 12 in lieu of Unit 9 and a consequent reduction to the size of Unit 5, along with the amalgamation of Units 10 – 14A to create one larger retail unit within the existing Shopping Centre.

## **5. RELEVANT PLANNING HISTORY**

The shopping centre itself has an extensive planning history however the following are of note:

TP 81/1823, “parent permission” for shopping centre.

There have been multiple applications within the shopping centre since the Parent Permission, details of which can be found on the Cork City Council Planning Register.

Relevant Cork City Council Section 5 Applications:

R 725/22, section 5 declaration issued in relation to units 17 and 18 Mahon Point Shopping Centre stating that the amalgamation of these units is exempted development.

R 622/20, section 5 declaration issued in relation to the anchor unit (formerly Debenhams) at Mahon Point Shopping Centre stating that the subdivision of the unit to form two units is exempted development.

R 480/18, section 5 declaration issued in relation to units 33-36 Mahon Point Shopping Centre stating that the subdivision of three units to form five units is exempted development.

R 414/16, section 5 declaration issued in relation to H&M, Unit 7, Opera Lane, Cork stating inter alia that the amalgamation of units through the removal of internal walls (etc) is exempted development.

The following An Bord Pleanála precedent cases are also noted:

RL.3578

RL.3420

RL.3056

RL. 2464

RL. 2308

## **6. LEGISLATIVE PROVISIONS**

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

#### **Section 2(1)**

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

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
  - (i) the interior of the structure,*
  - (ii) the land lying within the curtilage of the structure,*
  - (iii) any other structures lying within that curtilage and their interiors, and*

- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).

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

### **Section 3(1)**

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

### **Section 4(1)(h)**

4.(1) 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 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, as amended.

### **Section 4(3)**

A reference in this Act to exempted development shall be construed as a reference to development which is—

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

### **Section 5(1)**

See section 1 of this report.

## **6.2 Planning and Development Regulations 2001 to 2018 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*

**(Article 6) Schedule 2, Part 2, Class 1**

Classes 1-18 relate to advertisements and Class 1 relates to advertisements “*exhibited on business premises, wholly with reference to the business or other activity carried on or the goods or services provided on those premises*”.

**7. ASSESSMENT**

**7.1 Development**

The first issue for consideration is whether or not the matter at hand is ‘*development*’, which is defined in the Act as comprising two chief components: ‘*works*’ and / or ‘*any material change in the use of any structures or other land*’.

‘*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*’. In relation to the proposed internal subdivision and amalgamation of the existing retail floor space, the proposed element is for alterations to the existing units which comprises ‘*works*’. As the proposal comprises ‘*works*’, it is clearly therefore ‘*development*’ within the meaning of the Act.

**CONCLUSION**

**Is development**

**7.2 Exempted development**

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘*exempted development*’ as having ‘*the meaning specified in section 4*’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

It is considered that the proposal comes within subsection (1) of section 4, i.e. the Regulations, and not subsection (2).

**Section 4(1)**

It is considered that this proposal comes within the scope of section 4(1), particularly subsection (h), as the works relate to internal alterations works. The substantive issues of the case are set out below.

The proposed works comprise the carrying out of internal works within the envelope of the existing shopping centre and involves the subdivision and amalgamation of a number of existing retail units. Essentially this proposal involves the amalgamation of 5 no. units into one larger unit and the subsequent subdivision of a larger retail unit into 4 no. units. It is noted that there will be no increase in retail floorspace as a result of the proposed works and that there will be a minor reduction in the retail floorspace as a result of the works. This reduction is minor, less than 1% of the overall retail floorspace of the full shopping centre which is considered to be *de minimis*. There will be no alterations to the external walls of the shopping centre and no new access or opening created in same as a result of the proposed works.

The relevant An Bord Pleanála precedent cases presented above are noted, including where in the context of the definition of the term “structure” and its use in section 4(1)(h) of the Act the “structure” is considered to be the ‘planning unit’ of an individual shop unit within a shopping centre. The case where the Board determined that the subdivision of a unit was exempted development under Section 4(1)(h) (RL.3420) is also noted.

It is noted that the existing “external” dimensions of the units (i.e. facing the internal circulation mall within the shopping centre) are to remain, with the works being carried out within the envelopes of these dimensions, with the exception of a minor reduction in retail floorspace from Unit 15.

In addition, and having regard to An Bord Pleanála Reference RL2308, it was determined that where the subdivision of a retail unit takes place inside a shopping mall, as is the case in this declaration, customers would have already parked their cars within the dedicated shopping centre car park and would either happen on an additional shopping unit by chance or already be aware of its existence and this basis, no material parking issues would arise in terms of intensification of use.

