



Comhairle Cathrach Chorcaí Cork City Council

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

Ted O' Connor
c/o Ciaran Dineen
6 Joyce House
Barrack Square
Ballincollig
Cork

12/11/2024

RE: Section 5 Declaration R884-24 35 Cornmarket Street, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 15th October 2024, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to —

- The planning history of the site, and
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10(6) of the Planning and Development Regulations 2001 (as amended)

It is considered that the *the specific question for which a declaration is sought* **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT** at 35 Cornmarket Street, 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, 12th November 2024.

Is mise le meas,



David Foley

Development Management Section



We are Cork.

**Community, Culture and Placemaking Directorate
Cork City Council**

PLANNER'S REPORT Ref. R884 /24		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>'Change of use of existing commercial premises at first, second and third floor levels from office with ancillary storage to provide 3 no. 1-bedroom residential apartments'.</i>	
Location	35 Cornmarket Street, Cork.	
Applicant	Ted O'Connor	
Date received	15/10/2024	
Recommendation	<i>Is Development Is Exempted Development</i>	

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

1. Requirements for a Section 5 Declaration

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

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

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

2. The Question before the Planning Authority

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

'Change of use of existing commercial premises at first, second and third floor levels from office with ancillary storage to provide 3 no. 1-bedroom residential apartments.'

3. Site Description

The subject site consists of a 4-storey mid-terrace building located on Cornmarket Street Cork City Centre.

4. Planning History

TP 02/26388 – Permission granted for change of use from turf accountants to hairdressing salon.

5. Legislative Provisions

5.1 ***The Act***

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

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

Section 4(2),

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

Section 5(1),

(See section 1 of this report)

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

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

5.2 The Regulations

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,*

S.I. No. 75/2022 - Planning and Development Act (Exempted Development) Regulations 2022

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 10(6)

- (a) In this sub-article—*

'habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

'relevant period' means the period from 8 February until 31 December 2025.

- (b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*
- (c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*
 - (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*
 - (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12 and*

- (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,
- then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).
- (d) (i) The development is commenced and completed during the relevant period.
- (ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall
- (I) primarily affect the interior of the structure
 - (II) retain 50 per cent or more of the existing external fabric of the building, and
 - (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.
- (iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.
- (iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.
- (v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.
- (vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.
- (vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.
- (viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.
- (ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
- (x) No development shall relate to any structure in any of the following areas:
- (I) an area to which a special amenity area order relates;
 - (II) an area of special planning control;
 - (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.
- (xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.
- (xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.
- (e)(i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;
- (ii) Details of each notification under subparagraph (i), which shall include information on—
- (I) the location of the structure,
 - (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and
 - (III) the Eircode for the relevant property,

Shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

- (iii) *During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii)*

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 Development

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

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

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

I consider that the proposed change of use will require works. Both the change of use and the associated modifications constitutes development.

6.2 Exempted development

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

Sufficient information (drawings, schedule of accommodation etc.) has been submitted to allow an assessment of the proposal to be undertaken against the criteria listed in Article 10(6) of the Planning and Development Regulations and this is assessed in detail below.

ARTICLE	REQUIREMENT	ASSESSMENT
10(6)(b)	This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2	The subject site was previously used as a Hairdresser and is currently used as a Clothing Shop at ground floor level. It is noted, the first-floor level had previously been in use as a Tattoo Studio although there is no record of planning permission for same. In addition, there is no record of use type to the upper floors of the building. Class 1 is – <i>Use as a Shop, meaning 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,</i> <i>(b) as a post office,</i>

		(c) for the sale of tickets or as a travel agency, (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use, (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, This requirement is met.
10(6)(c)(i)	The structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018	The structure was constructed prior to the making of the regulations. This requirement is met.
10(6)(c)(ii)	The structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12 and	This requirement is met.
10(6)(c)(iii)	The structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development	It is stated in the application Planning Report that the upper floors of the site have been vacant in excess of 2 years. This requirement is met.
10(6)(d)(i)	The development is commenced and completed during the relevant period.	The applicant is required to comply with this requirement.
10(6)(d)(ii)	Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall – (I) primarily affect only the interior of the structure, (II) retain 50 per cent or more of the existing external fabric of the building, (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.	The application documentation states that the proposed works are only to the interior of the building. Existing elevations have been provided. This requirement is met.
10(6)(d)(iii)	Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures	No works proposed to existing ground floor unit.

