



# Comhairle Cathrach Chorcaí Cork City Council

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

Purtol Ltd.,  
c/o Ciaran Dineen,  
McCutcheon Halley Planning Consultants,  
6 Joyce House,  
Barrack Square,  
Ballincollig,  
Cork.

04/04/2023

**RE: Section 5 Declaration R768/23, 7 Pope's Quay, Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 08<sup>th</sup> March 2023, I wish to advise as follows:

The Planning Authority, having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10(6) of the Planning and Development Regulations (as amended),

It is considered that the proposed change of use from commercial use at first floor level to provide 2 no. apartments at 7 Pope's Quay **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.**

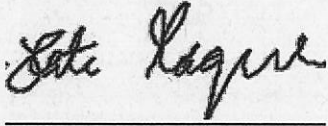
Please note that per Article 10(6)(e) of the Planning and Development Regulations (as amended), the applicant or their agent must notify the planning authority in writing not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 04<sup>th</sup> April 2023.



**We are Cork.**

Is mise le meas,

A handwritten signature in black ink, appearing to read "Kate Magner". The signature is written in a cursive style with a large initial 'K'.

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**Kate Magner**  
**Development Management Section**  
**Community, Culture and Placemaking Directorate**  
**Cork City Council**



<b>PLANNER'S REPORT</b> <b>Ref. R768/23</b>		Cork City Council Culture, Community and Placemaking
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Is the change of use from commercial use at first floor level to provide 2 no. apartments exempted development?</i>	
<b>Location</b>	7 Popes Quay, Cork	
<b>Applicant</b>	Putrol Ltd	
<b>Date</b>	04/04/2023	
<b>Recommendation</b>	<i>Is Development and Is Exempted Development</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:

*Request for a Section 5 Declaration seeking confirmation that the change of use from commercial use to provide 2 no. apartments at 7 Pope's Quay, Cork City is exempted development.*

### 3. SITE DESCRIPTION

The subject site comprises the first floor of No. 7 Pope's Quay which is a two-storey commercial unit that forms part of a 6-storey mixed use development which fronts onto Pope's Quay and has frontage onto Shandon Street. Access is at first floor level from Shandon Street with access at ground floor level from Pope's Quay. The unit is currently vacant.

The subject site is located with Shandon Architectural Conservation Area.

### 4. PLANNING HISTORY

#### Planning Applications

There is no recent planning history at the subject site.

Permission was granted under Planning ref. 92/17870 for a mixed-use development consisting of 42 no. dwelling units and commercial development at 51B/ 52/ 53A and 54-58 Shandon Street and 1-10 Pope's Quay, Cork.

**Section 5**

**Section 5 Reference:** R377/15

**Question:** Whether the change of use from previous use as second hand goods retail unit to furniture store requires planning permission.

**Outcome:** Proposed is not development

**5. LEGISLATIVE PROVISIONS**

**5.1 The Act**

*Section 2(1),*

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

*Section 3(1),*

*In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or ‘the making of any material change in the use of any structures or other land’*

*Section 4(1)(h),*

*The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement, or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.*

*Section 4(2),*

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

*Section 5(1),*

*(See section 1 of this report)*

*Section 57(1)*

*Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

*(a) the structure, or*

*(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*

*Section 57(2)*

*An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.*

*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)(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,*

### **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 –*

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (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.*

### **Article 10(6)**

*(a) In this sub-article—*

*‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;*

*‘relevant period’ means the period from 8 February until 31 December 2025.*

- (b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*
- (c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*
  - (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*
  - (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12 and*



- (iii) *the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,*
- then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*
- (d) (i) *The development is commenced and completed during the relevant period.*
- (ii) *Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*
- (I) primarily affect the interior of the structure*
- (II) retain 50 per cent or more of the existing external fabric of the building, and*
- (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*
- (iii) *Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*
- (iv) *No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*
- (v) *No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*
- (vi) *Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*
- (vii) *Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*
- (viii) *No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*
- (ix) *No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*
- (x) *No development shall relate to any structure in any of the following areas:*
- (I) an area to which a special amenity area order relates;*
- (II) an area of special planning control;*
- (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*
- (xi) *No development shall relate to matters in respect of which any of the restrictions set out in 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.*
- (e)(i) *Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;*



- (ii) Details of each notification under subparagraph (i), which shall include information on—  
 (I) the location of the structure,  
 (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and  
 (III) the Eircode for the relevant property,  
 Shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority’s website.
- (iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

## 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: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’.

In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’

The proposed change of use requires the carrying out of internal works (amendments to the internal layout of the unit) and the relocation of the main entrance door.

