

Comhairle Cathrach Chorcaí Cork City Council

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

Alan Halpin
C/o Unit 2C
The Atrium
Blackpool
Cork

04/11/19

RE: Section 5 Declaration R537/19 58 Thomas Davis
Street, Blackpool, Cork

A Chára,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

In view of the above and having regard to —

- Sections 2, 3 and 4(1)(h) of the *Planning and Development Act 2000* (as amended), and
- Articles 9(a)(viii) and 10(6) of the *Planning and Development Regulations 2001* (as amended),

It is considered that *the proposed change of use at 58 Thomas Davis Street Is Development and Is Not Exempted Development*.

Yours faithfully,

Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

COMHAIRLE CATHRACH CHORCAI
CORK CITY COUNCIL

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

R-Post/E-Mail planning@corkeity.ie
Fón/Tel: 021-4924564/4321
Lionra/Web: www.corkeity.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

58 Thomas Davis Street,
Blackpool, Cork.

2. 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.

Is the proposed change of use at 58 thomas davis street, exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Proposed change of use to part of the existing commercial premises ground floor. Required in order to facilitate renovation of the existing upper floor two bedroom single apartment with separate access from the ground floor. Change of use area will accommodate a proposed sitting room and new stairwell configuration for Building Regulation Compliance access to the upper floor apartment.

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	Total floor area of existing = 140.4 sq. M
(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 <input type="checkbox"/> No <input type="checkbox"/> N/A 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)	Proposed/ existing use (please circle)
Commercial	Residential

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Patrick O Connor Owen Barrett	
Applicants Address	North Point House, North Point Business Park, New Mallow Road, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Alan Halpin
	Address:	c/o Unit 2C The Atrium, Blackpool, Cork
	Telephone:	0216017152
	Fax:	
	E-mail address:	info@dc.ie
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		
		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	<input checked="" type="checkbox"/>	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 and address of the owner if available		N/A		

6.1 / We confirm that the information contained in the application is true and accurate:

Signature: Alex Halpin

Date: 30/08/2019

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

PLANNER'S REPORT

Ref. R537 /19

Cork City Council
Culture, Community and
Placemaking

Application type	Section 5 Declaration
Description	<i>Is the proposed change of use at 58 Thomas Davis Street, exempted development?</i> Change of use – <i>Commercial to Residential</i>
Location	58 Thomas Davis Street, Blackpool
Applicant	Patrick O'Connor & Owen Barrett
Date	18/10/2019
Recommendation	<i>Request Further Information</i>

This report should be read in conjunction with the previous report on the file dated 2 October 2019.

1. Further Information Requested

- 1) You are requested to indicate under which part, or parts, of the *Planning and Development Act 2000* (as amended) and / or the *Planning and Development Regulations 2001* (as amended) you consider the proposed development to be exempt.
- 2) If you are relying upon the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended) please provide, in detail, how the proposed development complies with the criteria for the exemption set out therein.
- 3) If relying upon any other exemption please similarly set out why you believe the proposed development complies.

2. Further Information Provided

The applicant has provided a written response to each point of the FI Request setting out:

- 1) That the proposed development is exempt in accordance with Section 4(1)(h) of the *Planning and Development Act 2000* (as amended) and Article 10.6 of the *Planning and Development Regulations 2001* (as amended).
- 2) Detail of compliance with Article 10.6.
- 3) Response state 'N/A' in response to point 3.

3. ASSESSMENT

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

Is the proposed change of use at 58 Thomas Davis Street, exempted development?

As set out in my report of 2 October 2019 I consider that the proposed change of use constitutes development. The associated works also constitute development.

The next issue for consideration is whether or not the matter at hand is exempted development. I note that that the applicant has provided detailed plans showing the proposed change of use and associated works. As all of the works are stated to be on the interior of the property I believe that these are exempt in accordance with Section 4(1)(h) of the *Planning and Development Act 2000* (as amended).

The final test is whether the proposed change of use complies with Article 10(6) of the *Planning and Development Regulations 2001* (as amended). The table on the following page examines this in detail.

