



Comhairle Cathrach Chorcaí Cork City Council

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

Shane Finn

~~Village Green House~~

~~Church Road~~

~~Douglas~~

~~Co. Cork~~

22nd July, 2021

RE: R672/20 – Section 5 Declaration
Property: 39/40 Shandon Street. Cork

Dear Sir/Madam,

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

- Section 3 of the Planning and Development Act 2000 (as amended)

It is considered that proposed reinstatement of a pharmacy use at 39/40 Shandon Street is not Development and therefore does not require planning permission.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R672 /21		
Application type	Section 5 Declaration	
Description	as per the application for the following question is asked: Originally this retail unit was operating as a pharmacy the closed. Another change of use application was made to change it to a bookie but never materialised. Now this unit is leased to a pharmacy operator. Q. Do I need a change of use back to a pharmacy?	
Location	39/40 Shandon Street	
Applicant	Gehad Elbastwisy	
Date	22/07/2021	
Recommendation	<i>Is not development and does not require planning permission</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:

*Originally this retail unit was operating as a pharmacy the closed.
Another change of use application was made to change it to a bookie but never materialised. Now this unit is leased to a pharmacy operator.
Q. Do I need a change of use back to a pharmacy?*

In the section set out for additional details the applicant has included the following:

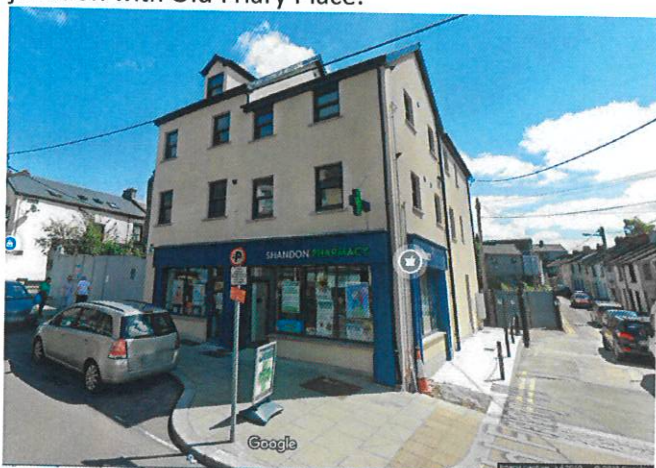
*There is no work done or changes made to the property as the 2nd change of use applicant never took the place.
It is as a pharmacy as its been always.*

For the purposes of this assessment it is considered appropriate to summarise the question asked by the applicant as follows:

Whether the reinstatement of a pharmacy use at 39/40 Shandon Street, Cork constitutes development and whether it requires planning permission

3. Site Description

The property in question is a 3 to 4 storey mixed use building on the eastern side of Shandon Street on its junction with Old Friary Place.



Google Streetview – Image capture July 2019

4. Planning History

There are multiple planning applications associated with the subject site. The most recent are as follows:

20/39176	Permission... for the change of use of existing vacant ground level single storey detached retail unit to licensed betting office (to be relocated subject to planning from existing Ladbrokes licensed betting office premises at 79 Shandon Street, Cork, Eircode: T23AE2N) to include for all associated internal alterations, new shopfront advertising signage to front (west) and side (south) elevations, replacement high level projecting signage to front (west) elevation, new satellite dish and air conditioning condenser unit mounted to rear (east) elevation together with all associated site development works
Outcome	Granted 30/11/2020
18/37836	Permission for retention and completion of works to the 3 storey development comprising 2 no. retail units at ground floor and 5 no. overhead apartments previously permitted under TP03/27377 and for permission for the amalgamation of the 2 no. ground floor retail units into 1 no. retail unit
Outcome	Granted 03/07/2018
16/36838	Permission for the demolition of existing partially completed three storey building on site, demolition of existing derelict house on Dominick street and construction of a new 3 storey bedroom house, construction of a new ground floor retail unit, first floor consisting of 5 no. medical consulting rooms with 1 no. 1 bed apartment, second floor with 1 no. two bed apartment and 2 no. one bed apartments and third floor level consisting of 1 no. two bed apartments and 2 no. one bed apartments, a bike store, a bin store and all ancillary site works required
Appeal Outcome	ABP Ref. No. 28.248464 Refused
15/36356	The demolition of an existing 3 storey structure, construction of a new ground floor retail unit, first floor medical consulting rooms, 1 no. 1 bed apartment, 4 no. 2 bed apartments at first, second and third floor levels. Demolition of existing derelict house on Dominick Street and construction of a new 3 storey 3 bedroom house, Bike store, bin store and all ancillary site works
Outcome	Refused