10(6)(d)(iv)	No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.	The subject site is zoned ZO 5 – City Centre Residential development is acceptable within this zoning. The proposed change of use accords with this sub-article. This requirement is met.
10(6)(d)(v)	No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.	The proposed development is for 3 no. 1-bedroom residential apartments. This requirement is met.
10(6)(d)(vi)	Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.	Please see separate discussion / assessment below.
10(6)(d)(vii)	Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.	Habitable room is defined under Article 10(6) of the Planning Regulations as a <i>'room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres.'</i> On review of the submitted floor plans the proposed development is considered to be adequately served by window / natural light for the living areas of each proposed apartment. This requirement is met.
10(6)(d)(viii)	No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.	The subject site is not a protected structure. This requirement is met.
10(6)(d)(ix)	No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.	I am satisfied that that the proposal does not contravene a condition attached to a permission. This requirement is met.
10(6)(d)(x)	No development shall relate to any structure in any of the following areas:	This requirement is met.

	(I) an area to which a special amenity area order relates; (II) an area of special planning control; (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.	
10(6)(d)(xi)	No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.	This requirement is met.
10(6)(d)(xii)	No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.	N/A

10(6)(d)(vi) – the following is an assessment against the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities”. The figures given in the blue table are derived from the floor plans provided.

New Apartment Guidelines for Planning Authorities 2023						
Minimum Requirements						
Apt Type	Total (sqm)	Aggregate Living / Dining (sqm)	Living / Dining Width (m)	Aggregate Bed (sqm)	Bedroom width (m)	Storage (sqm)
Apartment Standards 1-bed	45	23	3.3	11.4	2.8 double	3
Unit 1	59.5sqm	24.5sqm	3.7sqm	11.4sqm	3.9sqm	4.6sqm
Unit 2	46.8sqm	23.5sqm	6.5sqm	11.4sqm	3.8sqm	3sqm
Unit 3	49.7sqm	24.7sqm	6.5sqm	11.4sqm	3.6sqm	3sqm

The proposed units meet or exceed the minimum requirements as outlined in ‘New Apartment Guidelines for Planning Authorities 2023’, the proposed development accords with the limitations set out in article 10(6)(d)(ii) and (vii).

It is noted there is a discrepancy in the submitted planners report with regard the aggregate floor area for the living / dining / kitchen rooms of the proposed units. On review, the submitted floor plans are accurate.

No private amenity provision is allocated for the proposed units. ‘New Apartment Guidelines for Planning Authorities 2023’, Section 6.9 is noted.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

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

7.2 Screening for Appropriate Assessment

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

8. RECOMMENDATION

In view of the above and having regard to —

- The planning history of the site, and
- Sections 2, 3 and 4 of the *Planning and Development Act 2000* (as amended), and
- Article 10(6) of the *Planning and Development Regulations 2001* (as amended)

It is considered that: *'Change of use of existing commercial premises at first, second and third floor levels from office with ancillary storage to provide 3 no. 1-bedroom residential'* at 35 Cornmarket Street, Cork, **Is Development and Is Exempted Development.**



Alan Swanwick
Assistant Planner
11/11/2024

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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SECTION 5 DECLARATION APPLICATION FORM under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Ted O'Connor

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

35 Cornmarket Street, 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.

change of use of existing commercial premises at first, second and third floor levels from office with ancillary storage to provide 3 no. 1-bedroom residential apartments

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

N/A

DEVELOPMENT MANAGEMENT
CCP
15 OCT 2024
CORK CITY COUNCIL

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? ☐

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 but ground floor only. No history for upper floors

7. APPLICATION DETAILS

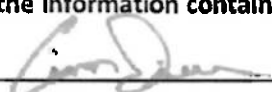
Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	156sqm (First,Second,Third Floor)
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes ☐ No ☐ 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) Commercial	Proposed/existing use (please circle) Residential (first, second and third floor levels)

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	N/A	
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: 

Date: 11th October 2024

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

11th October 2024

Re: Request for a Section 5 Declaration seeking confirmation that the change of use for commercial use at first, second and third floor levels to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development.