The previously established use on the site is stated as being office use. The proposed residential use is not within the same class use as the established use and would therefore constitute a material change of use.

The proposal constitutes a material change of use and involves the carrying out of works. The proposed change of use therefore constitutes development.

### CONCLUSION:

- Change of use and associated works constitutes development.

### 6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The applicant is relying on the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended).

Sufficient information (drawings, schedule of accommodation etc.) has been submitted to allow an assessment of the proposal to be undertaken against the criteria listed in Article 10(6) of the Planning and Development Regulations and this is assessed in detail below.

ARTICLE	REQUIREMENT	ASSESSMENT
10(6)(b)	This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2	<p>It is stated in the application that the unit was in office use.</p> <p>A previous section 5 (Ref. R377/15) at the subject site indicates that that the unit was for a period in commercial use as a retail unit.</p> <p>A sales listing/ brochure for the property (found online) indicates that the unit was being sold/ advertised as an office. There is no record of any change of use from the permitted retail to office use.</p> <p>No documentation has been submitted indicating the former uses on the site.</p> <p>In any event, I am satisfied that sufficient evidence exists to suggest the unit was previously in retail use and I am of the view that the proposed change of use accords with this sub-article.</p>
10(6)(c)(i)	The structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018	The structure was constructed prior to the making of the regulations.
10(6)(c)(ii)	The structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12 and	<p>It is stated in the documentation submitted that the unit was in office use (Class 3).</p> <p>A previous section 5 (Ref. R377/15) at the subject site indicates that that the unit was in commercial use as a retail unit (class 1).</p> <p>I am satisfied that sufficient evidence exists to suggest the unit was previously in retail use and I am of the view that the proposed change of use accords with this sub-article.</p>
10(6)(c)(iii)	The structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development	It is stated in the cover letter submitted with the application that the site has been vacant for greater than 2 years. No information has been submitted to demonstrate same. Google street view indicates the unit has been vacant for greater than 2 years.



		I am satisfied that the proposed change of use accords with this sub-article.
<b>10(6)(d)(i)</b>	The development is commenced and completed during the relevant period.	The applicant is required to comply with this requirement.
<b>10(6)(d)(ii)</b>	Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall – (I) primarily affect only the interior of the structure, (II) retain 50 per cent or more of the existing external fabric of the building, (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.	<p>A review of the existing and proposed floor plans indicates that the required works primarily affect the interior of the building (layout changes, provision of internal partitions etc.).</p> <p>The only external change proposed is the repositioning of the main entrance door. It is proposed to re-positioning it to the side of the existing location. The relocation is to allow for this area to be subsumed into the apartment area.</p> <p>I am satisfied that the proposed external works do 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.</p>
<b>10(6)(d)(iii)</b>	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	<p>No works are proposed to alter the existing shop fronts.</p> <p>I am satisfied that the proposed change of use accords with this sub-article.</p>
<b>10(6)(d)(iv)</b>	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.	<p>The subject site is zoned ZO 5 – City Centre.</p> <p>Residential development is acceptable within this zoning. The proposed change of use accords with this sub-article.</p>
<b>10(6)(d)(v)</b>	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.	The proposed change of use accords with this sub-article.
<b>10(6)(d)(vi)</b>	Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements	Please see separate discussion/ assessment below.

	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.	
<b>10(6)(d)(vii)</b>	Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.	I am satisfied that the proposed habitable rooms will receive adequate natural lighting.  The proposal accords with this sub-article.
<b>10(6)(d)(viii)</b>	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.	The subject site is not a protected structure.  The proposal accords with this sub-article.
<b>10(6)(d)(ix)</b>	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.	Permission was granted under planning reg. 92/17870 (ABP Ref. PL 28.090810) for a mixed-use development consisting of 42 no. dwelling units and commercial development at 51B/ 52/ 53A and 54-58 Shandon Street and 1-10 Pope’s Quay, Cork.  I am satisfied that that the proposal does not contravene a condition attached to a permission.  The proposed change of use accords with this sub-article.
<b>10(6)(d)(x)</b>	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.	The proposed change of use accords with this sub-article.
<b>10(6)(d)(xi)</b>	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.	The proposed change of use accords with this sub-article.
<b>10(6)(d)(xii)</b>	No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater	N/A



	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.	
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Compliance with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities.”

The applicant has submitted a schedule of accommodation with the proposed application. The proposed apartments comply with the minimum floor area requirements (incl. living room and bedroom widths, aggregate living areas etc.) as set out in Appendix 1 of the Apartment Guidelines.

