# **COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

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Líonra/Web: www.corkcity.ie

# **SECTION 5 DECLARATION APPLICATION FORM**

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

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

No. 40-41 Grand Parade, Cork Refer to site location map attached

## 2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE		
Sample Question:	Is the construction of a shed at No 1 Wa exempted development?	ll St, Cork development and if so, is it
Note: only works listed	and described under this section will be asse	essed under the section 5 declaration.
Is the provision	of ≤ 9 no. residential units in the vacar	nt upper floors of the subject pro
	opment, said property being vacant fo	> 2 years and no material exte
alterations being	proposed?	
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# 3. 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			562 m <sup>2</sup> Existing Internal Gross Floor Area		
location after 1 <sup>st</sup> O for which planning obtained)?	res been erected at th ctober, 1964, (includin permission has been	s If yes, please provide floor areas. (sq m			
? Vacant commercial upper floors		Proposed/existing use (please circle)  Residential			
4. APPLICANT/ CONT		Home	oly Developments Ltd.		
Applicants Address  Lacka, Templenoe, Co. Kerry					
Person/Agent acting on	Name:	Meithe	eal Architects		
behalf of the Applicant (if any):	Address:	1 South Mall Cork T12 CCN3			
	Telephone:	(Lancasca)			
	Fax:				
	E-mail address:	1	TRATEGOR		
Should all correspondence (Please note that if the answer is 'No address)					
LEGAL INTEREST					
Please tick appropriate box to show applicant's			ner B. Other		
egal interest in the land o	or structure				
Where legal interest is 'O			-		
your interest in the land/s					
If you are not the legal or name and address of the					

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6. I / We confirm that the information contained in the application is true and accurate:
Signature: Burn Cullum
Signature: During (L. 1111)
Date: 28 - 0(- 202/
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# **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, Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- 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

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution



# SECTION 5 DECLARATION - NO. 40-41 GRAND PARADE, CORK

### INTRODUCTION

Homely Developments Ltd. Intend to, under the initiatives espoused in the Government's 2016 'Rebuilding Ireland: Action Plan to Housing and Homelessness' procure residential units in the upper floors of a vacant commercial property.

A Section 5 Declaration is being sought as to the change-of-use of the long vacant (>2 years) upper floors to  $\leq 9$  no. residential units.

### **POLICY CONTEXT**

Under the 'Government Policy on Architecture' implementation programme, a number of key policies have been developed to align the objectives of heritage-led regeneration with those of spatial planning. Publications such as 'Shaping the Future – Case Studies in Adaptation and Reuse in Historic Urban Environments' (DCHG 2012) and the 'Retail Design Manual – a Companion Document to the Retail Planning Guidelines for Planning Authorities' (DAHG/DECLG 2012) have helped to bring about a new focus on the sustainable and adaptive reuse of our existing and historic stock.

Addressing Climate Change is a key priority of Government policy. Modern renovation offers an opportunity to reduce heat loss from buildings as well as helping Ireland meet its international energy and climate goal, national Long Term Renovation Strategy objectives and the requirements of the Energy Performance of Buildings Directive.

# REGULATORY CONTEXT

The following provides a brief description of the legislation that may be relevant when bringing an existing building back into use for residential purposes.

The main regulations that affect the design, build and use of the building on completion are:

The planning system:

- The Exempted Development Regulations, 2018
- Specific regulations affecting older buildings
- The building control system
- Minimum Standards in Rented Accommodation
- Safety Health and Welfare at Work Act
- The Fire Services Acts

# **Legislative Provisions**

Under the Planning and Development Act 2000, all development including a material change of use, unless specifically exempted under the Act or associated Planning and Development Regulations 2001, requires planning permission. Section 4(1) of the Act provides for a range of exemptions, and section 4(2) provides

Issue:



that the Minister may by regulations provide for further classes of development to be exempted development.

# **Exempted Development**

Article 6 and Schedule 2 of the Planning and Development Regulations 2001 (as amended) set out certain classes of development which are exempt from planning permission requirements, many of which classes have specific conditions or limitations which restrict the exemption. In certain circumstances, for example, the conditions may restrict the exempted development to a certain size or extent.