Dear Sir/Madam,

We, McCutcheon Halley Planning Consultants, of 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf of our client, Ted O'Connor, who is the owner of 35 Cornmarket Street, Cork City. Our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended), seeking confirmation that the change of use from commercial use at first, second and third floor levels to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development on the basis that:

- The change of use from commercial use at first, second and third floor levels to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development under the Planning and Development Regulations.
- The associated works to facilitate the proposed use will affect only the interior of the structure and therefore come within the exempted development provisions of the Planning and Development Regulations and Section 4(1)(h) of the Planning and Development Act, 2000.

The ground floor use which fronts onto Cornmarket Street will remain in commercial (i.e. retail) use. The above reasons are outlined in greater detail below. The remainder of the declaration request is set out as follows:

1. **Site and Planning Context**
2. **Planning Legislation/Regulations**
3. **Assessment**
4. **Conclusion**



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1.1 Site and Planning Context

The property comprises a 4-storey mid terrace building located along Cornmarket Street in the City Centre. The building has an established commercial uses, however only the ground floor is currently used for commercial (i.e. retail)¹ use, as the first, second and third floors of the building have been vacant for a number of years (i.e. greater than 2 years), but were last used for commercial purposes (i.e. office and ancillary storage). The surrounding area is comprised of a mix of uses but given its location in the City Centre, primary uses mostly consist of commercial use.



Figure 1 – Property at 35 Cornmarket Street

In the 2022 Cork City Development Plan (CDP) the site is zoned “ZO 5: City Centre” use. Based on objective ZO 5 of the CDP, it is an objective to “*consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural and residential growth*”. Based on Section ZO 5.2 of the CDP, the primary purpose of this zone is to “*promote the continued economic, civic, cultural and **residential growth** of the City Centre, and to create a thriving urban community.*”

The building is not a protected structure and is not located within an Architectural Conservation Area. It is not proposed that any works be done to the exterior of the building, with all works to take place internally only.

In terms of planning history, there is one application on file relating to the building under Cork City Council Ref No. 02/26388, in which a decision to grant was provided by the Council for a change of use

¹ The ground floor is currently occupied by ‘Casa Craft’.

application, from turf accountants to hairdressing salon. **This application for change of use related to the ground floor of 35 Cornmarket Street only.** As such, there is no known planning history for upper floor levels.

1.2 Planning Legislation/Regulations

In order to assess this declaration request, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended). The 2018 Planning Regulations provided for an exemption from the requirement to obtain planning permission in respect of the change of use of certain vacant commercial premises, to residential use. On the 25th February 2022 the Planning and Development Act (Exempted Development) Regulations 2022 extended to 31st December 2025 the exemption given by the 2018 regulations and included some additional amendments/exemptions as outlined in Section 2.2.

1.2.2 Planning and Development Act, 2000 (As Amended)

Section 2 of the 2000 Planning and Development Act, as amended (PDA), includes the following definitions which are of relevance to this assessment

“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) of the PDA defines “Development” as, ‘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 of the PDA relates to ‘Exempted Development’ and subsection (1) sets out categories of development that shall be exempted development, including subsection 4(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(2)(a) states that the Minister may by regulations provide for any class of development to be exempted development where he or she is of the opinion that the carrying out of such development by virtue of its size, nature or limited effect on its surroundings, would not offend against the principles of proper planning and sustainable development. Section 4(2)(b) of the Act states that regulations under paragraph (a) may be made subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

1.2.3 Planning and Development Regulations, 2001 (As Amended)

The extent to which the classes of development specified in Part 1 of the Second Schedule are exempted is governed by Article 9(1)(a) and that article is itself subject to the restrictions on exemption which includes the following:

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,



(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users;

(iv) ... comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed

(viiB) ... development that would be likely to have a significant effect on the integrity of a European site...