The existing and proposed uses are noted and it is not considered that any material change of use arises.

The nature and scale of the existing units, the proposed units and the overall shopping centre itself are noted, and it is not considered that in this case any material or new planning impacts would arise.

Having regard to the interpretations and decisions, including those of An Bord Pleanála, set out in the precedent cases above, it is considered that the proposed works as set out in the question accompanying documentation submitted, is exempted development under section 4(1)(h) of the Act.

#### ***Restrictions on exemption***

It is not considered that any apply in this instance.

### **CONCLUSION**

**Is exempted development**

### **8. ENVIRONMENTAL ASSESSMENT**

The provisions of sections 4(4), 4(4A) and 177U(9) of the Act are noted which state,

*Section 4(4),*

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

#### Section 4(4A)

*Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—*

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
  - (b) as respects which an environmental impact assessment or an appropriate assessment is required,*
- to be exempted development.*

#### Section 177U(9)

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

### 8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required**.

### 8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required**.

## 9. RECOMMENDATION

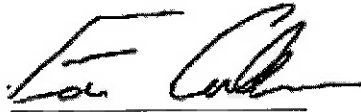
In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floor space at Douglas Court Shopping Centre, Douglas, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



A handwritten signature in black ink, appearing to read 'Eoin Cullinane', written over a horizontal line.

Eoin Cullinane  
Executive Planner  
10/12/2024

1 2 NOV 2024

**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: 021-4924029  
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**

The Douglas Court Partnership

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

Douglas Court Shopping Centre, Douglas, 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.*

Section 5 Declaration seeking confirmation that internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace is exempted development at Douglas Court Shopping Centre, Douglas, Cork

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

*(Use additional sheets if required).*

Please refer to the cover letter provided by McCutcheon Halley Planning Consultants and drawings provided by KOBW Architects

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

If so please supply details:

No

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? ☐

If so please supply details:

Yes, please refer to enclosed letter by McCutcheon Halley

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	8400sqm (existing shopping centre)
(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"/> If yes, please provide floor areas. (sq m) N/A
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)  N/A	Proposed/existing use (please circle)  N/A

7. LEGAL INTEREST

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

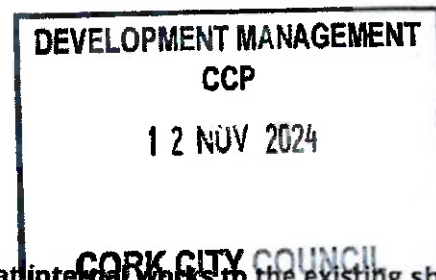
8. I / We confirm that the information contained in the application is true and accurate:

Signature: [Signature]

Date: 12/11/2024

The Secretary  
Planning Department  
Cork City Council  
City Hall  
Cork

12th November 2024



**Re: Section 5 Declaration seeking confirmation that internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace is exempted development at Douglas Court Shopping Centre, Douglas, Cork.**

Dear Sir/Madam,

We McCutcheon Halley, 6 Joyce House, Barrack Square, Ballincollig, Cork act on behalf of The Douglas Court Partnership, who are the owners of Douglas Court Shopping Centre and request a declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended), seeking confirmation that internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace is exempted development and therefore does not require planning permission as:

- The works come within the scope of the definition of "development" as defined in Section 3 of the Planning and Development Act, 2000;
- The works which comprise internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace, affects only the interior of the structure and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000; and
- The nature and extent of existing retail floorspace (as defined by Article 5(1) of the Planning and Development Regulations) will not be affected and will not involve any change of use.

The above reasons are outlined in greater detail in Section 4.0 below. As the works involved in this declaration request affect only the interior of the structure and do not materially affect the external appearance of the structure, it is submitted that the development is exempted development in accordance with the requirements of Section 4(1)(h) of the Act. It is also considered that the proposed development does not involve any change from the existing retail use (as defined by Article 5(1) of the Planning and Development Regulations 2005).

# 1. Site Context and Planning History

The site is situated at Douglas Court Shopping Centre and is positioned to the immediate south of the N40 South Ring Road. The site is situated approximately 450 m east of Douglas Village and approximately 5.1 km southeast of Cork City centre. The site is bounded by the N40 to the north, a mix of residential development and a greenfield site to the east, residential development to the south and Douglas Village to the west. Access to the subject site is via the R610 with 3 access points available as seen in Figure 1 below.