# **General Restrictions on Exemptions**

Article 9 of the Planning and Development Regulations 2001 (as amended) provides for a range of restrictions on exemptions generally. For example, it provides that development listed in Schedule 2 which relates to exempted development shall not be exempted development if it would contravene an objective of a development plan, or local area plan or such drafts of such plans, where such objectives may relate to the preservation or protection of the character of a landscape, or of a site of archaeological or historical interest. Restrictions also apply where development would endanger public safety or would obstruct a public right of way, etc.

# Change-of-Use Exemptions

Article 10 of the Planning and Development Regulations 2001 (as amended) provides that certain changes of use, with regard to particular classes of use, are exempted from the requirement to obtain permission.

Article 10 change of use exemptions are not subject to Article 9 restrictions. However, all exemptions, under Section 4 of the Act, or Article 6 and 10 of the Regulations are subject to compliance with any general restrictions on exemptions set out in the Act and would need to be considered on a case-by-case basis.

# **EXEMPTED DEVELOPMENT REGULATIONS**

The Planning and Development (Amendment) (No.2) Regulations 2018, namely S.I. 30 thereof provide that, for development consisting of the change of use, and any related works, from an existing specified use class to residential use, in certain circumstances and subject to conditions and limitations, to be exempt from the requirement to obtain planning permission. This exemption can be availed of during the period from 8 February 2018 until 31 December 2021.

# **Buildings that Benefit from the Exemption**

The exemption applies to existing completed commercial buildings, such as shops and offices, which have been in use for commercial purposes, but which have been vacant for a period of two years prior to the proposed works commencing and are available and suitable for housing. As envisaged in Rebuilding Ireland, therefore, the regulations focus on bringing existing vacant commercial units back into use for residential purposes thereby facilitating increased housing supply.

# **Development Works Covered by the Exemption**

Title

The development works covered by the exemption are works which may be required in connection with the change of use of a building, or part of a building, for residential purposes and are subject to certain restrictions.

In general, the development works to the building must primarily be works which only affect the interior of the building. Some limited works to the external appearance of the structure are permitted, but they must be

Issue:



consistent with the character of the structure and of neighbouring properties. The proposed works will meet these criteria.

### **Restrictions on Works**

A number of restrictions and limitations apply, and those germane to this matter include;

- The change of use and related works must occur between the 8 February 2018 and 31 December 2021.
- Generally, works cannot be carried out to a ground floor of a building that conflicts with an objective of the relevant Local Authority development plan or local area plan for such ground floor to remain in retail use.
- No more than nine individual housing units can be provided in any building.
- Works to a protected structure shall not be permitted unless it has been confirmed by the planning authority that the works will not affect the character or elements of the structure which have been identified for protection.
- Works shall not be permitted in a number of limited areas, such as areas of special planning control and areas to which special amenity area orders relate and within certain perimeter distances of certain establishments where flammable/ toxic or chemical substances are stored.

# **NON-PLANNING MATTERS**

It is acknowledged by the applicant that the declaration will relate to planning matters only and that no exemption from the following matters arises;

- Minimum Standards in residential accommodation, namely the "Housing Standards for Residential Houses Regulations" (S.I. 17 of 2017).
- Safety, Health and Welfare at Work Act, 2005 namely the prescriptions of the Safety, Health and Welfare at work (Construction) Regulations 2013, (S.I. 291 of 2013).
- Fire Services Acts.
- Building Control Regulations, namely the Building Control (Amendment) Regulations 2014 (BCAR).

# CONCLUSION

S.I. 30 of 2018 provides that the conversion of certain classes of vacant upper floor commercial accommodation is exempt from the requirement to obtain planning permission.

We respectfully contend that No. 40-41 Grand Parade enjoys such exemption, the proposal being;