A storage area of 1.2m<sup>2</sup> is shown for apartment 1 (requirement is 3m<sup>2</sup>). An additional storage area of 2.7m<sup>2</sup> is proposed for this unit which is located internally within the building but outside the apartment and accessed off the communal corridor. Section 3.33 of the Apartment Guidelines states that *‘where secure, allocated ground or basement level storage is provided, it may be used to satisfy up to half of the minimum storage requirement for individual apartment units, but shall not serve to reduce the minimum floor area required to be provided within each individual apartment unit, as set out in these guidelines. This is intended to enable greater flexibility in apartment design, whereby more living or bedroom space may be provided within the apartment unit in lieu of a portion of required internal storage space where such storage space has been provided elsewhere in the building.’*

The secure storage area/ room provided outside the apartment provides for over half the minimum storage requirement but there is some flexibility having regard to section 3.34 of the Apartment Guidelines which states that *‘for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, the storage requirement may be relaxed in part, on a case-by-case basis, subject to overall design quality.’* I am satisfied that sufficient storage space is provided for apartment 1.

A storage area of 1.6m<sup>2</sup> is proposed for unit 2 (requirement is 6m<sup>2</sup>). This unit also contains a utility room of 5.4m<sup>2</sup>. The applicant contends that this space forms part of the storage space allocation. I am of the view that a utility room can form part of storage space allocation. Section 3.30 states that *‘minimum requirements for storage areas are set out in Appendix 1 and are intended to accommodate household utility functions such as clothes washing and the storage of bulky personal or household items.’* Section 3.31 of the Apartment Guidelines states that the *‘as a rule, no individual storage room within an apartment should exceed 3.5m<sup>2</sup>.’* The utility room at 5.4m<sup>2</sup> exceeds this requirement but there is some flexibility (having regard to section 3.34 of the apartment guidelines referenced above) and given the room is a utility room and not solely storage, I have no objection to same.

**CONCLUSION:**

- Is exempted development.

**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**

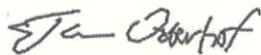
Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant 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. 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 10(6) of the Planning and Development Regulations (as amended),

It is considered that the proposed *change of use from commercial use at first floor level to provide 2 no. apartments at 7 Pope’s Quay* **Is Development and Is Exempted Development.**



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Jan Oosterhof  
A/ Executive Planner  
16/12/2022



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Martina Foley  
A/ Senior Executive Planner  
16/12/2022



**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**

7 Pope's Quay, Cork City

**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.*

Request for a Section 5 Declaration seeking confirmation that the change of use from commercial use at first floor level to provide 2 no. apartments at 7 Pope's Quay, Cork City is exempted development.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

**DEVELOPMENT MANAGEMENT**  
**CCP**  
**08 MAR 2023**  
**CORK CITY COUNCIL**

3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details: NO

4. 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?

5. Was there previous relevant planning application/s on this site?

If so please supply details: 92/17870 and 99/23368

**6. 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	124sqm
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> 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) ----- Commercial (First Floor) ----- -----	Proposed/existing use (please circle) ----- Residential (2 no. apartments First Floor) ----- -----

**8. 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 <input type="checkbox"/>
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 and address of the owner if available		

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

Signature:  \_\_\_\_\_

Date: 08/03/2023 \_\_\_\_\_



The Secretary,  
Planning Department,  
Cork City Council,  
City Hall,  
Cork.

8th March 2023

**Re: Request for a Section 5 Declaration seeking confirmation that the change of use from commercial (office) use at first floor level to provide 2 no. apartments at 7 Pope's Quay, Cork City is exempted development.**

Dear Sir/Madam,

We, McCutcheon Halley Planning Consultants, of 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf of our client, Purtol Ltd., who are the owners of 7 Pope's Quay, Cork City. Our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended), seeking confirmation that the change of use from commercial (office) use at first floor levels to provide 2 no. apartments at 7 Pope's Quay, is exempted development on the basis that:

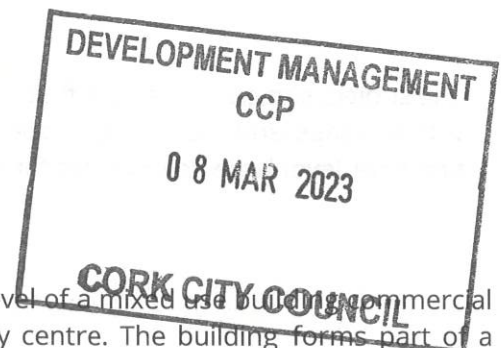
- The change of use from commercial (office) use at first level to provide 2 no. apartments at 7 Pope's Quay, Cork City, is exempted development under the Planning and Development Regulations.
- The associated works to facilitate the proposed use are predominantly internal works only and will not have any material impact on the external appearance of the structure and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

The remainder of the declaration request is set out as follows:

1. **Site and Planning Context**
2. **Planning Legislation/Regulations**
3. **Assessment**
4. **Conclusion**

## 1.1 Site and Planning Context

The property subject of this declaration is located at first floor level of a mixed use building, commercial and residential building located at 7 Pope's Quay in Cork's city centre. The building forms part of a



permission which was permitted as part of a mixed-use residential and commercial development at No.s 1-10 Pope's Quay under Cork City Council Ref. 92/17870.