13/35875 A) Material Alteration and completion of existing partially completed 3 storey Retail/Apartment block (granted under Planning ref no. TP 03/27377). These works will include new windows, new balconies, new bay windows and new roof, the amalgamation of existing ground floor retail units and the material alteration for new shopfronts. B) construction of a new ground floor retail unit which is an extension of the existing amalgamated ground floor retail unit granted under TP 03/27377. C) Construction of 2 no 1 bed apartments and 1 no. 2 bed apartment on first floor. 1 no. 1 bedroom, 1 no. 2 bed apartment and 1 no. 3 bedroom apartment at second floor level. 2 no. 1 bedroom on the third floor. A 2 bedroom house on ground and first floor. D) Demolition of existing derelict house on Dominick Street and construction of a new 2 storey 2 bedroom house, E) all ancillary site works required, new bin store, new bike store

Appeal ABP Ref. No. 28.243161
Outcome Refused

5. Legislative Provisions

5.1 The Act

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(2),

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

Section 5(1),

(See section 1 of this report)

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

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

5.2 The Regulations

Article 9 (1)

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

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*

6. ASSESSMENT

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

6.1 Development

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

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’.

The applicant has asked whether a change of use to pharmacy requires permission. In this instance however the previous use was pharmacy. A recent site visit indicated that no other use has been established and the premise is vacant, with some pharmacy related signage etc. still in place. Notwithstanding the grant of permission for a licensed betting office under 20/39176 I am satisfied that it has not been implemented.

Whether a change of use will occur if the pharmacy use is reinstated is a key consideration. If this use has not been ‘abandoned’ then in effect no change of use will be taking place and no development will result.

Berna Grist, in An Introduction to Irish Planning Law, states:

The concept of abandonment requires a conclusion to be reached as to whether the use of a building or lands has been paused temporarily because of circumstances or has been permanently concluded. Case law indicates that the test here involves whether the development has been suspended for a determined period, the length of this period, and whether there is a demonstrable intention of resumption.

It could be argued that the application of a change of use under 20/39176 indicates that the pharmacy use has been abandoned. In this instance however the google streetview image from July 2019 shows the pharmacy in operation. Given the short period of time that has elapsed, that permission 20/39176 was never implemented and no works have occurred to the premises I am satisfied that in this instance no abandonment of use has occurred.

To conclude, this report recommends that a declaration be issued to state that the proposed change of use does not constitute development.

6.2 Exempted development

As the proposed resumption of pharmacy use on this site is not considered to be development the matter of whether or not it is exempted development is considered mute.

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 the reinstatement of a pharmacy use at 39/40 Shandon Street, Cork constitutes development and whether it requires planning permission.

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is not development and therefore does not require planning permission.

9. RECOMMENDATION

In view of the above and having regard to —

- Section 3 of the Planning and Development Act 2000 (as amended)

It is considered that proposed reinstatement of a pharmacy use at 39/40 Shandon Street **is not Development** and therefore **does not require planning permission**.



Martina Foley
Executive Planner
21/07/2021

Melissa Walsh
Senior Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924564/4321
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

39-40 Shandon street, 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.

originally this retail unit was operating as a pharmacy then closed. Another change of use application was made to change it to a Bookie but never materialized. Now this unit is leased to a pharmacy operator. Q. Do I need a change of use back to a pharmacy?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

There is no work done or changes made to the property as the 2nd change of use applicant never took the place. It is as a pharmacy as it's been always.

Comhairle Cathrach Chorcaí
Cork City Council

01-07-2021

Strategic Planning & Economic
Development Directorate

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

Signature: _____

Date: _____

30-6-21

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

Land Registry Compliant Map



National Mapping Agency

CENTRE COORDINATES:
ITM 567092.572390

PUBLISHED: 30/11/2020
ORDER NO.: 50158760_1

MAP SERIES: 6382-04
1:1,000
6382-05
1:1,000
6382-09
1:1,000
6382-10

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

Unauthorised reproduction
infringes Ordnance Survey Ireland
and Government of Ireland
copyright.

All rights reserved.
No part of this publication may
be copied, reproduced
or transmitted in any form
or by any means without the prior
written permission of
the copyright owners.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Ordnance Survey maps
never show legal property
boundaries, nor do they
show ownership of
physical features.