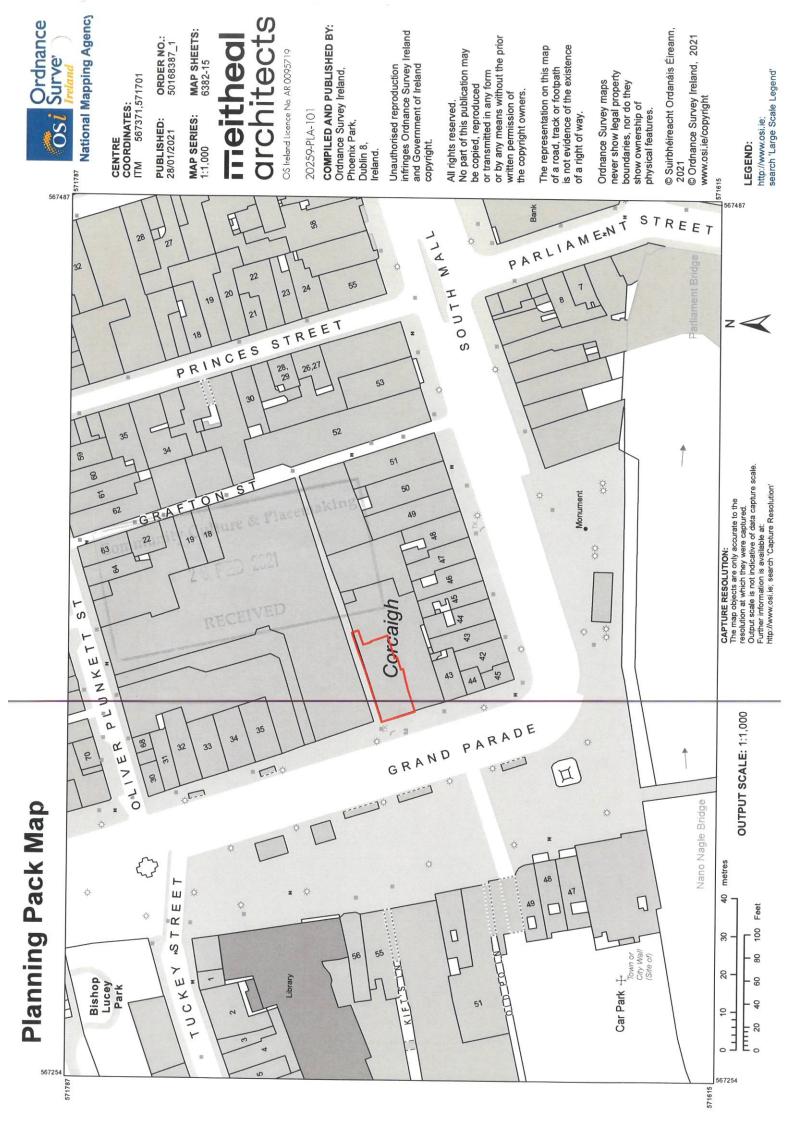
- ≤9 no. residential units.
- The vacancy period > 2 years.
- The building is not a Protected Structure.
- No material external alterations are proposed.
- The works will be undertaken before 31st December, 2021.
- Any internal modifications are minor and fall under Section 4 (1)(h)

Date:



Document Control/ Review History:					
Description (type)	Rev:	Date:	Originator:	Checked by:	Approved by:
21.01.28-Section 5 Declaration-20259	А	28.01.2021	РОТ	MD	POT
21.02.17-Section 5 Declaration-20259	А	17.02.2021	РОТ	MD	РОТ

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21.02.17-Section 5 Declaration-20259	_^	17.02.2021	РОТ	MD	POT
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# Comhairle Cathrach Chorcaí Cork City Council

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

Meitheal Architects 1 South Mall Cork T12 CCN3

09th March 2021

RE: R639/21 – Section 5 Declaration Property: 40-41 Grande Parade Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise having regard to

- Planning and Development (Amendment) (No.2) Regulation, 2018.
- The particulars received by the Planning Authority on 26<sup>th</sup> February 2021

The Planning Authority has concluded that -

- The proposal comes within the scope of the definition of 'development' as defined in Section 3 of the Planning and Development Act, 2000 as amended
- The proposal complies with the provisions for exempted development set out in Article 10(6) of the Planning and Development Act, 2000, as amended.

And therefore, the Planning Authority considers that -

 The provision of less than or equal to 9 no. residential units in the vacant upper floors of the subject property exempted development, said property being vacant for 2 or more years and no material external changes being proposed <u>is development</u> and <u>is exempted development</u>

Yours faithfully,

Kerry Bergin

Assistant Staff Officer

Community, Culture and Placemaking

Cork City Council



### SECTION 5 DECLARATION - PLANNER'S REPORT

File Reference:

R 639/21

Description:

Is the provision of less than or equal to 9 no. residential units in the vacant upper floors of the subject property exempted development, said property being vacant for 2 or more years and no material external

changes being proposed?