The surrounding area is comprised of a mix of uses but given its location in the City Centre, primary uses mostly consist of a mix of commercial and residential uses.

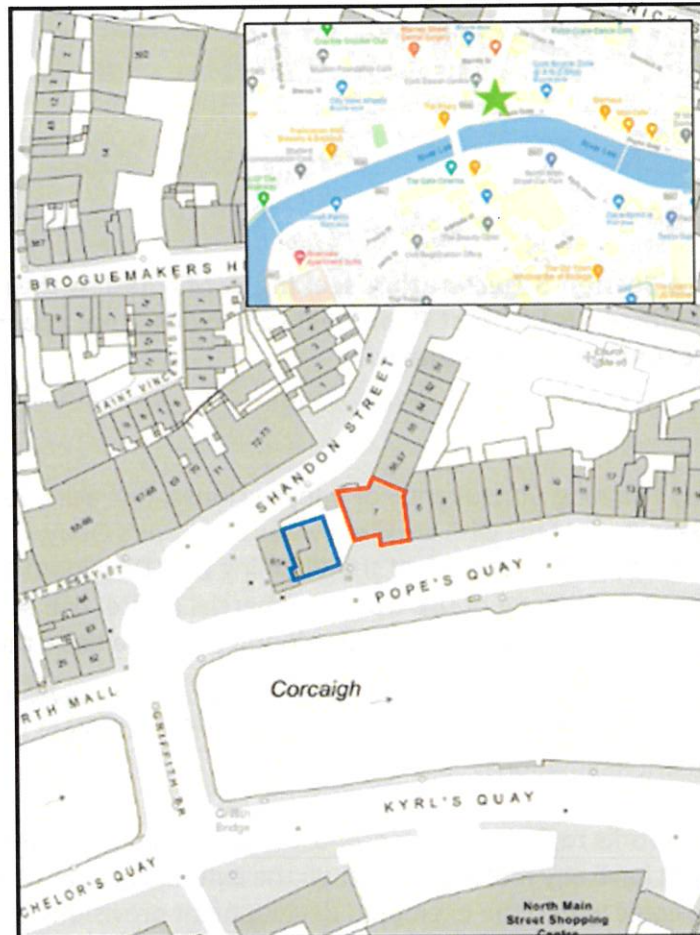


Figure 1 – Property at 7 Pope's Quay

The subject site comprises the first floor of a six storey mixed-use (commercial and residential) building, with frontage and access onto Pope's Quay and Shandon Street. The commercial floors at ground and first floor level have been vacant for a number of years (i.e. greater than 2 years).





Figure 2 – Property at 7 Pope's Quay with area subject of change of use outlined in dashed red line.

In terms of the existing planning policy for the area, in the 2022 Cork City Development Plan (CDP) the site is zoned "ZO 5: City Centre" use. Based on objective ZO 5 of the CDP, it is an objective to "consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural and residential growth". Based on Section ZO 5.2 of the CDP, the primary purpose of this zone is to "promote the continued economic, civic, cultural and **residential growth** of the City Centre, and to create a thriving urban community."

While the building is also located within an ACA, the property at 7 Popes Quay is a modern building and our client is not proposing any material changes to the external finishes/appearance to the building.

## 1.2 Planning Legislation/Regulations

In order to assess this declaration request, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended). The 2018 Planning Regulations provided for an exemption from the requirement to obtain planning permission in respect of the change of use of certain vacant commercial premises, to residential use. On the 25<sup>th</sup> February 2022 the Planning and Development Act (Exempted Development) Regulations 2022 extended to 31<sup>st</sup> December 2025 the exemption given by the 2018 regulations and included some additional amendments/exemptions as outlined in Section 2.2.

