

Comhairle Cathrach Chorcaí Cork City Council

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

Michael Curley, c/o Brian O'Kennedy & Associates Ltd., Shannonhouse, Church Road, Douglas, Cork T12 PW40.

19/07/2023

RE: Section 5 Declaration R792/23 63 Saint Patrick Street, Cork T12 HK79.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 10th July 2023, I wish to advise as follows:

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 of the Planning and Development Regulations 2001 (as amended),

The Planning Authority considers that –

the proposed conversion of the upper floors of No. 63 St. Patrick's Street is not exempted development as it doesn't comply with the floor area requirements of S.I No. 75 of 2022 3(d)(vi) which requires:

"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."

The overall kitchen/dining area and storage area do not meet the minimum requirements.

Therefore, the conversion of the upper floors of No. 63 St. Patrick's Street from office and/or retail to a 2-bed habitable accommodation IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 19th July 2023.

Is mise le meas,
Sate lagre

Kate Magner

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council

PLANNER'S RE Ref. R792/23	PORT	Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	"Can the upper floors of the above referenced property (sic 63 St. Patrick's Street) be converted from long term office and/or retail use to a two-bed habitable accommodation."	
Location	63 St. Patrick's Street	
Applicant	Michael Curley (Owner)	
Date	18/07/2023	
Recommendation	Is Development and is Not Exempted Development	

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:

"Can the upper floors of the above referenced property (sic 63 St. Patrick's Street) be converted from long term office and/or retail use to a two-bed habitable accommodation."

3. Site Description

The property in question is 4 storey mid terrace building in the city centre. The ground floor is currently vacant and historically was in retail use. It is listed on the NIAH (Ref: 20513122) and is located within the Oliver Plunkett ACA.

4. Planning History

There is no known history at this site.

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 6 (1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column.

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

SI No. 75 of 2022 -Planning and Development Act (Exempted Development) Regulations 2022

Amendment of Article 10 of Principal Regulations

3. The Principal Regulations are amended in article 10 (as amended by article 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)) by

substituting for sub-article (6) the following:

"(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 2018 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 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.

(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.

6. ASSESSMENT

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.

I consider that the proposed change of use from office and/or retail (storage) constitutes a material change of use of the upper floors of the structure in question and therefore is "Development".

6.2 Exempted development

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

S.I.No. 75 of 2022 is the relevant legislation (see above).

The application states that the structure in question has been vacant since 2020. While it is registered on the NIAH (Ref: 20513122) as being of regional architectural interest, and is located within the Oliver Plunkett Street ACA, it is not a protected structure. The accompanying maps detail that all the works are to the interior and re-iterate that no changes to the external façade are proposed. Therefore, the external appearance of the structure will not be rendered inconsistent with the character of the structure or of neighbouring structures.

There are no proposed alterations too the ground floor vacant retail space and shopfront. The proposal is for 1no. 2bed dwelling unit – it does not exceed 9 no. units. There is no known planning history at this site and therefore no conditions attached to the property.

The scheme must 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.

The floor areas being provided in comparison to that currently required under the latest edition are as follows:

	2022 Guidelines	Proposed 2-Bed, 4-Person Apt
Overall Floor Area 2-Bed 4 Person	73sq.m	89sq.m
Widths Areas for Living / Dining Rooms	3.6sq.m	3.9sq.m
Aggregate Floor Areas for Living/Dining/Kitchen Rooms - 2Bed 4 Person	30sq.m	22.43sq.m
Width for Double Bedroom	2.8sq.m	3.4sq.m
Floor area Double Bedroom	11.4sq.m	17.63sqm and 17.98 sq.m
Aggregate Bedroom Floor Areas 2Bed 4 Person	24.4sq.m	35.61sq.m
Storage Space 2Bed-4 Person Apt	6sq.m	0sq.m

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

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

7.2 Screening for Appropriate Assessment

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

8. Conclusion

The question has been asked whether

"Can the upper floors of the above referenced property (sic 63 St. Patrick's Street) be converted from long term office and/or retail use to a two-bed habitable accommodation."

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 of the Planning and Development Regulations 2001 (as amended),

It is considered that the proposed conversion of the upper floors of No. 63 St. Patrick's Street is not exempted development as it doesn't comply with the floor area requirements of S.I No. 75 of 2022 3(d)(vi) which requires:

"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."

The overall kitchen/dining area and storage area do not meet the minimum requirements. Therefore, the conversion of the upper floors of No. 63 St. Patrick's Street from office and/or retail to a 2-bed habitable accommodation Is Development and Is Not Exempted Development.