(viiC) ... development that would be likely to have an adverse impact on a natural heritage area...

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

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

(xi) obstruct any public right of way,

(xii) consist of or comprise the carrying out of works to the exterior of a structure within an architectural conservation area...

The Planning and Development (Amendment) (No.2) Regulations 2018 - S.I. No. 30 of 2018, provided for an exemption from the requirement to obtain planning permission in respect of the change of use of certain vacant commercial premises, including vacant areas above ground floor premises, to residential use. The regulations are primarily aimed at facilitating the productive re-use of qualifying vacant commercial buildings as homes, while also facilitating urban renewal and the bringing on stream of increased housing supply. The Planning and Development Act (Exempted Development) Regulations 2022 (S.I. 75 of 2022) extended to 31 December 2025, the exemption given by SI 30 of 2018. In order to avail of the exemptions being provided for, the structure, or part of the structure, which is the subject of the change of use must have been vacant for at least 2 years immediately prior to the commencement of the relevant works, with such works being required to be completed by 31 December 2025. The conditions and limitations that applied to the 2018 exempted development provisions, as outlined in previous Circular Letter PL 01/2018, continued to apply under the 2022 regulations and include::



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(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall -

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:



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(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

Each of the above conditions/restrictions are considered further in relation to our clients proposed development in the section below.

1.3 Assessment

In this case, our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000, seeking confirmation that the change of use from commercial use at first, second and third floor levels to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development on the basis that:

The structure at 35 Cornmarket Street was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 (i.e. on the 8th February 2018).

1. The proposed works comply with the requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities – see Figure 3.
2. The first, second and third floors have been vacant for greater than 2 years.
3. The works will be commenced and completed between 8th February 2018 and 31st December 2025.

In addition to the above, the proposed change of use also complies with the provisions of Article 9(1)(a) of the Planning Regulations in that the proposed change of use:

- will not contravene a condition attached to a permission;
- will not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway;
- will not endanger public safety by reason of traffic hazard or obstruction of road users;
- will not comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building;
- will not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest;
- will not have any effect on the integrity of a European site or natural heritage area;
- will not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure;
- will not preclude or restrict the continuance of the existing use;
- will not obstruct any public right of way;



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- will not comprise the carrying out of works to the exterior of a structure within an architectural conservation area (ACA). The building adjoins, but is not located within an ACA, but as can be seen from the existing and proposed drawings by DOSA Consulting Engineers, all works are interior and do not affect the external appearance of the building.

The material submitted as part of this declaration includes proposed floor plans of each of the proposed 3 no. 1-bedroom apartments, with a breakdown of floor areas provided by DOSA Consulting Engineers outlining how each of the apartments meets the requirements as set out by the Design Standards for New Apartments. We would like to highlight that under Article 10 (6) (c) (vi) of the Planning and Development regulations 2001 (as amended), while reference is made to requirements regarding dwelling floor areas, this does not specify private space and communal amenity space. As such, we contend that this subsection of Article 10 does not apply with regards to private space and communal amenity space, rather on overall floor areas.

It should be noted that based on a review of other Section 5 Declarations made by the Council in recent years regarding the change of use from commercial to residential uses in the City Centre, a requirement to adhere to private and communal amenity spaces has not always been requested for development to be deemed exempted. Planning Reference R639/21 is one such case. In this example the Planning report referred to the Apartment Guidelines and as part of the assessment the report outlined the following:

The applicants have submitted details of floor areas for each proposed apartment on the submitted floor plan drawings. It is noted that the proposed development accords with the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, in terms of minimum floor areas. Adequate natural lighting has been provided for habitable rooms. In this regard, it is considered that the proposed development complies with the exempted development provisions set out in Planning and Development (Amendment) (No.2) Regulation, 2018.

The case planner did not refer to private and communal amenity standards as part of their decision-making, with neither provided as part of the proposed works detailed under R639/21.

We would also like to make the case that Section 6.9 of the Guidelines allow for departures from the requirements of the Guidelines and specifically request planning authorities to:

“practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and ‘over the shop’ type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements.”