### 1.2.2 Planning and Development Act, 2000 (As Amended)

**Section 2** of the 2000 Planning and Development Act, as amended (PDA), includes the following definitions which are of relevance to this assessment



*“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)** of the PDA defines “Development” as, ‘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 PDA relates to ‘Exempted Development’ and subsection (1) sets out categories of development that shall be exempted development, including subsection 4(1)(h) which includes:

*‘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)** states that the Minister may by regulations provide for any class of development to be exempted development where he or she is of the opinion that the carrying out of such development by virtue of its size, nature or limited effect on its surroundings, would not offend against the principles of proper planning and sustainable development. **Section 4(2)(b)** of the Act states that regulations under paragraph (a) may be made subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

### **1.2.3 Planning and Development Regulations, 2001 (As Amended)**

The extent to which the classes of development specified in Part 1 of the Second Schedule are exempted is governed by Article 9(1)(a) and that article is itself subject to the restrictions on exemption which includes the following:

- (i) 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;*
- (iv) ... comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,*
- (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 ....*
- (viiB) ... development that would be likely to have a significant effect on the integrity of a European site...*



*(viiC) ... development that would be likely to have an adverse impact on a natural heritage area...*

*(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,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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,*

*(xi) obstruct any public right of way,*

*(xii) consist of or comprise the carrying out of works to the exterior of a structure within an architectural conservation area...*

In addition to this, Article 10 further outlines the classes of development which are exempted. Article 10 (6) (as amended under SI 600 of 2001) The Principal Regulations are amended in article 10 (as amended by article 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 ( S.I. No. 30 of 2018 )) by substituting for sub article (6) the following:

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*

*(d) (i) The development is commenced and completed during the relevant period.*

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall -*

*(I) primarily affect the interior of the structure,*

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

*(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act,*

*for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*

*(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

*(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*

*(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*

*(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*

*(x) No development shall relate to any structure in any of the following areas:*

*(I) an area to which a special amenity area order relates;*

*(II) an area of special planning control;*

*(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*

*(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*

Each of the above conditions/restrictions are considered further in relation to our clients proposed development in the section below.

### **1.3 Assessment**

In this case, our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000, seeking confirmation that the change of use from commercial use at first floor level to provide 2 no. apartments at 7 Pope's Quay, is exempted development in accordance with the 2022 Regulations, on the basis that:

1. The structure at 7 Pope's Quay was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 (i.e. on the 8th February 2018).
2. The proposed works comply with the requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities



3. The structure has been vacant for greater than 2 years.
4. The works will be commenced and completed between 8<sup>th</sup> February 2018 and 31<sup>st</sup> December 2025.

In addition to the above, the proposed change of use also complies with the provisions of Article 9(1)(a) of the Planning Regulations in that the proposed change of use:

- will not contravene a condition attached to a permission.
- will not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway.
- will not endanger public safety by reason of traffic hazard or obstruction of road users.
- will not comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building.
- will not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation.
- will not have any effect on the integrity of a European site or natural heritage area.
- will not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure.
- will not preclude or restrict the continuance of the existing use.
- will not obstruct any public right of way.
- will not comprise works to a protected structure or the carrying out of material works to the exterior of a structure within an architectural conservation area – as can be seen from the existing and proposed drawings by Butler Cammoranesi, the works are predominantly internal only and do not materially affect the external appearance of the building.
- Does not 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.
- Does not exceed 9 residential units.
- The apartment floor areas and storage spaces 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” – See Table below for details
- The habitable rooms have good quality natural lighting.
- The development does not relate to a structure in a special amenity area/planning control and is not near a Seveso site.

The proposed plan for this building is to make use of a vacant property in the heart of the City Centre to provide essential residential accommodation.

The proposed plans provide a high-quality living environment for prospective residents and complies with the key criteria outlined in the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities.

It should be noted that based on a review of other Section 5 Declarations made by the Council in recent years regarding the change of use from commercial to residential uses in the City Centre, a requirement to adhere to private and communal amenity spaces has not always been requested for development to be deemed exempted. Planning Reference R639/21 is one such case. In this example the Planning report

referred to the Apartment Guidelines and as part of the assessment the report outlined the following:

*The applicants have submitted 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.*

The case planner did not refer to private and communal amenity standards as part of their decision-making, with neither provided as part of the proposed works detailed under R639/21.

We would also like to make the case that Section 6.9 of the Guidelines allow for departures from the requirements of the Guidelines and specifically request planning authorities to:

*“practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and ‘over the shop’ type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements.”*

Considering the location of the property, in the heart of Cork City Centre, we contend that the standards regarding private and communal amenities should not be considered a priority in this assessment. The property is surrounded by a plethora of amenities and nearby facilities.