Figure 1 Subject site outlined by yellow star

Under the 2022 Cork City Development Plan, the site is zoned District Centre where object ZO 7 applies. Under this objective, it is policy of the Council to *"provide for the development and enhancement of district centres as mixed-use centres and as primary locations for retail, economic and residential growth."*

The overall use of the existing Douglas Court Shopping Centre structure will not be affected by this declaration.

## 1.1 Planning History

The retail use on site was first permitted under Ref. No. 81/1823. The following is the planning history associated with the site since the shopping centre opened:

### **Cork City Council Ref. No. 91/1721**

Permission granted for a garden centre at the northern end of the centre grounds at Douglas Court Shopping Centre, Douglas, Cork.



McCutcheon Halley  
ARCHITECTS PLANNERS ENGINEERS

**Cork City Council Ref. No. 98/5031**

Permission granted for extension to include 4 no. retail units and first floor storage (Units 41-44) and retail unit (Unit 45) with optional use as restaurant and first floor storage at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 00/2838**

Permission granted for the construction of 2 no. entrance lobbies, external staircase and change of use of first floor over Unit 45 to leisure at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 03/2146**

Permission refused for change of use of market units 5 and 8 from creche to retail outlet at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 04/416**

Permission granted for change of use of market units 5 and 8 from creche to retail and to remodel the existing toilet block to provide male and female toilets, baby changing room, disabled toilet, parent and child/disabled toilet, escape corridor and childcare drop-in centre at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 04/420**

Permission granted to convert and extend restaurant (Unit 2) and retail kiosk (K9) into a restaurant, 2 shop units and retail kiosk within the eastern mall area at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 04/430**

Permission granted for a change to the retail use of units 18/19, adjacent food preparation area and adjacent existing staircase and corridor to restaurant and to provide a new means of escape corridor and staircase to east elevation of service yard at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 04/4346**

Permission granted for the construction of an extension incorporating entrance lobby, goods lift and escape stairs at ground floor level, access corridor escape stairs and up to 5 stores on each of the first and second floor levels together with associated signage over the existing service yard on the east elevation at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 05/3325**

Permission granted for optional use of retail unit 42 as a restaurant at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 06/8604**

Permission refused for erection of new illuminated signage with backing panel to exterior of shopping centre and removal of existing signage at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 06/12128**

Permission granted for the relocation of 2 no. existing illuminated signs from Western, Northern and Southern porch entrances to the Northern end and Southern end of West elevation respectively at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 07/5423**



Permission granted for the amalgamation of units 16, 17 and 17a and the adjacent existing staircase and corridor for use as single retail unit, construction of escape staircase in part of existing cleaners store at ground floor level and construction of corridor in part of existing comms room and construction of escape stairs to east of existing comms room at first floor level at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 09/7953**

Permission granted for the retention of temporary single storey building for social and community use, including a dance studio, for a period of 3 years together with associated signage at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref No. 11/4209**

Permission granted for use of ground floor of Unit 45 for one of the following optional uses: - medical, retail services, retail offices, off licence, leisure or financial services, in addition to previously permitted retail and restaurant use under Planning Reg. No. S/00/3828 at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 10/4256**

**An Bord Pleanála Ref. No. PL 04.237415**

Permission granted for the construction of a part single, part two-storey extension to the north, & first floor extension to the east of the existing anchor retail store, modification and extension to the existing surface car park, construction of an additional left-only slip road entrance north west of the existing roundabout, the removal of the existing roundabout and the construction of a new signalised traffic control junction incorporating pedestrian phases, replacing 2 existing unconnected pedestrian crossings, the construction of a new left-only exit to the south of the existing roundabout, and related road improvement works including road widening, lane improvements, the provision of a cycle lane route, pedestrian footpath improvement works & associated signage and landscaping at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 11/5265**

Permission granted for a single storey drive-thru restaurant (326 square metres gross floor area), external plaza, modifications to existing internal road, car park and landscaped areas at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 11/5885**

Permission refused for a two storey extension to existing shopping centre comprising of anchor retail unit, with office lobby and escape stairs and service yard at ground floor level: office, office lobby and escape stairs at first floor level and roof top plant: relocation and widening of western entrance to the shopping centre to the north of its existing location: extension to the mall and provision of up to 3 no. additional retail units and 1 no. restaurant unit. The development will also comprise of modifications and extension to existing car parking to provide additional car parking spaces: signage and landscaping works: removal of temporary single storey prefab building: road improvement works to the Douglas Link Road including the construction of a new left only slip road entrance northwest of the existing roundabout, a new left only exit to the south of the roundabout and the provision of a widened footpath incorporating a cycle lane to the western boundary with new entrance plaza and additional cycle stands at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 14/5310**