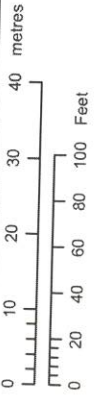
© Suirbhéireacht Ordnáinis Éireann,
2020
© Ordnance Survey Ireland, 2020
www.osi.ie/copyright

LEGEND:
<http://www.osi.ie>



CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



572304

572304

567208

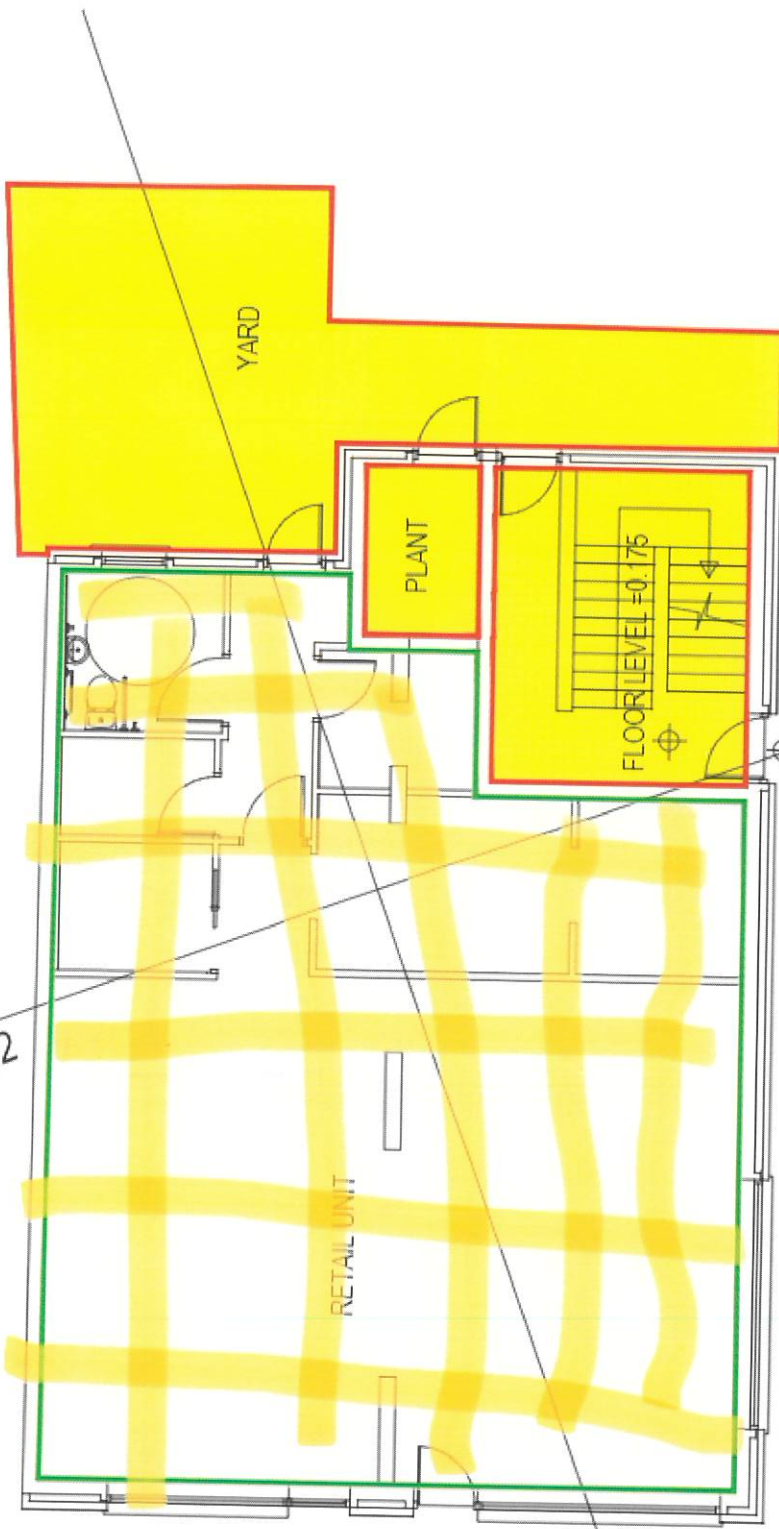
567208

566975

566975

E 567092

N 15232300



G.L. = 0.00

GROUND FLOOR PLAN
Scale 1:100

- GROUND FLOOR RETAIL UNIT AREA
- GROUND FLOOR COMMON AREA

REV. DATE BY

NOTES



THE NUTCRACK OFFICE PARK, RAITHEANURAH, DUBLIN 14
 47 SOUTH WALL, COBK
 45 MILL ROAD, MOUNTON, CO. COBK
 INFO@CEAGROUP.IE WWW.CEAGROUP.IE

Desenzan Ltd.		5 IND. APTS
GROUND FLOOR PLAN		3940 SHANDON STREET
APR 2019	1695	AW
SCALE 1:100 @ A4		L010

MAPS