Minimum Width/Areas	Sustainable Housing Design Standards for New Apartments 2022	Proposed Unit 1	Proposed Unit 2
Overall Floor Area	45 sqm – 1 bedroom 73 sqm – 2 bedroom (4 person)	47 sqm	77 sqm
Storage Space	3 sqm – 1 bedroom 6 – 2 bedroom (4 person)	3.9sqm	7sqm*
Width Area for Kitchen/Living/Dining room	3.3 – 1 bedroom 3.6 – 2 bedroom (4 person)	3.6	4.3
Aggregate Area for Kitchen/Living/Dining room	23sqm – 1 bedroom 30sqm – 2 bedroom (4 person)	24.7sqm	30sqm



Bedroom Area	11.4sqm – Double bedroom	11.7sqm	11.5sqm
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\*7sqm arrived at by combining utility floor space with additional defined storage area.

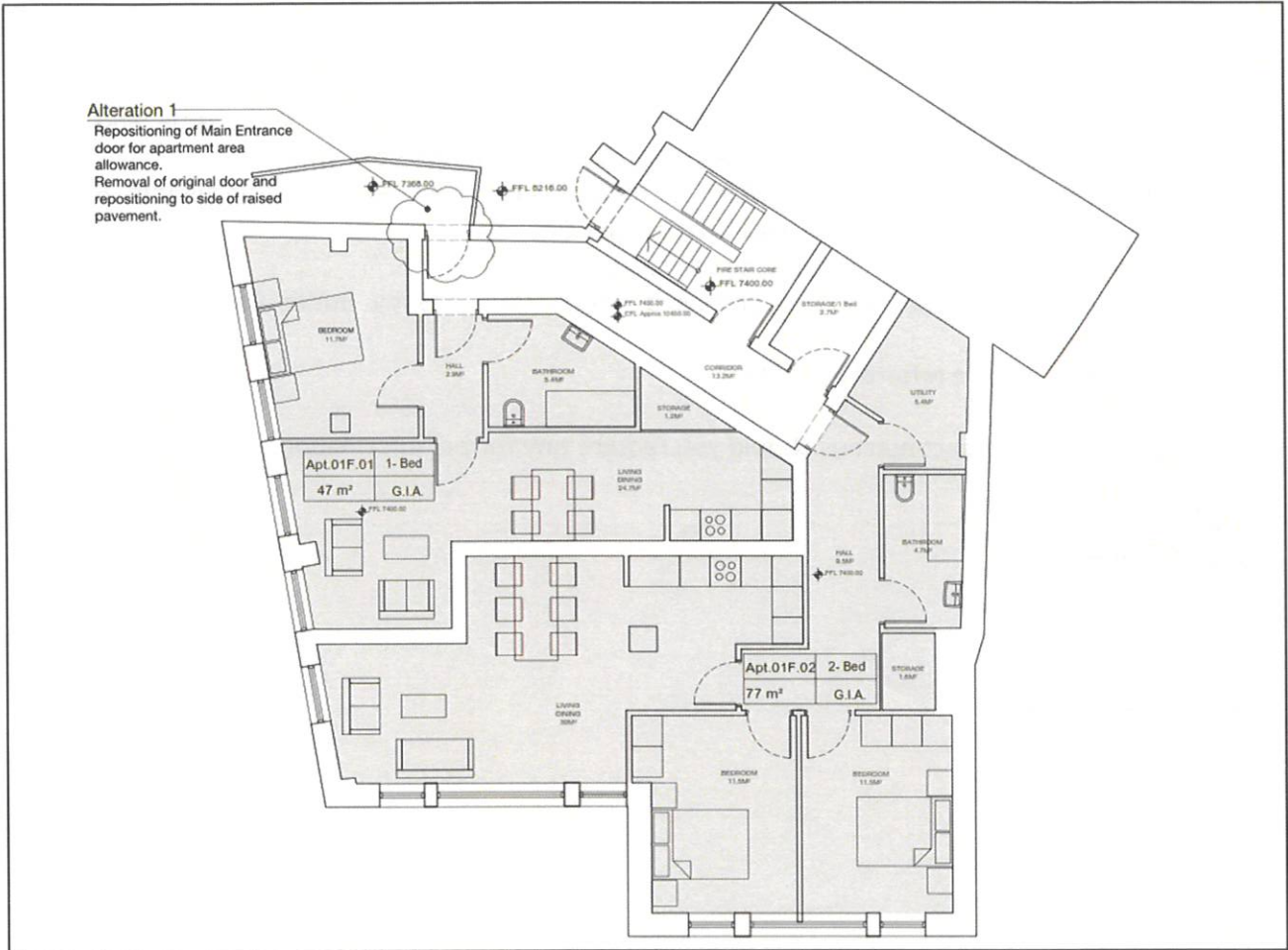


Figure 2 – Proposed floor layouts.