ARTICLE	REQUIREMENT	FI RESPONSE	ASSESSMENT
10(6)(b)	<i>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 or 6 of Part 4 to Schedule 1</i>	Change will be from Class 2 – Financial + Professional to Residential Use.	Based on the information provided the proposed change of use accords with this sub-article.
10(6)(c)(i)	<i>the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018</i>	None	The structure was constructed prior to the making of the regulation.
10(6)(c)(ii)	<i>the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6</i>	Structure was used for Class 2 use.	Based on the information provided the proposed change of use accords with this sub-article.
10(6)(c)(iii)	<i>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</i>	States that the commercial unit was vacated over two years ago.	Based on the information provided the proposed change of use accords with this sub-article.
10(6)(d)(i)	<i>The development is commenced and completed during the relevant period</i>	States that development will be completed before 31 st November 2021.	Based on the information provided the proposed change of use accords with this sub-article.
10(6)(d)(ii)	<i>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.</i>	States that works proposed to interiors only.	Based on the information provided stating that no works are proposed to external facades, the proposed change of use accords with this sub-article.
10(6)(d)(iii)	<i>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</i>	None	Based on the information provided stating that no works are proposed to external facades, the proposed change of use accords with this sub-article.
10(6)(d)(iv)	<i>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</i>	None	The subject site is zoned ZO 9 – Neighbourhood Centres. As residential development is acceptable within the zone the proposed change of use accords with this sub-article.

	exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.		
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.	States that 1 unit will be provided.	Based on the information provided the proposed change of use accords with this sub-article.
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.	States that all requirements are met with the exception of the storage requirement.	Please see separate discussion below.
10(6)(d)(vii)	Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.	States all habitable rooms will meet Building Regulation standards.	Based on the information provided the proposed change of use accords with this sub-article.
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.	States no works are proposed to a protected structure.	Based on the information provided the proposed change of use accords with this sub-article.
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.	None	There is no recent planning history associated with the subject site. There are however two early permissions from 1986 (13087/86) and 1992 (17213/92). Both permissions state that the first floor of the property shall remain in residential use.
10(6)(d)(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;	States that while the site is in an ACA there are no external works proposed.	Based on the information provided the proposed change of use accords with this sub-article.

10(6)(d)(xi)	(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.	None	Please see separate discussion below.
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.	None	N/A

Proposed Change of Use

Drawing No. 18071-P 110 – Existing Floor Plans - indicates that there is a two bedroom residential unit on the first floor. It is noted that the unit currently lacks a dining or sitting room.

The proposed change of use and works (as shown on Drawing No. 18071-P 300) will allow the re-configuration of the floor plans to provide for a much larger dwelling over two stories. The new dwelling will continue to have 2 no. bedrooms but will also enjoy a large open plan first floor kitchen / dining / living room on the first floor, changing the use from ‘storage’ as per Drawing No. 18071-P 110). On the ground floor the use of Office no. 3 (as per Drawing No. 18071-P 110) will change to Sitting Room (Drawing No. 18071-P 300).

To be clear the proposed change of use is proposed only to the downstairs Office No. 3 and the rear first floor Storage rooms 1 & 2.

Compliance with Apartment Standards

The applicants have submitted that the proposed development accords with *Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities* with the exception of the requirement for storage. The standards used by the applicant relate to a two bedroom, four person apartment. The required storage area is 6m².

The proposed development, as detailed in Drawing No. 18071-P 300, includes one 3.49m² storage room. No other space is designated for storage. Accordingly the proposed development does not accord with the requirements set out in 10(6)(d)(vi) of the regulations.

While the applicant has indicated that the standard should not apply this level of assessment does not form part of a Section 5 procedure and can only be taken into account through a full planning application process.

Unauthorised Development

Sub Article 10(6)(d)(xi) requires that the proposed development comply with various subsections of Article 9(1). The proposed development accords with all but one of the subsection listed. Article 9(1)(a)(viii) states that the exemption shall not apply if carrying out such development would: *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.*

It is noted that Condition No. 1 attached to Permission 13087/86, for the Change of use to Offices states:

The first floor of No. 58 Thomas Davis Street shall be retained in residential use and shall on no account be converted to any form of commercial use unless permission has been obtained from the Planning Authority or An Bord Pleanála on appeal.

Further Condition No. 1 attached to Permission 17213/92, for alterations to the shop front / entrance states:

No permission is granted for any commercial use on the first floor of this property, which shall remain in residential use.

