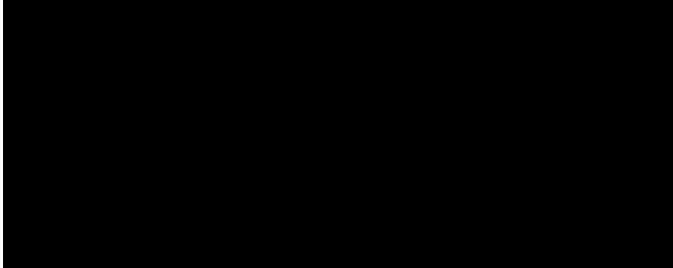




Comhairle Cathrach Chorcaí Cork City Council

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

Tom Scriven



07/04/2025

Section 5 Request:

**RE: R923/25. 14 & 14A, St Nicholas Square, BallymacThomas Street,
Cork City.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on the 10th of March 2025, I wish to advise as follows:

The question placed before the Planning Authority was whether the change of use from guesthouse to residential accommodation for protected persons accommodating international protection applicants was exempted development.

The Planning Authority's conclusions are listed below:

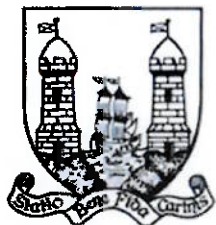
- a) The proposal is for a 'change of use of the commercial portion of the building into a direct provision centre to provide accommodation to internal applicants.'. The proposal comprises a 'material change in the use of any land or structure' and therefore the proposed change of use constitutes development within the meaning of the Act.

The proposed change of use includes for internal works to the buildings (internal partitions, new connections etc.). it is unclear if any external changes are proposed. This information could be requested by way of further information.

The proposal includes an act of construction and therefore falls within the definition of "works". Therefore, the proposal constitutes development within the meaning of the Planning and Development Act, 2000.



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- b) No evidence has been submitted by the applicant to demonstrate that the site has been in use as 'a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation' (the list of uses set out in Class 14(h) of the Planning and Development Regulations for which a change of use can occur to provide accommodation protected person) and it is considered that the proposed change of use does not fall within the scope of Class 14H and is therefore not exempted development.

The documentation submitted with the application also refers to accommodating International Applicants. It is not clear from the information provided if the proposed accommodation is being provided for or on behalf of the Department of Children, Equality, Disability, Integration and Youth. This information could be requested by way of further information. However, as the proposed change of use is considered not to be exempt, this information will not be requested.

Therefore, the Planning Authority has decided that the change of use of the commercial portion of a building into a direct provision centre to provide accommodation to international applicants at 14, and 14a Saint Nicholas Square, BallymacThomas Street, Cork City; **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT Ref. R923/25		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>Is the change of use from guesthouse to residential accommodation for protected persons accommodating international protection applicants exempted development?</i>	
Location	14 and 14a St Nicholas Square, BallymacThomas St, Cork City.	
Applicant	Mekar Ltd (owners)	
Agent	Brian O'Kennedy & Associates Consulting Engineers and Architects	
Date	08/07/2025	
Recommendation	<i>Request further information.</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:

The Section 5 Application involves the change of use of the commercial portion of a building into a direct provision centre to provide accommodation to international applicants.

The works are to be considered under Class 14(H) of the Planning and Development Regulations (S.I. 582 of 2015) and deemed exempted development in accordance with Section 5 of the Planning Development Act, subject to approval.

The intention of the request is clear.

3. SITE DESCRIPTION

The proposal relates to 14 and 14a St Nicholas Square. The buildings are two-storeys in height. The buildings appear to have been extended over time through two storey flat roof side and rear extensions. There is an area of hard standing to the front of No. 14 which is enclosed by a steel fence and vehicular entrance gate – see Fig 1.

Fig 1: Extract from google street view of subject site



4. PLANNING HISTORY

Planning Applications

14/36244 – Permission **refused** for change of use from existing store/ garage to 2-storey, 1-bedroom dwelling-house and ancillary site works at St Nicholas Sq.