Mary Doyle

mDoyle

Executive Planner



Our Ref: **BOK/KOB/6831** Your Ref:

Shannon House, Church Road, Douglas, Cork, T12PW40

Tel: 021-4899854 Email: info@bok.ie Web: www.bok.ie

Date:

30th June 2023

The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

Re: 63 Saint Patrick Street, Cork, T12HK79

Dear Sir or Madam,

Please find enclosed Section 5 Declaration application in relation to the following property:

63, Saint Patrick Street, Cork T12HK79

We enclose the following:

- Cheque in the sum of €80.00
- Location map (2 copies)
- Plans of the proposed works (2 copies)
- Elevation photos of the building (2 copies)

We look forward to your response in this matter.

DEVELOPMENT MANAGEMENT CCP

10 JUL 2023

CORK CITY COUNCIL

Brian O'Kennedy Chartered Engineer

Yours Sincerely

DEVELOPMENT NAME OF ME

COMHAIRLE CATHRACH CHORCAÍ **CORK CITY COUNCIL**

1 0 JUL 2023

CC.

Community, Culture & Placemaking Directorate,

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

Cork City Council, City Hall, Anglesea Street Cork (17 COUNFON/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM

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

1. NAME OF PERSON MAKING THE REQUEST

Michael Curley

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

63 Saint Patrick Street, Cork T12HK79

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Can the upper floors of the above referenced property be converted from long term office and or retail use to a two-bed habitable accommodation. It is proposed to retain the ground floor as a retail unit. The upper floors will be accessed by a separate existing access door and corridor from Patrick street which was covered over in the past but which is now uncovered. The building has been unoccupied since 2020

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

- 1. Building is NIAH Ref No 20513122
- 2. Building is in an Architectural Conservation Area
- 3. Please see attached location map and drawings of conversion proposal
- 4. Drawings are submitted showing the proposed works and fit out
- 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:				
	We are not aware of any record of previous	s planning	applications pe	rtaining to the property	
	APPLICATION DETAILS				
	r the following if applicable. Note: Floor are		asured from the	inside of the external	
(a) Floor area of existing/proposed structure/s		Existing Retail Ground – 3 rd Floor = 114.49 57			
			Proposed Ground Floor Residential 1 ^s	Retail = 25.12 sqm t – 3 rd Floor = 89.37 sqm	
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?		Yes No X If yes, please provide floor areas. (sq m)			
	(c) If concerning a change of use of land and	or buildi	ng(s), please st	ate the following:	
Exist	ting/ previous use (please circle)	Proposed	existing use (pl	lease circle)	
	Retail (ancillary to ground floor retail premises) and office use				
7. LEG	AL INTEREST				
1000	se tick appropriate box to show applicant's linterest in the land or structure	A. Owr	ner YES	B. Other	
	ere legal interest is 'Other', please state your rest in the land/structure in question				
If yo	ou are not the legal owner, please state the e of the owner if available				

8. I / We confirm that the	e-information contained in the application	is true and accurate:
Signature:	XXX 57	
Date: 29th	4 JUNE 2023	
	CONFIDENTIAL CONTRACT	
	These details will not be made available to t	
9. Applicant:	,	
	9	
Name(s)	Michael Curley	
Address		
10. Person/Agent acting		
Name(s):		1
Address:		
8		*
Telephone:		
E-mail address:		
	nce be sent to the above address? answer is 'No', all correspondence will be	Yes X No
sent to the Applicant's a	address)	
		I.
11. Owner Details (if the	applicant above is not the legal owner):	
Name(s)	,	
Address		
		100

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Tel. No.	
Mobile No.	
Email Address:	
	For Office Use Only:
	File Ref. No.