Permission granted to amalgamate units 41 & 42, construction of a two-storey extension to units 41 & 42 comprising of ground floor retail area & first floor storage area, installation of signage to the



**McCutcheon Halley**

ARCHITECTS & ENGINEERS

proposed extension, to make modifications to the car parking layout together with all associated site works at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref No. 15/6908**

Permission granted for the demolition of existing building, and construction of a single storey drive-thru restaurant (350sq.m gross floor area), external signage, external plaza, modifications to existing car park and landscaping areas, and all associated site works at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref/ No. 16/7265**

Permission granted for extension, amalgamation and modification to retail units 21-23, 25-26 and 40. The development will consist of amalgamation of retail units 21-23, 25 (part), 26 (part) & 40 and a proposed single-storey extension (66m<sup>2</sup> gross floor area) to the South elevation into one retail unit and the option to amalgamate the remaining parts of retail units 25 & 26 into one or two retail units. Associated site works will include the relocation of 2no trolley bays, relocation of 2 no parking spaces and external illuminated signage at Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 21/40347**

Permission granted for the change of permitted use from general retail to restaurant at Unit 37/38 Douglas Court Shopping Centre, Douglas, Cork.

**Cork City Council Ref. No. 22/41307**

Permission granted for development at Dunnes Stores, Douglas Court Shopping Centre, Cork. The development will consist of internal alterations and improvements to the store's ground floor, including: (a) The removal of interior walls and changing the use of existing stockrooms, deli, and circulation space to retail, increasing the store's net convenience sales area from 2,463 sqm to 3,148 sqm; (b) The conversion of existing storage space to create a new deli (127 sqm) and prep area (120 sqm); and (c) The relocation of the store's existing off-licence. Along with all other related site work and services, the development includes the installation of a roof-top PV solar panels and mounting system (c.3,733 sqm). The store's Gross Floor Area is not increased by this development.



**McCutcheon Halley**  
URBAN PLANNING CONSULTANTS



## 2. Planning Legislation/Regulations

In order to assess whether or not the proposal is or is not development or is exempted development or not, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended). The principal provisions of both the Act and the Regulations are outlined below:

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

**Section 2** of the 2000 Planning and Development Act (PDA), defines a "Structure" as:

*"any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-*

*(a) where the context so admits, includes the land on, in or under which the structure is situate, and*

*(b) in relation to a protected structure or proposed protected structure, includes:*

*i. the interior of the structure;*

*ii. the land lying within the curtilage of the structure;*

*iii. any other structures lying within that curtilage and their interiors, and*

*iv. all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (ii)"*

**Section 3 (1)** of the Act defines "Development" as, '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'

**Section 4** of the Act refers to "exempted development" and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act, including subsection (1)(h) which includes:

*"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 (1)(h)** of the Act states that works which affect only the interior of the structure or which do not materially affect the external appearance of the structure will be considered exempted development.

**Section 4(2)** of the Act provides for the making of regulations. The provisions from the 2001 Planning and Development Regulations (as amended) most relevant to this declaration are set out below:

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

Article 6 of Part 2 of the Regulations provides that subject to Article 9(1)(a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. However, there are no classes of relevance to the current declaration. Article 9 (1) (a) lists the exceptions where development would not be exempted development (by virtue of Article 6). Part 4 of Schedule 2 lists 11 different classes of use. Class 1 is defined as "use as a shop". Also, under Article 5(1) of the regulations (as amended by Article 3 of S.I. No. 364 of the Planning and Development Regulations 2005) a "shop" is defined as:



McCutcheon Halley

100-1100 100-1100 100-1100 100-1100 100-1100

*'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 10(1) of Part 2 provides that development which consists of a change of use within any of the classes of use specified in Part 4 of Schedule 2 shall be exempted development provided that it would not involve the carrying out of any works (other than exempted development works), contravene a condition of any permission, be inconsistent with any use specified in such a permission, or relate to unauthorised development.



### 3. Relevant Section 5 Declarations/Referrals

To date a number of referral cases have been made under Section 5 of the Planning and Development Act 2000 (as amended) which deal with similar planning issues, including referrals within Cork City Council's area which deal with the issue of internal works to an existing shopping centre, including in particular the following declarations/referrals

#### **Cork City Council Ref. No. R.725/22**

Section 5 Declaration (submitted on 7<sup>th</sup> July 2022) confirming that the amalgamation of 2 no. retail units into a single retail unit at Unit 17 and 18 Mahon Pint Shopping Centre is exempted development and does not therefore require planning permission.