Considering the location of the property, in the heart of Cork City Centre, we contend that the standards regarding private and communal amenities should not be considered a priority in this assessment. The property is surrounded by a plethora of amenities and nearby facilities, including communal areas such as Bishop Lucey Park (200 metres) and Mardyke Walk/Fitzgerald Park (500 metres and 1km respectively), along with a number of cultural and civic amenities found within the City Centre.

The design for the internal floor areas of all proposed apartments has been considered thoroughly and will provide a high-quality standard of living in the City Centre where there is increasing demand for 1-bedroom units. These layouts are indicated below.



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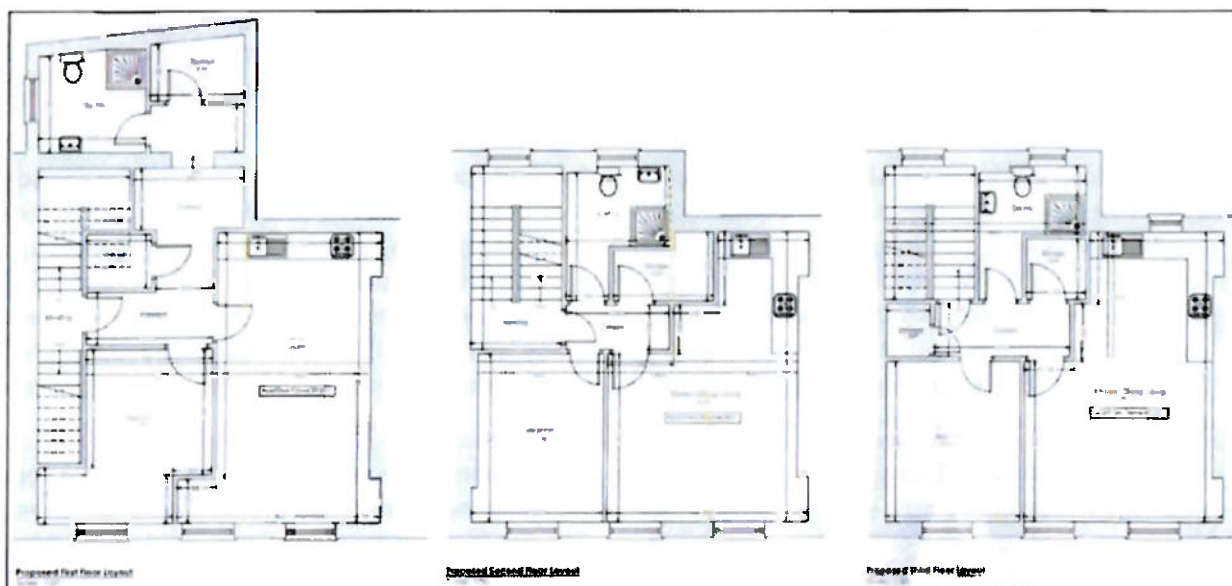


Figure 2 – Proposed floor layouts for the first, second and third floors of 35 Cornmarket Street

As can be seen, the proposed floor plans for the 1-bedroom apartments includes living, dining and kitchen spaces, as well as areas for storage, all of which meet the minimum standards for 1-bedroom apartments as per Appendix 1 of the Apartment Guidelines. Delivering these minimum standards is achieved through proposals to remove some internal existing walls. All works to facilitate this are internal only.

Each living area will have good access to daylight through the provision of existing windows on front and rear elevations, ensuring that residents will have access to a high-quality living environment.

The table below outlines how each proposed unit will meet the minimum standards, resulting in the provision of a high-quality living space, which offers a high-quality standard of living opportunity for prospective residents, in the heart of the City Centre.

Minimum Area/Widths	Sus. Housing Design Standards for New Apartments (2022)	Proposed Unit 1	Proposed Unit 2	Proposed Unit 3
Overall Floor Area	45.00 m ²	59.5 m ²	46.8 m ²	49.7 m ²
Width Area for Living / Dining Rooms	3.3m	6.5 m	6.5 m	6.5 m
Aggregate Floor Areas for Living / Dining / Kitchen Rooms	23.0 m ²	35.9m ²	34.9 m ²	36.1 m ²
Width for Bedroom	2.1 m	3.9 m	3.8 m	3.6 m
Storage Space	3.0 m ²	4.6 m ²	3.0 m ²	3.0 m ²

Figure 3 – Floor Plan layouts proposed for all units, in compliance with minimum requirements.