The planning status of the first floor stores (Storage 1 and Storage 2 as per Drawing No. 18071-P 110) is therefore questionable. As the current use of the storage areas is unauthorised and contravenes Condition No. 1 on Permissions 13087/86 and 17213/92 then the proposed change of use does not accord with Article 10(6)(d)(xi).

As the proposed change of use does not accord with Article 10(6)(d)(xi) it cannot rely upon the exempted development provision set out by Article 10(6). Accordingly the proposed development is not exempted development.

4. ENVIRONMENTAL ASSESSMENT

4.1 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.

4.2 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.

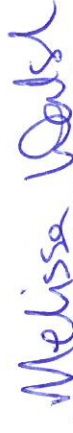
5. RECOMMENDATION

In view of the above and having regard to —

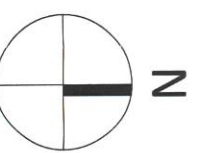
- Sections 2, 3 and 4(1)(h) of the *Planning and Development Act 2000* (as amended), and
- Articles 9(a)(viii) and 10(6) of the *Planning and Development Regulations 2001* (as amended),

It is considered that the proposed change of use at 58 Thomas Davis Street is Development and Is Not Exempted Development.


 Martina Foley
 Executive Planner


 Melissa Walsh
 Senior Executive Planner

31.10.19



Description:
 Historic / Local Edition
 Publisher / source:
 Ordnance Survey Ireland (OS)

Date / source / reference:
 Data source:
 Ordnance Survey Ireland (OS)
 CRK3
 Revision Date = 31-Dec-1932
 Levelled Date = 31-Dec-1935

File Name:
 18071_P_1935.dwg
 File Format:
 AutoCAD 2019
 Project / Spot Reference:
 BRIDGE, J.B., Lorraine, Mercator

Centre Point Coordinates:
 X = 56142.8635373411089
 Y = 56142.8635373411089
 Datum: Ordnance Datum
 Product Version:
 1.3

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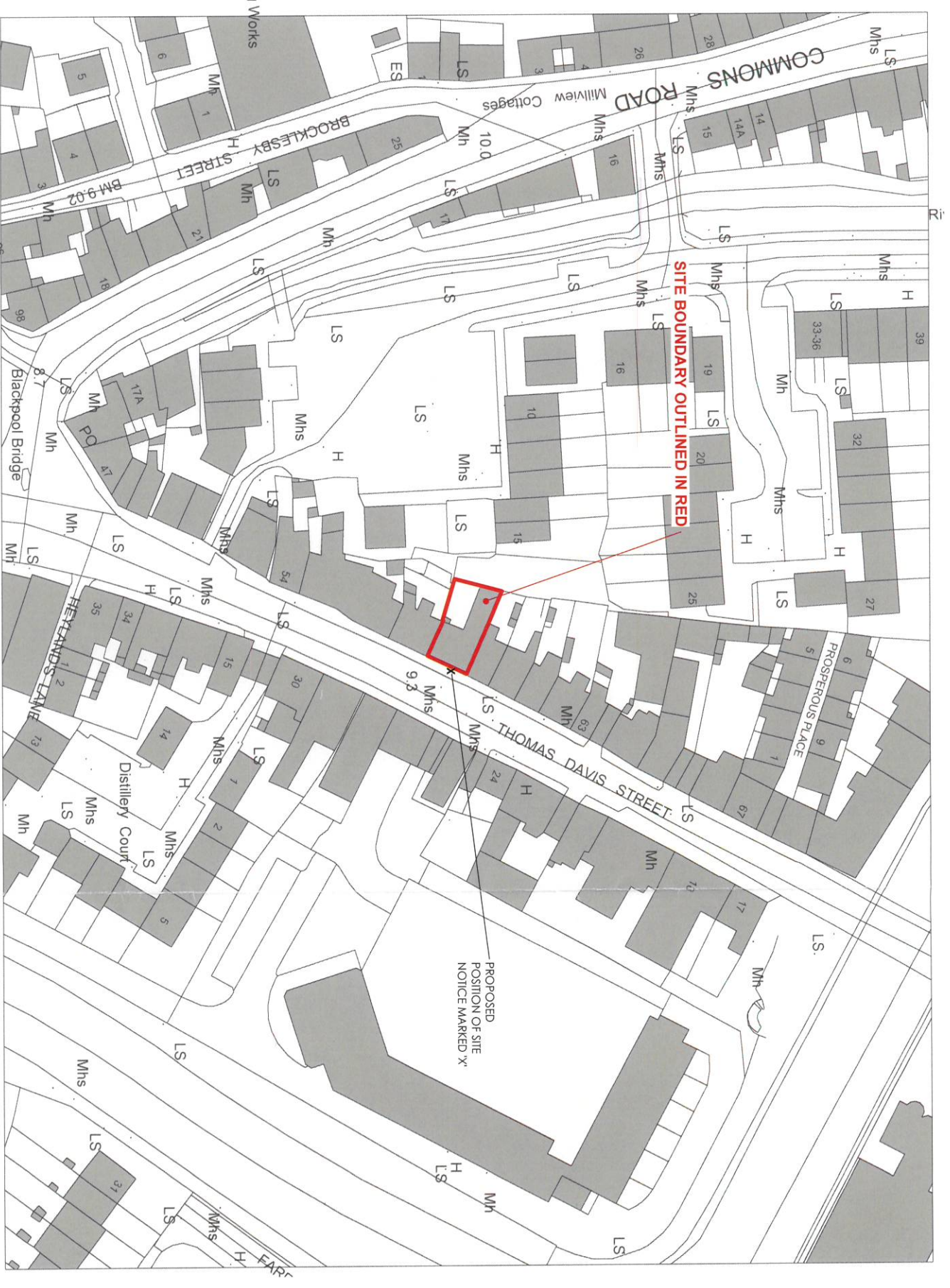
EXEMPTION CERT
 No. 18071_P_1935
 Date: 20/08/2019
 Issued for Exemption certificate
 Date: 20/08/2019