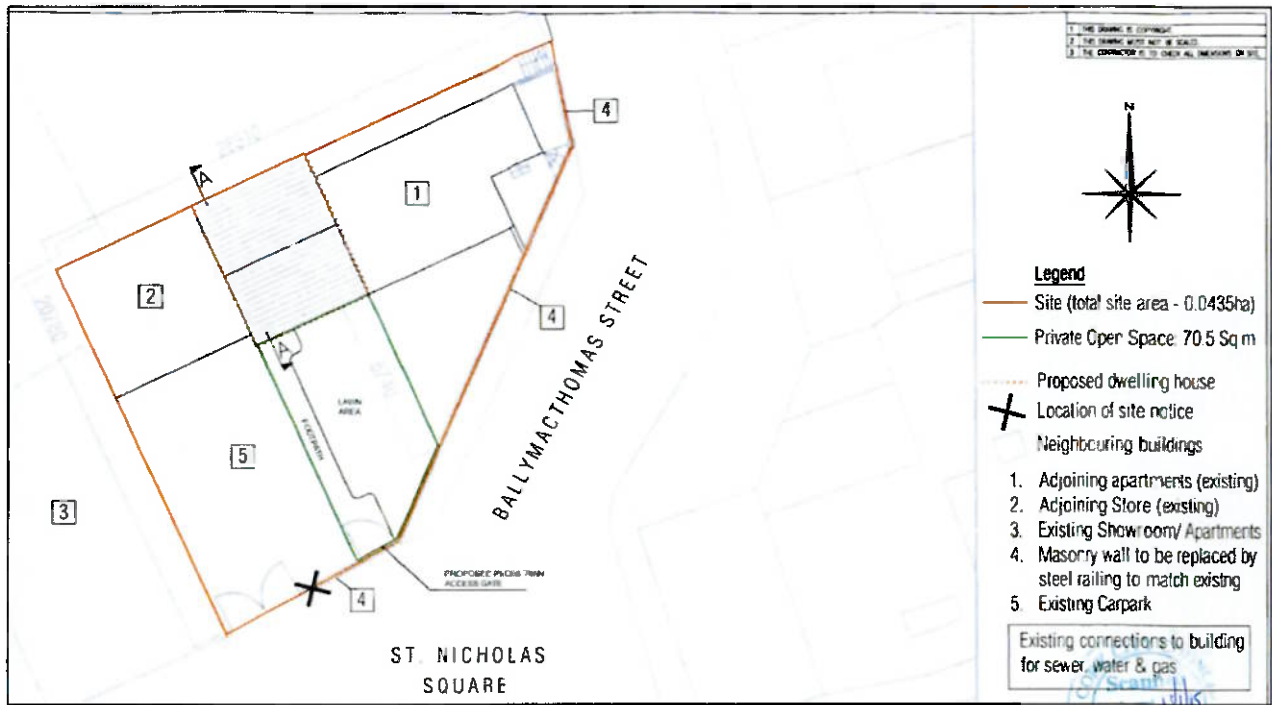
10/34589 – Permission **refused** for change of use from existing store/ garage to 2-storey, 2-bedroom dwelling house, demolition of existing front masonry wall to be replaced with steel railing and gates, steel access gate to rear and ancillary site works at St Nicholas Sq.

09/34244 – Permission **refused** for change of use from existing store/ garage to two-storey, two-bedroom dwelling house, demolition of existing front masonry wall to be replaced with steel railings and gates, steel access gate to rear and ancillary site works.

96/20869 – Permission **granted** to demolish existing warehouse & to erect 2 no apartments, 1 commercial garage unit with store over install. of telephone equipment.

It is noted that a notification of change of use from commercial to residential use was received on February 2024 under SI No 75 of 2022 Planning and Development Act (Exempted Development) Regulations 2022. The applicant has stated that this change of use was never implemented.

Fig 2: Extract of Site Layout Plan submitted for 14/36244



5. LEGISLATIVE PROVISIONS

5.1 The Act

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) *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, except where the context otherwise requires, "development" means, -

- a) *The carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land, or*
- b) *Development within the meaning of Part XXI.*

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)(a),

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*
- ii) The development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

Section 4(2)(b)

Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

Section 4(2)(c)

Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

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) (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 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or

machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

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 1.

Article 9 (1)(a)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (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,*
- (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,*
- (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 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,*
- (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,*
- (xi) obstruct any public right of way,*
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area 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 and the development would materially affect the character of the area,*

Class 14(h) is inserted by article 4 of S.I. No. 582/2015 Planning and Development (Amendment)(No. 4) Regulations 2015.