In its decision the City Council had regard to Section 2, 3, and 4 of the Planning & Development Act 2000 and the definition of "structure" in Section 2 of the Planning and Development Act, 2000. The Planning Authority concluded that the development came within the scope of the definition of "development" as defined in Section 3 of the Planning and Development Act, 2000, but as the development affected only the interior of the structure and did not materially affect the external appearance of the structure, therefore the development constituted exempted development in accordance with the requirements of Section 4(1)(h) of the Act.

#### **Cork City Council Ref. No. R.622/20**

Section 5 Declaration (submitted on 25<sup>th</sup> November 2020) confirming that the subdivision of the anchor unit formerly occupied by Debenhams at Mahon point Shopping Centre into 2 no. retail units is exempted development and does not therefore require planning permission.

Cork City Council had regard to Section 2, 3 and 4(1)(h) of the Planning & Development Act 2000, as amended in making its decision noting that *"the proposal affects only the interior of the structure and does not materially affect the external appearance of the structure or neighbouring structure. No new material planning impacts will arise as a consequence of the proposal. The proposal therefore comes with the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended."*

#### **Cork City Council Ref. No.**

Section 5 Declaration (submitted on 7<sup>th</sup> October 2019) confirming that the replacement/reconstruction of part of Douglas Village Shopping Centre that was damaged/compromised by fire is exempted development and does not therefore require planning permission.

Cork City Council had regard to Section 2, 3 and 4(1)(h) of the Planning & Development Act 2000, as amended in making its decision noting that *"the proposal involves works for the maintenance or improvement of the shopping centre, the proposal involves development which affects only the interior of the structure or which does 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 proposal therefore comes with the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended."*

It is clear from the above referrals and planning history outlined in Section 1.1, that:

- Works which comprise internal works to existing shopping centre(s) including the internal subdivision and amalgamation of the existing retail floorspace and affects only the interior of the structure, come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000; and



McCutcheon Halley  
EXPERIENCE. PASSION. COMMITMENT.

- If the nature and extent of existing retail floorspace (as defined by Article 5(1) of the Planning and Development Regulations) will not be affected, it will not involve any change of use.
- The retail use associated with the Shopping Centre is a permitted use on the site; and
- The conditions of the existing permissions do not preclude the proposed use.

We would ask that the Council has regard to each of the above precedents and planning history when considering this section 5 declaration.



**McCutcheon Halley**  
URBAN & PLANNING CONSULTANTS

## 4. Assessment

In this case, our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000, confirming that internal works to the existing Douglas Court Shopping Centre including the provision of subdividing walls is exempted development and does not therefore require planning permission. Please refer to the enclosed material by KOBW Architects for the extent of works proposed.

In considering this declaration the following provisions and considerations are relevant:

- Sections 2, 3 and 4 of the PDA and in particular Section 4(1)(h);
- Articles 6, 9 and 10 of the Planning and Development Regulations, 2001;
- Schedule 2, Part 1, Class 14 of the Planning and Development Regulations;
- The planning history of the site;
- Case law and precedent referrals/section 5 declarations.

In considering this declaration request, the question of whether internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace is development or not needs to be addressed in the first instance, and thereafter, (if it is deemed to be development), whether or not this development would constitute 'exempted development' as defined in the Planning and Development Act and Regulations.

The proposed works are outlined on the plans by KOBW Architects (see Drawing ref.s PL – 003 and PL – 004) and a comparison of existing (RHS) and proposed (LHS) floorplans is provided in Figure 2 below. The proposed works involve the relocation of retail units 10, 11 and 12 in lieu of Unit 9 and a consequent reduction in the size of Unit 5. Existing retail Units 10-14A will be amalgamated to form one larger retail unit. The main purpose of these changes is to facilitate existing tenants (e.g. Easons) and to improve the legibility of the approach to the Dunnes Stores anchor retail unit. Overall, there will be a minor reduction in retail floorspace, but no material change in the overall quantum of retail floorspace within the shopping centre.