CLC & ASSOCIATES
 CHARTERED ENGINEERS & PROJECT MANAGERS
 CLC & ASSOCIATES
 CHARLES FOLEY BUILDING, 2003 LAKE DRIVE, CLYMORE, CO. DUBLIN
 TEL: 01 454 5454 FAX: 01 454 5454
 WWW.CLCASSOCIATES.COM

PROJECT: OFFICE / APARTMENT
CLIENT: Patrick O Connor & Owen Barrett
DRAWING: Record Map
DATE: 30/08/2019
SCALE: 1 : 10560 @ A3
DRAWN: AH
CHECKED: CC
JOB NUMBER: 18071_P
NO. 20
REVISION: 00

Record Map

1 : 10560



Site Location Map

1 : 1000

Description: Digital Orthographic Model (DOM)
 Publisher / Source: Ordnance Survey Ireland (OS)
 Data Source / Reference: P81M2
 File Format: Autodesk AutoCAD (DWG, X2019)
 File Name: C:\Users\j.l.dunlop\OneDrive\Documents\18071_P.dwg

OS Grid: EPSG:29901
 UTM Zone: 29Q
 Datum: ED50
 Spheroid: Everest
 Datum Shift: 1000000.000
 Scale Factor: 0.9996012717
 False Easting: 475000.000
 False Northing: 6250000.000
 Projection: UTM
 Units: Meter

Source Data Release: DCMS Release V1.11.105
 Date: 16-May-2019
 Product Version: Verbatim 1.3
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 DWT: AH
 JOB NUMBER: 18071_P
 DWG NUMBER: 30
 REVISION: 00