### 1.4 Conclusion

The proposed change of use from commercial (office) use at first floor level to provide 2 no. apartments complies with the criteria included in Article 9(1)(a) of the Planning Regulations and the physical/proposed works are exempted development under Section 4(1)(h) and Section 57 of the Planning and Development Act.

Accordingly, it is submitted that the change of use from commercial (office) use to provide 2 no. apartments at 7 Pope’s Quay, Cork City, is exempted development on the basis that:

- **The change of use from commercial (office) use at first level to provide 2 no. apartments at 7 Pope’s Quay, Cork City, is exempted development under the Planning and Development Regulations.**

- **The associated works to facilitate the proposed use are predominantly internal works only and will not have any material impact on the external appearance of the structure and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000.**

In accordance with the Council's requirements for Section 5 declarations please find enclosed:

5. This cover letter and declaration form which includes the applicant's name and address; the location of development; and the nature of development
6. The correspondence address which is: McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Cork City.
7. Ordinance Survey Map (identifying site location),
8. Drawings and Plans for the proposed residential units by Butler Cammoranesi Architects.
9. The appropriate referral fee of €80.

Please do not hesitate to contact us should you require any further information.



Ciaran Dineen

**McCutcheon Halley**





Issued by: Butler Cammoranesi architects

Contact Person(s) Arch. Paul Butler  
Address 6 George's Quay, Cork

Tel.: 00 353 (0)21 2417273

Project 7 Pope's Quay  
Document: Housing Quality Assessment  
Document No.: 22130\_A\_SCHDL-01

Project No.: 22130

Rev.: A Date 21/02/2023

DEVELOPMENT MANAGEMENT  
 CCP  
 08 MAR 2023  
 CORK CITY COUNCIL

Sustainable Urban Housing - Design Standards for New Apartments [March 2018]

Min. Overall Apts. Floor Areas:	
Studio	37 sqm
One bedroom	45 sqm
Two bedrooms (3 person)	63 sqm
Two bedrooms (4 person)	73 sqm
Three bedrooms	90 sqm

Min. widths for main KLD and Min aggregate floor Areas for KLD		
	Width of KLD	Aggregate area KLD
Studio	4 m	30 sqm
One bedroom	3.3 m	23 sqm
Two bedrooms (3 person)	3.6 m	28 sqm
Two bedrooms (4 person)	3.6 m	30 sqm
Three bedrooms	3.8 m	34 sqm

Min. Bedroom Widths and Areas		
	Min. Width	Min. Floor Area
Studio	4 m	30 sqm
Single bedroom	2.1 m	7.1 sqm
Double bedroom	2.8 m	11.4 sqm
Twin bedroom	2.8 m	13 sqm