1.4 Conclusion

The proposed change of use from commercial (office with ancillary storage) use at first, second and third floors to provide 3 no. 1-bedroom apartments complies with the criteria included in Article 9(1)(a) of the



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Planning Regulations and the physical/proposed works are exempted development under the Planning and Development Regulations and Section 4(1)(h) Planning and Development Act.

Accordingly, it is submitted that the change of use from commercial use to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development on the basis that:

- **The change of use from commercial use at first, second floor and third floor levels to provide 3 no. 1-bedroom apartments at 35 Cornmarket Street, Cork City, is exempted development under the Planning and Development Regulations.**
- **The associated works to facilitate the proposed use will affect only the interior of the structure and therefore come within the exempted development provisions of Planning and Development Regulations and Section 4(1)(h) of the Planning and Development Act, 2000.**

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

1. This cover letter and declaration form 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 Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Cork City.
3. Ordinance Survey Map (identifying site location).
4. Drawings and Plans for the proposed residential units by DOSA Consulting Engineers.
5. The appropriate referral fee of €80.

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



Ciaran Dineen
McCutcheon Halley



McCutcheon Halley
EXEMPTED PLANNING CONSULTANTS

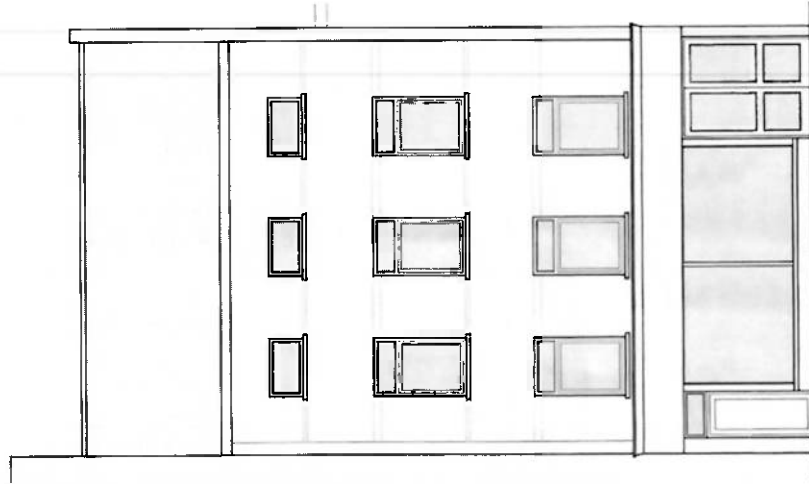


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	A	G-1	COS	COS	01 Dec 24	Issued for information