Applicant:

Homely Developments Ltd.

Location:

40-41 Grand Parade, Cork

Date:

05/03/2021

# SUMMARY OF RECOMMENDATION

Constitutes development; is exempted development

### **Purpose of Report**

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

### **Site Location**

The site is located at 40 & 41 Grand Parade, Cork. The property is a 4-storey building with an additional set back floor at roof level. It is an end of terrace property on Grand Parade. 40/41 is not a protected structure but is included in the National Inventory for Architectural Heritage, noted as a late 18<sup>th</sup> Century building with an architectural special interest of regional importance.

### **Subject Development**

The proposed development subject to this Section 5 declaration request asks for a declaration from the Planning Authority in respect of the conversion of part of the upper vacant floors (part of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floor levels) into 7 no. apartments. The applicant has submitted a report with the Section 5 application setting out the description and context of the proposed development and why it is considered to be exempted development.

The applicant seeks a declaration on whether the above works and use is development and is exempted development.

### **Relevant Legislation**

### Planning and Development Act, 2000

**Section 3 (1)** of the Act defines "Development" as, '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** of the Act refers to 'Exempted Development' and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

'Development consisting of the carrying out of the 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 of the structure or of neighboring structures'.

### **Definitions**

The definition of "Structure" in the 2000 Act is as follows:

- "any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-
- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes
- i. the interior of the structure
- ii. the land lying within the curtilage of the structure
- iii. any other structures lying within that curtilage and their interiors, and
- iv. all fixtures and features which form part of the interior or exterior of any structure
- or structures referred to in subparagraph (i) or (ii)"

# Planning and Development (Amendment) (No.2) Regulation, 2018

As an amendment to the Article 10 of the principal regulations of the *Planning and Development Regulation 2001*, Article 10 of Part 4 of the Regulations provides definitions Classes of Uses for the purposes of Exempted Development.

The amendment broadens the availability for exempted development for change of use to residential use from Class 1, 2, 3 or 6 of Part to Schedule 1.

Under the amendment of the regulations, 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) which is as follows:

- (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 affect only the interior of the structure and shall 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. 4 [30]
- (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.

### Ministerial Guidelines

The document Sustain *Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities* (March 2018) is of relevance here. The guidelines specify minimum floor areas for residential units. Specific Planning Policy Requirement 3 requires the following:

# **Specific Planning Policy Requirement 3**

Minimum Apartment Floor Areas:

- Studio apartment (1 person) 37 sq.m
- 1-bedroom apartment (2 persons) 45 sq.m
- 2-bedroom apartment (4 persons) 73 sq.m
- 3-bedroom apartment (5 persons) 90 sq.m

## Land use zoning

The Cork City Development Plan 2015-2021 ("The Development Plan") establishes the following:

ZO 1 City Centre Retail Area (CCRA)

Objective: To provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.

# **Planning History** On this site:

TP19/38441 – Permitted development at 40-42 Grand Parade for the conversion and change of use of the building to a hostel with ground floor bar area and an additional floor level.

TP99/23505 - Permission granted to demolish part of building at rear and rebuild this portion with new 1st and 2<sup>nd</sup> floor extension (retail offices).

### Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIS is not required to be submitted.

**Appropriate Assessment** 

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

### Assessment

Is the proposal "Development"?

As per definition of "development" in Section 3 (1) of the Planning and Development Act 2000 (as amended), the issues of works and material change of use proposed by this development will be assessed to determine the planning status of the proposed development.

### Works

The proposed change of use requires the carrying out of internal works. These works will be carried out within the interior of the structure (the building itself) and would therefore be considered as internal works. Having regard to the provisions set out in Section 4 (1) (h) of the Act, these internals works would not materially affect the external appearance of the structure. In addition, it can be stated that these internal works would not render the appearance as inconsistent with the character of the structure or of neighboring structures and would therefore be considered exempted development under this section of the Act.

Material Change of use

The established use of the planning unit subject to this Section 5 request is as a tourist office with overhead office accommodation. The Planning and Development Regulations 2001 (as amended) define this use "office" in Part 4 of Schedule 2, where 11 different classes of use are listed. Class 3 is defined as "Use as an office, other than a use to which class 2 of this Part of this Schedule applies".

The proposed residential use is not within the same class use as the established use and would therefore constitute a material change of use and would be considered as constituting "development" as defined in the Act.