(Article 6) Schedule 2, Part 1, Class 14(h)	
Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Development consisting of a change of use—</i> <i>(H) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,</i>	

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

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: '(a) the carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land, or (b) Development within the meaning of Part XXI.'

The proposal is for a 'change of use of the commercial portion of the building into a direct provision centre to provide accommodation to internal applicants.'. The proposal comprises a 'material change in the use of any land or structure' and therefore the proposed change of use constitutes development within the meaning of the Act.

The proposed change of use includes for internal works to the buildings (internal partitions, new connections etc.). it is unclear if any external changes are proposed. This information could be requested by way of further information.

CONCLUSION:

Is Development.

6.2 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 4(1)(a) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within **subsection (2) of section 4**.

Section 4(2)

It is therefore necessary to consider whether the proposed change of use comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

The applicant is requesting an exemption for a change of use in accordance with the exemption Class 14H of the Planning and Development Regulations. The proposal is assessed below against Class 14H and its conditions and limitations.

Class 14H read as follows:

Development consisting of a change of use — (H) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons.

Protected Persons is defined in the Planning and Development Regulations as follows:

"protected person", for the purposes of Schedule 2, means

- (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),*
- (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or*
- (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996";*

It is stated that the subject site has been in commercial use with an element of residential accommodation. The plans submitted with this section 5 indicate that there are 2 no. residential apartments at second floor level of No. 14 and the plans submitted with planning application ref. 14/36244 indicate that the remainder of the site is commercial use. The exact nature of the commercial use is unclear. The plans submitted with 14/436244 indicate that the site contained a number of store rooms and a showroom.

No evidence has been submitted by the applicant to demonstrate that the site has been in use as 'a *hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation*' (the list of uses set out in Class 14(h) for which a change of use can occur to provide accommodation protected person) and it is considered that the proposed change of use does not fall within the scope of Class 14H and is therefore not exempted development.

The documentation submitted with the application also refers to accommodating International Applicants. It is not clear from the information provided if the proposed accommodation is being provided for or on behalf of the Department of Children, Equality, Disability, Integration and Youth. This information could be requested by way of further information. However, as the proposed change of use is considered not to be exempt, this information will not be requested.

CONCLUSION:

Is not exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 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 an environmental impact statement is not required.

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.

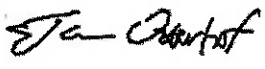
8. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6 and 9 and Class 14H of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

the planning authority considers that —

the change of use of the commercial portion of a building into a direct provision centre to provide accommodation to international applicants at 14, and 14a Saint Nicholas Square, BallymacThomas Street, Cork City **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**

	
Jan Oosterhof A/ Executive Planner Development Management 07/04/2025	Melissa Walsh Senior Executive Planner Development Management 07/04/2025

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

Fón/Tel: 021-4924029

Líonra/Web: www.corkcity.ie

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

1. NAME OF PERSON MAKING THE REQUEST

Mekar Ltd

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

14 & 14A Nicholas Square, Cork. T23 YX22 & T23 EY73

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.

The Section 5 Application involves the change of use of the commercial portion of a building into a direct provision centre to provide accommodation to international applicants.

The works are to be considered under Class 14(H) of the Planning and Development Regulations (SI.582 of 2015) and deemed exempted development in accordance with Section 5 of the Planning Development Act, subject to approval.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

See plans and site location attached.

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

5. Is this a Protected Structure or within the curtilage of a Protected Structure? ☒

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:

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	396.6sq.mts
(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)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) Mixed commercial (shop/offices and domestic)	Proposed/existing use (please circle) Direct provision accommodation for international applicants

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner ☒	B. Other ☐
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

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

Signature

Date: 4th March 2025



**BRIAN O'KENNEDY
& ASSOCIATES LTD**
Consulting Engineers & Architects

Shannon House,
Church Road,
Douglas,
Cork, T12PW40

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

Our Ref: BOK/KOB/

Your Ref:

Date: 6th March 2025

Planning Section,
Cork City Council,
City Hall,
Cork.