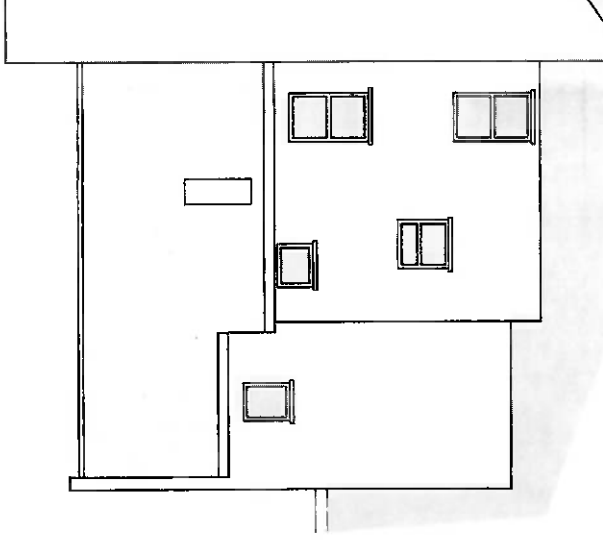
Ted O'Connor
35 Coolquoy, Cork

Existing Floor Layouts

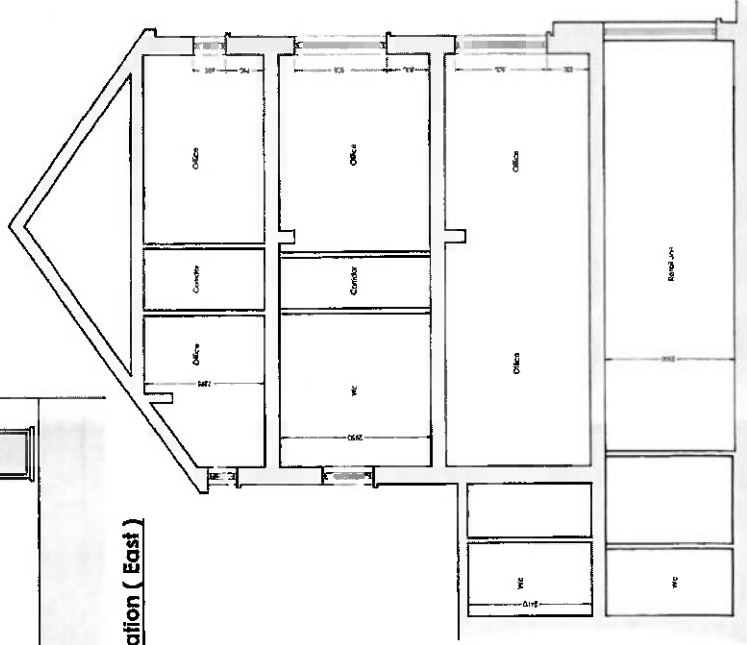
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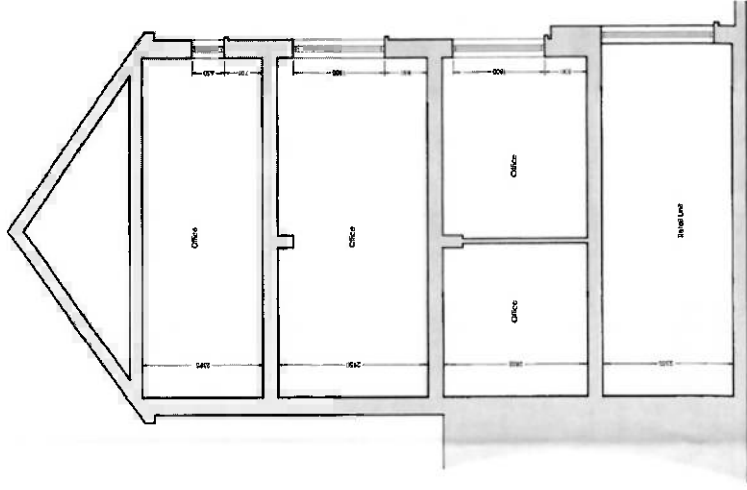
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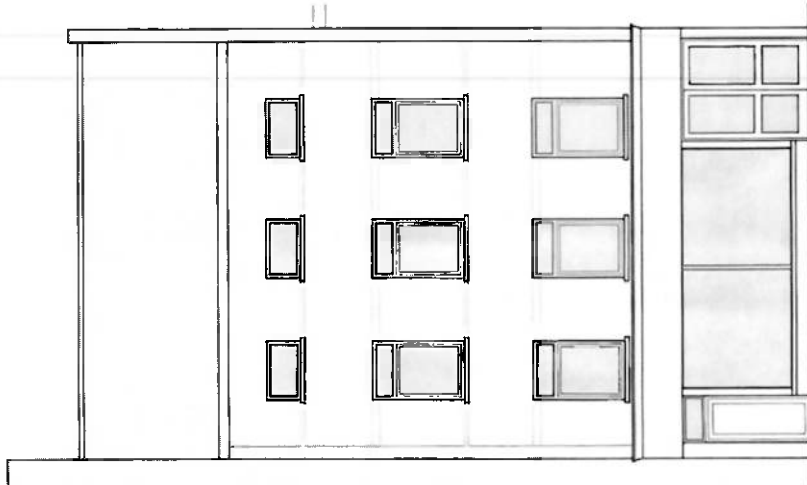
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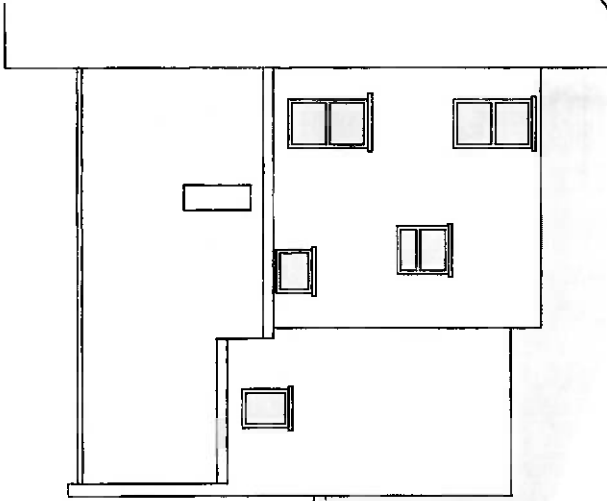