# Is the proposal exempted development?

The planning agent for the applicant has submitted a report of the proposed development as part of this Section 5 declaration request. It is asserted that the change of use is exempted development having regarded to:

Planning and Development (Amendment) (no. 2) Regulations 2018

The established use (now vacant) of the planning unit was for office use. The vacancy of this space is stated in the application as in excess of 2 years. Notwithstanding any other considerations, the change of use from an office (Class 3) to residential use would be exempt under the regulations as amended. This satisfies Article 10(6)(b) of the Regulations.

It is noted that the structure concerned was constructed prior to the introduction of the legislation, has an existing tourist office use on the ground floor with a previous use of the upper floor as offices (class 3) and was vacant for a period of more than 2 years prior to the commencement of the proposed development. In this regard, the proposed development satisfies Article 10(6)(c) of the Regulations.

It is stated that the proposed will involve only interior works and will not materially affect the external appearance of the structure. The proposed residential use is consistent with the zoning objective for the site which is zoned City Centre Retail Area. 7 no. residential units in total are provided as part of the proposed development.

The applicants have submitted a 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.

### Recommendation

Having regard to: In view of the above, and having regard to-

- Planning and Development (Amendment) (No.2) Regulation, 2018.
- The particulars received by the Planning Authority on 26<sup>th</sup> February 2021