**CORK CITY COUNCIL
PLANNING & DEVELOPMENT**

10 MAR 2025

DEVELOPMENT MANAGEMENT

**Re: 14 & 14A St Nicholas Square, BallymacThomas St, Cork City.
Section 5 Declaration Application.**

Dear Sir/Madam,

I refer to the above. Please find enclosed Section 5 Declaration Application in respect of the above property. We enclose the application fee amount of €80 along with the following:

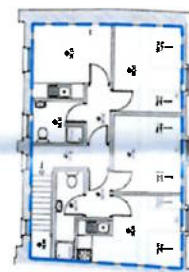
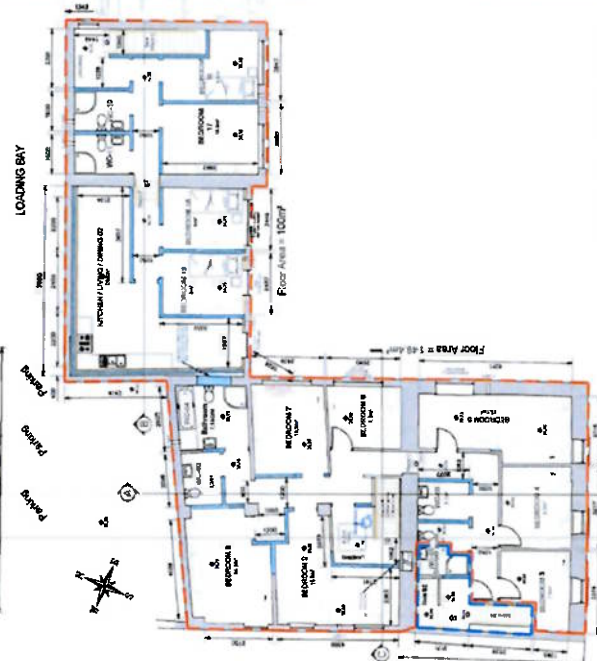
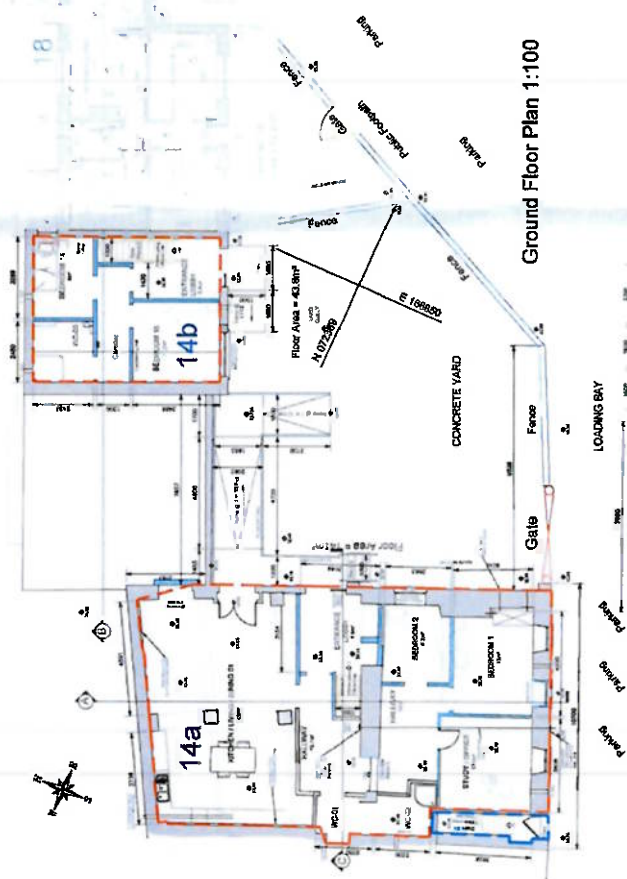
The Application Form
€80 cheque payment
Location Map
Existing and proposed floor plan drawings.

This Section 5 Application involves the change of use of an existing mixed commercial/Domestic premises into a direct provision accommodation centre to provide accommodation to international applicants.

Please note that this property was the subject of an SI.75 application in February 2024 for change of use from disused commercial building to habitable accommodation. We confirm that this use was never exercised or put into effect.

I trust all is in order.

Brian O'Kennedy CEng MIEI
Chartered Engineer



Area to which previous domestic use applies.
To be retained as domestic use.

Area to which previous commercial office & showroom.
Use applies, which is the subject of current section 5
declaration of exemption application.

**Does not form part of section 5
declaration of exemption application**

Second Floor Plan (1:100)

First Floor Plan (1:100)