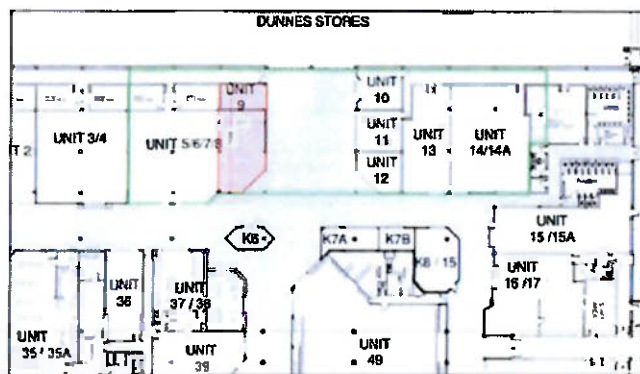
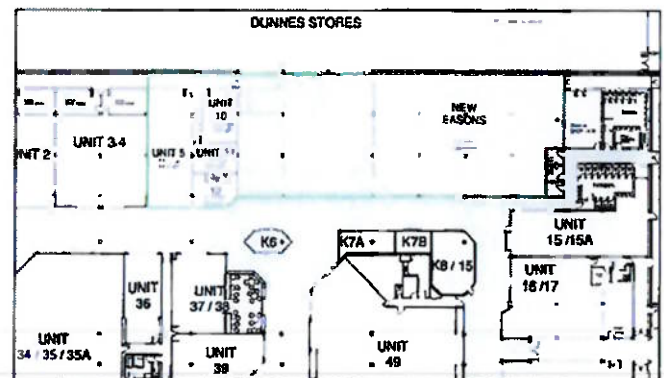


Figure 2 Existing Floor Plan



Proposed Floor Plan

It is accepted that the internal subdivision and amalgamation of the existing retail floorspace including the provision/removal of subdividing walls constitutes works, and as such, is 'development'. The remaining question therefore is whether it is 'exempted development'.

In this case, the planning unit and 'structure' is the overall shopping centre structure, and that the proposed works only affects a very small proportion of the overall shopping centre i.e. less than 1 % of the overall floorspace of the shopping centre. The proposed works are outlined on the plans by KOBW Architects (see

Drawing ref.s PL – 003 and 004) and affect the interior of the structure only and do not affect the external appearance of the shopping centre.

Douglas Court Shopping Centre is not a protected structure or a proposed protected structure. We therefore consider that the exempted development provisions allows for changes to be made to internal areas or the interiors of the structure/shopping centre where they do not affect the external appearance of the building/structure or character of the area.

The sole purpose of these internal changes is to facilitate existing tenants. The internal works proposed will not be seen from outside of the existing shopping centre and do not result in a material change to the overall retail floor space within the shopping centre.

It is submitted that the proposed works are in accordance with Section 4(1)(h) of the Act and constitute exempted development.



**McCutcheon Halley**

ARCHITECTS PLANNERS ENGINEERS



## 5. Conclusion

In conclusion, it is submitted that the provision of internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace is exempted development and therefore does not require planning permission as:

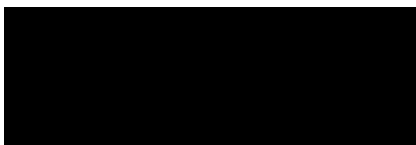
- The works come within the scope of the definition of "development" as defined in Section 3 of the Planning and Development Act, 2000;
- The works which comprise internal works to the existing shopping centre including the internal subdivision and amalgamation of the existing retail floorspace; affects only the interior of the structure; and therefore comes within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000; and
- The nature and extent of the existing retail floorspace (as defined by Article 5(1) of the Planning and Development Regulations) will not be materially affected and will not involve any change or intensification of use.

In accordance with the Council's requirements for Section 5 declarations please find enclosed:

1. This cover letter which includes the applicant's name and address; the location of development; and the nature of development;
2. The correspondence address which is: McCutcheon Halley Chartered Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork;
3. Ordnance Survey Site Location Maps and Site Plan by KOBW Architects; and
4. The appropriate referral fee of €80.00

Please do not hesitate to contact us should you require any further information.

Yours sincerely



Andrea Mc Auliffe  
McCutcheon Halley



McCutcheon Halley  
CHARTERED PLANNING CONSULTANTS



MANAGEMENT

12 NOV 2024



LEGEND:

- BOUNDARY SUBJECT TO EXEMPTION
- PROPERTY IN OWNERSHIP OF APPLICANT

ORDNANCE SURVEY IRELAND  
LICENSE NO. AR0004224  
© ORDNANCE SURVEY IRELAND  
GOVERNMENT OF IRELAND  
OS No. 6428-03 / OS No. 6428-04  
OS No. 6428-08 / OS No. 6428-09

1. THIS DRAWING IS COPYRIGHT © 2024 BY KOBW ARCHITECTS. ALL RIGHTS RESERVED.  
2. THIS DRAWING IS THE PROPERTY OF KOBW ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN.  
3. THE CLIENT AGREES TO CHECK ALL DIMENSIONS ON SITE.  
4. NO TOWN NAMES AND LOCAL SETBACKS ARE INDICATED HEREIN TO DEFINE THE AESTHETIC AND TECHNICAL PERFORMANCE CRITERIA REQUIRED BY THE SPECIFIC SITE AND THE INTENTION TO FACILITATE THE PRODUCTION OF ANOTHER SET OF EXCELLENT OTHER PROJECTS WITHIN THE SITE. THE CLIENT AGREES TO CHECK ALL DIMENSIONS ON SITE.  
5. THE CLIENT AGREES TO CHECK ALL DIMENSIONS ON SITE.