REV	DATE	BY	NOTES
00	20/08/19	AH	Issued for Exemption certificate

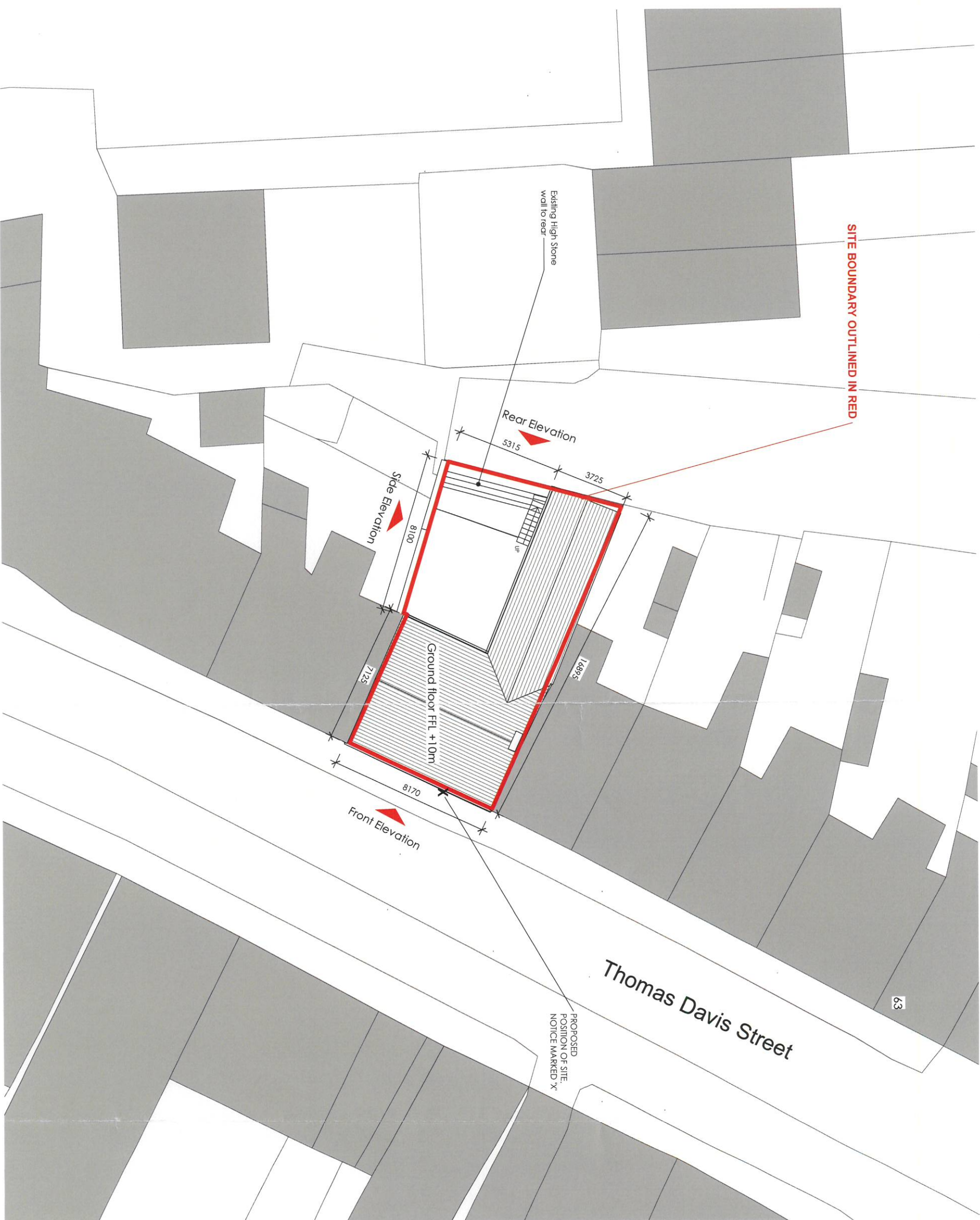
EXEMPTION CERT

CLC & ASSOCIATES
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 58 THOMAS DAVIS ST. CORK
 TEL: 021 8371152
 FAX: 021 8371153
 WWW.CLCASSOCIATES.COM

PROJECT: OFFICE / APARTMENT
 CLIENT: Patrick O Connor & Owen Barrett
 DRAWING: Site Location Map



SITE BOUNDARY OUTLINED IN RED



Legend

— Site Boundary

NOTES

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REV	DATE	DESCRIPTION
00	20/08/19	AH Issued for Exemption certificate
01	20/08/19	AH Issued for Exemption certificate

EXEMPTION CERT

CLC & ASSOCIATES
 CHARTERED ENGINEERS & PROJECT MANAGERS
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 EMAIL: INFO@CLC.IE WEB: WWW.CLC.IE

PROJECT: OFFICE / APARTMENT
 CLIENT: 58 Thomas Davis St, Cork
 DRAWING: Existing Site Plan

DATE	SCALE	AS INDICATED @ A3
30/08/2019	AS INDICATED @ A3	
18071_P	100	00

Existing Site Plan

1 : 200