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

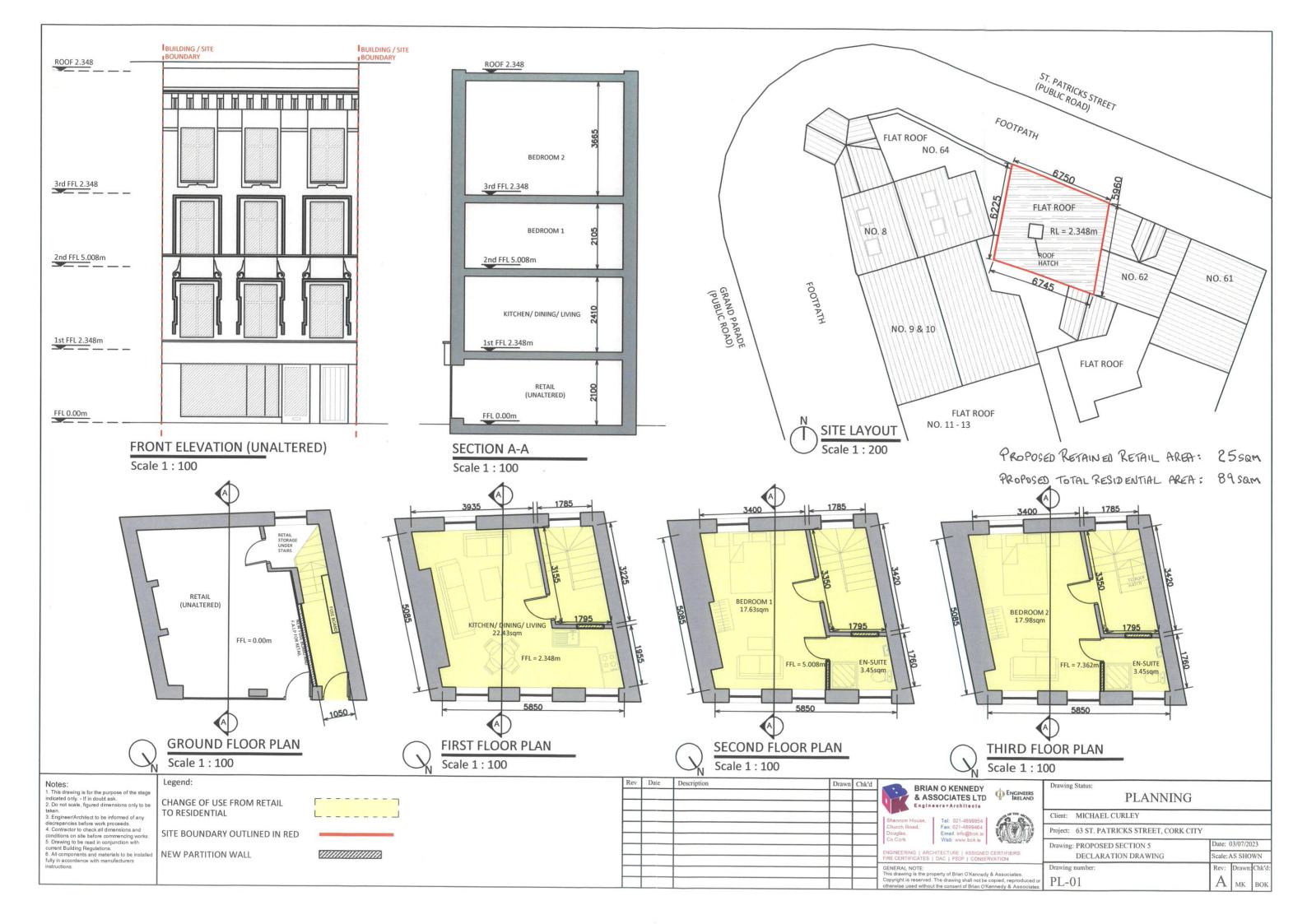
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at https://www.corkcity.ie/en/council-services/public-info/qdpr/.

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

Planning Pack Map Irdnance 572048 S Paul Street **National Mapping Agency** Shopping MO Centre PORTNEY S LN P CENTRE COORDINATES: 567292,571962 0 0 PUBLISHED: ORDER NO .: D 02/09/2020 50138741 1 Z MAP SERIES: MAP SHEETS: Z 1:1,000 6382-10 P N X SAINT m Ш ES D S 1 0 STREET 1 m D D m COMPILED AND PUBLISHED BY: PAUL Ordnance Survey Ireland, Castle: P Saint Peter and Phoenix Park. Z Saint Paul's Bank Dublin 8, Catholic Church D Ireland. CASTLE STREET D Unauthorised reproduction D infringes Ordnance Survey Ireland 0 C and Government of Ireland PU copyright. S All rights reserved. SAINT PATRICK'S STREET No part of this publication may be copied, reproduced or transmitted in any form S (Site of) or by any means without the prior S written permission of 0 the copyright owners. The representation on this map of a road, track or footpath 0 is not evidence of the existence D of a right of way. V Ordnance Survey maps SAINT AUGUSTINE STREET ST PATRICK'S ST never show legal property 0 boundaries, nor do they 11-13 show ownership of D physical features. V D BEE 50 © Suirbhéireacht Ordanáis Éireann. V D © Ordnance Survey Ireland, 2020 Church www.osi.ie/copyright 10 40 metres **CAPTURE RESOLUTION:** The map objects are only accurate to the N **OUTPUT SCALE: 1:1,000** resolution at which they were captured. 20 40 Output scale is not indicative of data capture scale. 60 80 100 Feet LEGEND: Further information is available at: http://www.osi.ie: http://www.osi ie: search 'Cantura Decalution'



Existing Photographic Record of No. 63 St. Patricks Steet





Front Elevation & Existing 2no. Doors









1st Floor Landing



1st Floor