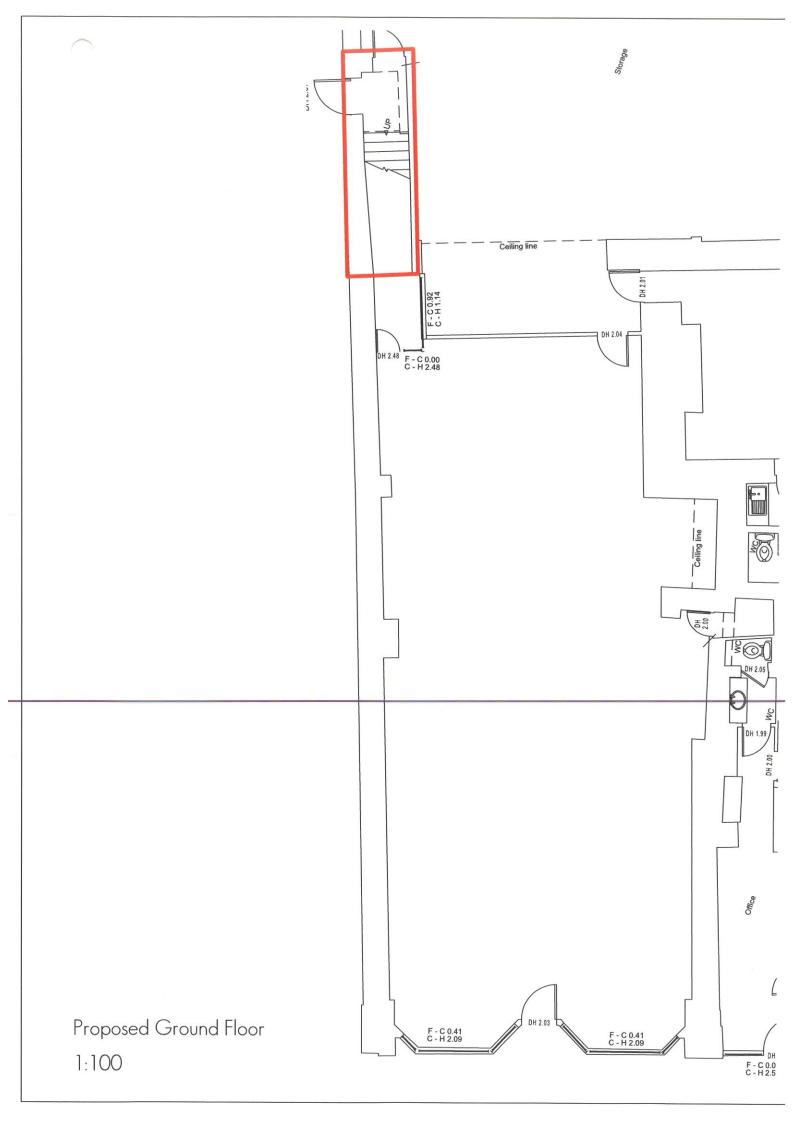
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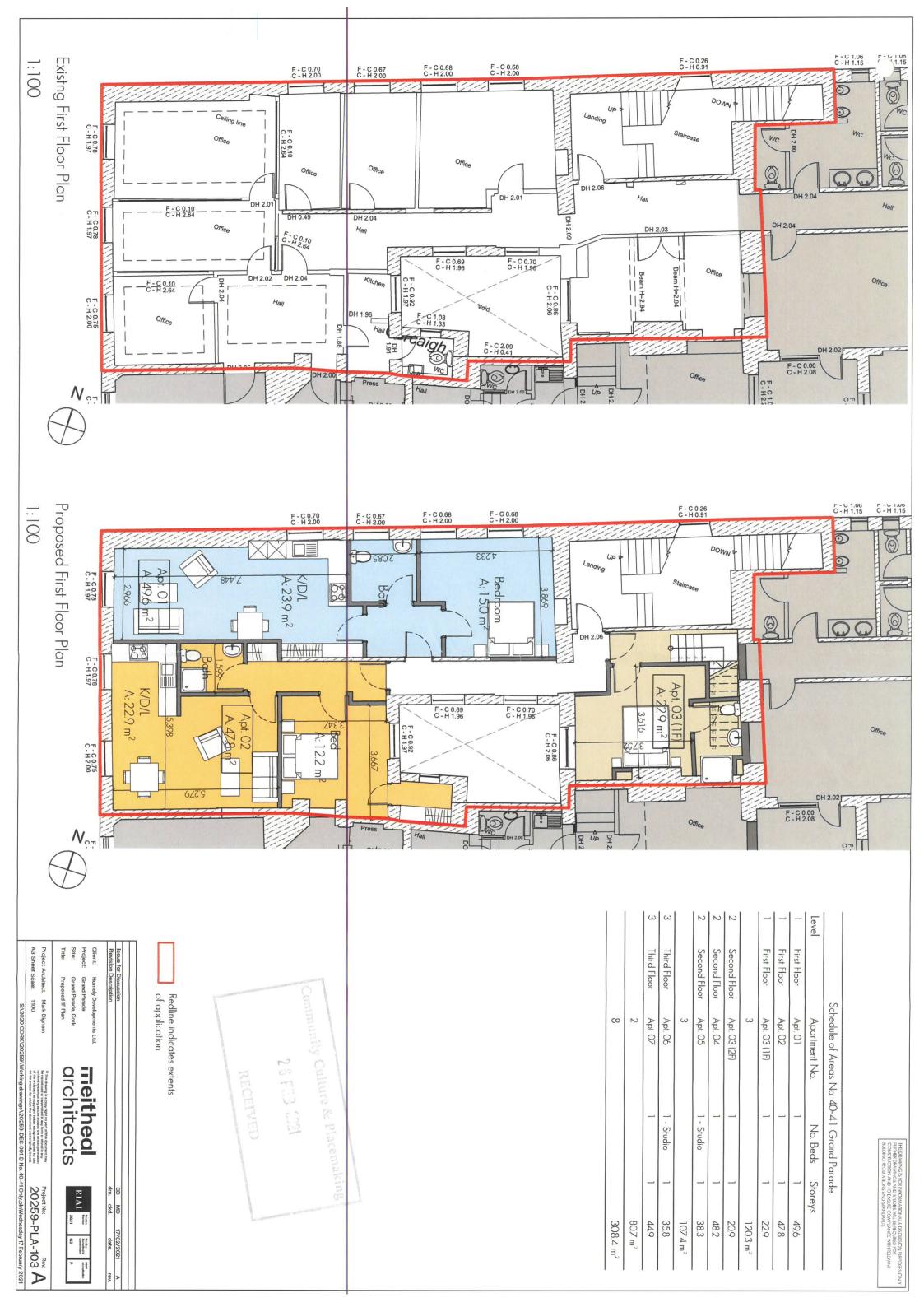
- The proposal comes within the scope of the definition of 'development' as defined in Section 3 of the Planning and Development Act, 2000 as amended
- The proposal complies with the provisions for exempted development set out in Article 10(6) of the Planning and Development Act, 2000, as amended.