KOBW ARCHITECTS		+353 (0) 21 4502319 arch@kobw.ie www.kobw.ie		Site Location map	
KELLY BARRY O'BRIEN WHELAN		2 Empress Place, Summer Hill, Cork, T23 KH68, Ireland		Section 5 submission	
				Douglas Court Shopping Center, Douglas, Cork	
Rev	Date	Int	Revision	Rev	Date
2849	2849	PL - 001	PL - 001	2849	2849
CHD	CHD	ISSUE FOR	ISSUE FOR	CHD	CHD
AJU	AJU	Planning exemption	Planning exemption	AJU	AJU
				DATE	
				10.10.2024	
				SCALE	
				1:10560	
				SHEET	
				A3	
				SHEET NO.	
				15 OF 15 LANScape SHEET NO.	





LEGEND:

- BOUNDARY SUBJECT TO EXEMPTION
- PROPERTY IN OWNERSHIP OF APPLICANT
- EXISTING WAYLEAVES

ORDNANCE SURVEY IRELAND  
LICENSE NO. AR0004224  
ORDNANCE SURVEY IRELAND  
GOVERNMENT OF IRELAND  
OS No. 6428-08 / OS No. 6428-04  
OS No. 6428-08 / OS No. 6428-08

1. THIS DRAWING IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN PERMISSION OF KOBW ARCHITECTS.  
2. THE CLIENT HAS AGREED TO PAY THE FEES FOR THIS SERVICE AND HAS ACCEPTED THE LIMITATIONS OF THIS SERVICE.  
3. THE CLIENT HAS AGREED TO PROVIDE ALL NECESSARY INFORMATION AND DOCUMENTATION TO KOBW ARCHITECTS IN A TIMELY MANNER.  
4. KOBW ARCHITECTS HAS AGREED TO PROVIDE THE SERVICES DESCRIBED IN THIS AGREEMENT TO THE CLIENT.