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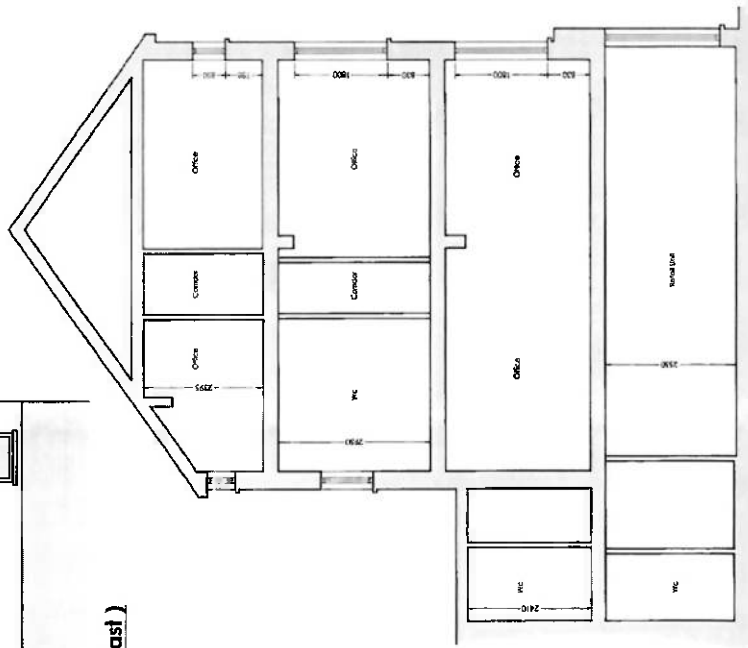
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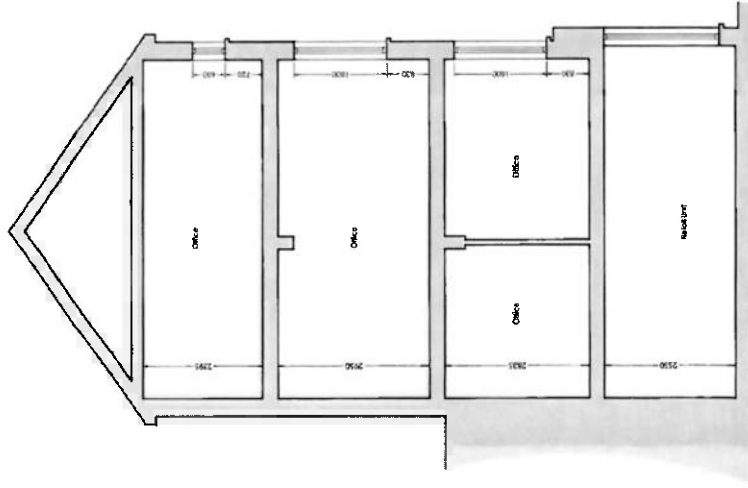
Front Elevation (West)
Scale : 1:100



Rear Elevation (East)
Scale : 1:100



Existing Section A-A
Scale : 1:100



Existing Section B-B
Scale : 1:100