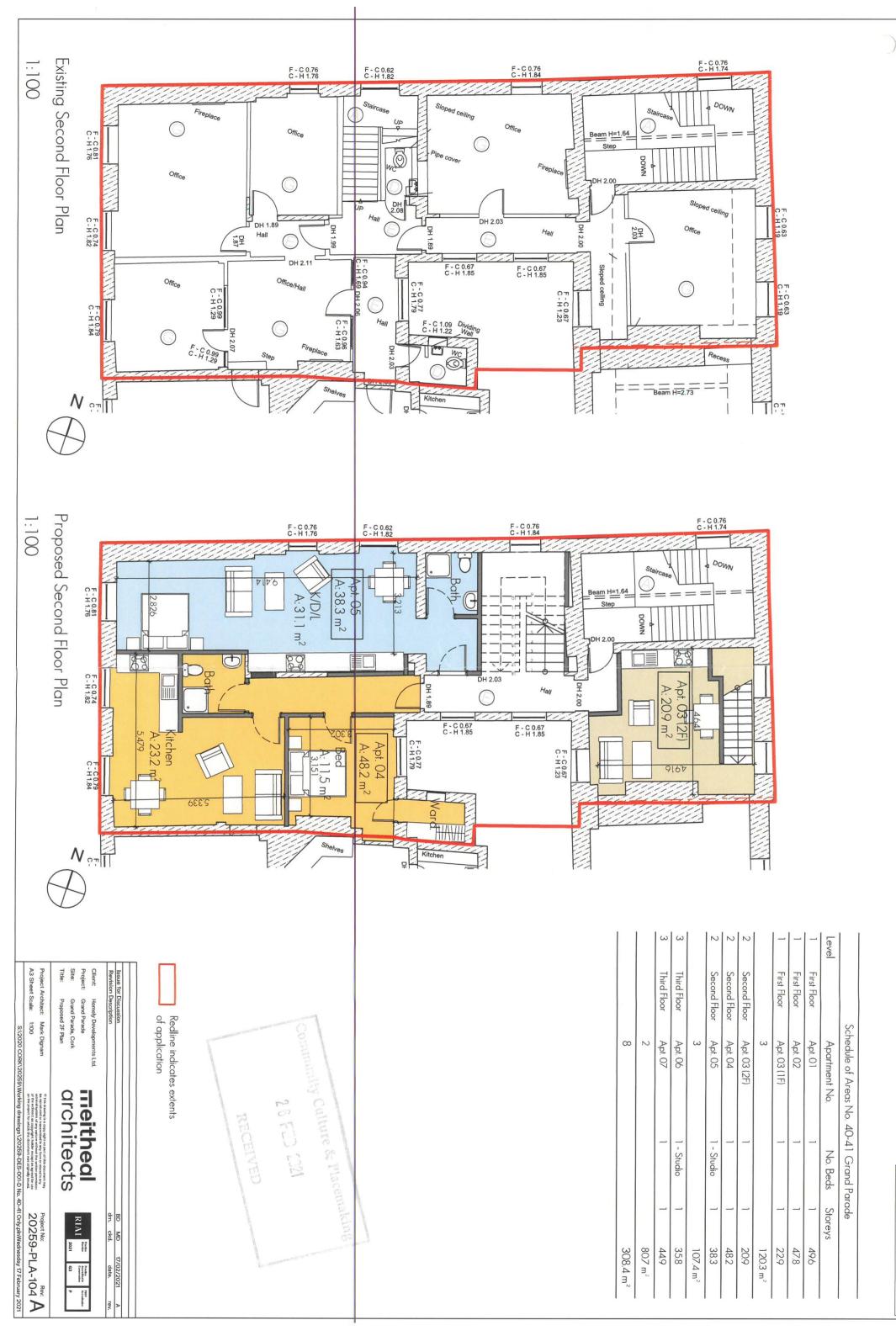
And therefore, the Planning Authority considers that -

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	property exempted development, said property being vacant for 2 or more years and no material
	external changes being proposed is development and is exempted development

Gwen Jordan McGee Senior Executive Planner







HIS DRAWNG IS FOR INFORMATIONAL & DISCUSSION PUPPOSES ONLY HEIFER DRAWNGS AND SILDJES WIL BE REQUIRED FOR CONSTRUCTION AND 10 DISCURE COMPLIANCE WITH PELEVANI BULDING REGULATIONS AND STANDARDS