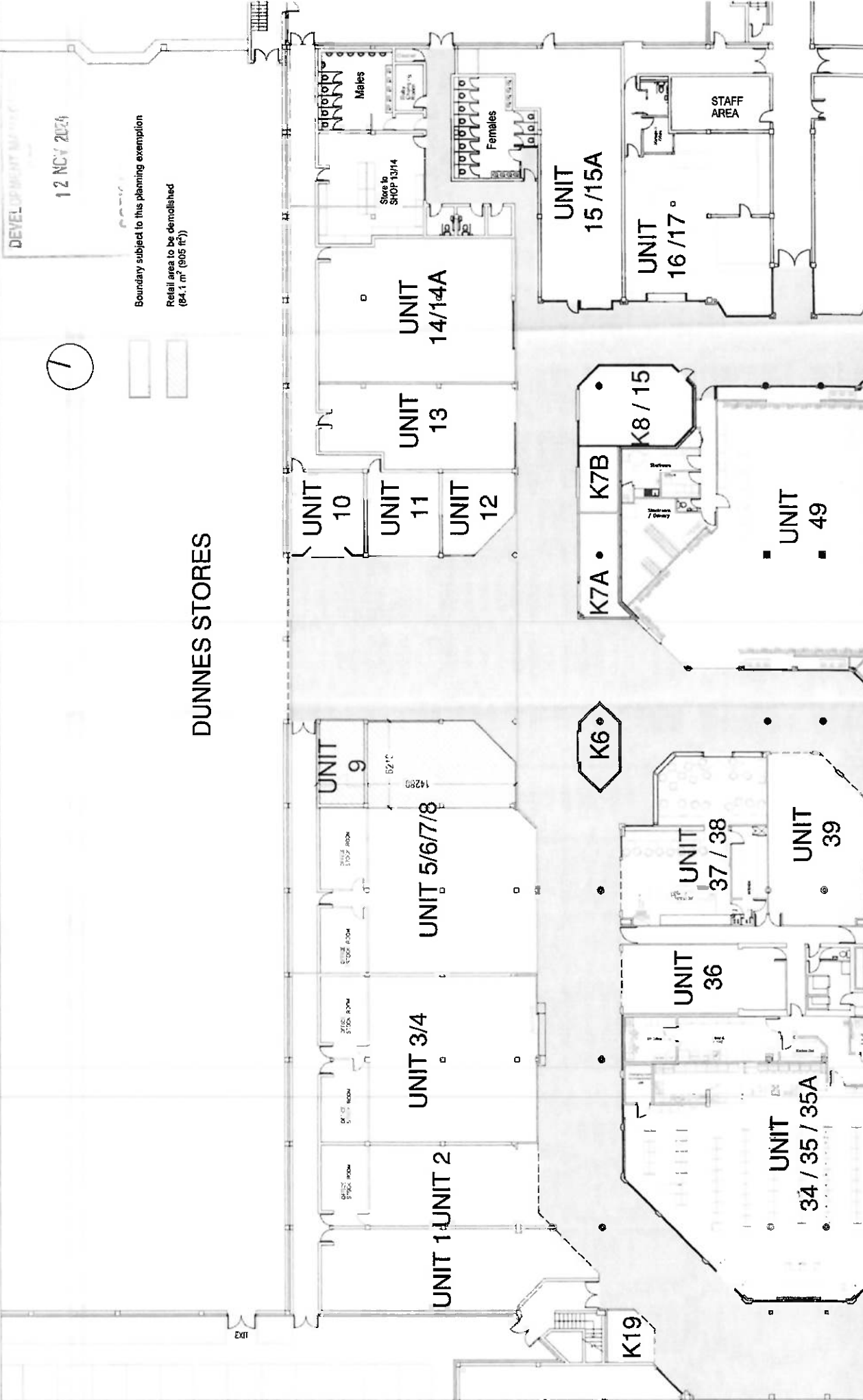
**KOBW** ARCHITECTS  
KELLY BARRY OBRIEN WHELAN

+353 (0) 21 4502319 arch@kobw.ie www.kobw.ie  
2 Empress Place, Summer Hill, Cork, T23 KH68, Ireland

Site Location Map  
Section 5 submission  
Douglas Court Shopping Center, Douglas, Cork

Rev	Date	Int	Revision
2849	PL - 002	PL - 002	PL - 002
2849	PL - 002	PL - 002	PL - 002

DATE 10.10.2024  
SHEET A3  
SCALE 1:2500



1. THIS DRAWING IS THE PROPERTY OF KOBW ARCHITECTS AND SHOULD NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF KOBW ARCHITECTS.		2. THIS DRAWING IS THE PROPERTY OF KOBW ARCHITECTS AND SHOULD NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF KOBW ARCHITECTS.		3. THE CONTRACTOR IS TO MAINTAIN ALL LINES AND DIMENSIONS ON THE DRAWING.	
KOBW ARCHITECTS		+353 (0) 21 4502319 arch@kobw.ie www.kobw.ie		2 Empress Place, Summer Hill, Cork, T23 KH68, Ireland	
KELLY BARRY O'BRIEN 'WHELAN'		Existing Floor Plan		Section 5 exemption	
		Douglas Court Shopping Center, Douglas, Cork			
Rev	Date	Int	Revision	Rev	Date
1	28/09	PL - 003	PL - 003	1	10.10.2024
2				2	
3				3	
4				4	
5				5	
6				6	
7				7	
8				8	
9				9	
10				10	
11				11	
12				12	
13				13	
14				14	
15				15	
16				16	
17				17	
18				18	
19				19	
20				20	
21				21	
22				22	
23				23	
24				24	
25				25	
26				26	
27				27	
28				28	
29				29	
30				30	
31				31	
32				32	
33				33	
34				34	
35				35	
36				36	
37				37	
38				38	
39				39	
40				40	
41				41	
42				42	
43				43	
44				44	
45				45	
46				46	
47				47	
48				48	
49				49	
50				50	
51				51	
52				52	
53				53	
54				54	
55				55	
56				56	
57				57	
58				58	
59				59	
60				60	
61				61	
62				62	
63				63	
64				64	
65				65	
66				66	
67				67	
68				68	
69				69	
70				70	
71				71	
72				72	
73				73	
74				74	
75				75	
76				76	
77				77	
78				78	
79				79	
80				80	
81				81	
82				82	
83				83	
84				84	
85				85	
86				86	
87				87	
88				88	
89				89	
90				90	
91				91	
92				92	
93				93	
94				94	
95				95	
96				96	
97				97	
98				98	
99				99	
100				100	