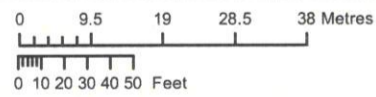
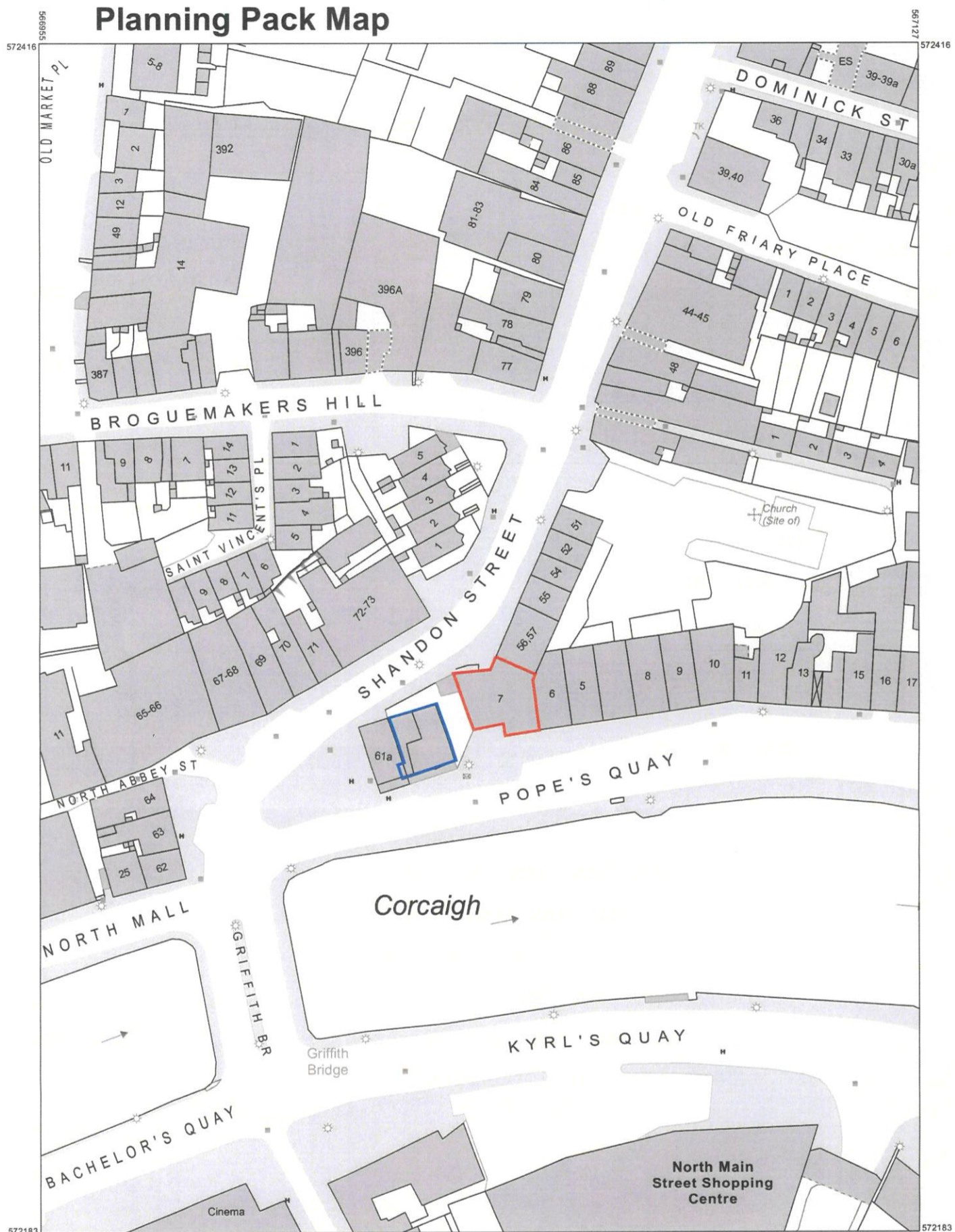
Min. Storage Space Requirements	
Studio	3 sqm
One bedroom	3 sqm
Two bedrooms (3 person)	5 sqm
Two bedrooms (4 person)	6 sqm
Three bedrooms or more	9 sqm

Min. Areas for Private Amenity	
Studio	4 sqm
One bedroom	5 sqm
Two bedrooms (3 person)	6 sqm
Two bedrooms (4 person)	7 sqm
Three bedrooms or more	9 sqm

	Apt Code	Bedrooms Count	Apt. Gross Internal Area (sqm) (GIA)	Min Required Overall Apt. Area (sqm)(GIA)	Ceiling Height	Kitchen / Living / Dining Code	Kitchen / Living / Dining Width	Kitchen / Living / Dining Minimum Width Required	Kitchen Living Dining Area	Kitchen / Living / Dining Minimum Area Required	Bedroom No.1 Code	Bedroom No.1 Type	Bedroom No.1 Width	Bedroom No.1 Width Minimum Width Required	Bedroom No.1 Area	Bedroom No.1 Width Minimum Area Required	Bedroom No.2 Code	Bedroom No.2 Type	Bedroom No.1 Width	Bedroom No.2 Width Minimum Width Required	Bedroom No.2 Area	Bedroom No.2 Width Minimum Area Required	Bathroom Area
First Floor	01F.01	1	47	45	3000	KLD.01F.01	3.6	3.3	24.7	23	Rm.01F.01-01	Double	2.9	2.8	11.7	11.4	/	/	/	/	/	/	5.4
	01F.02	2	77	73	3000	KLD.01F.02	4.3	3.6	30	30	Rm.01F.02-01	Double	2.8	2.8	11.5	11.4	Rm.01F.02-02	Double	2.8	2.9	11.5	11.4	4.7

GRAND TOTALS - Residential Units			
Apartments No.	2	Bedrooms No.	3
Total Apts. Area	124 sqm		

**SITE LOCATION MAP**



OUTPUT SCALE: 1:1,000



**CENTRE COORDINATES:**  
ITM 567041,572300

**PUBLISHED:** 09/03/2022  
**MAP SERIES:** 1:1,000  
**ORDER NO.:** 50255370\_1  
**MAP SHEETS:** 6382-09

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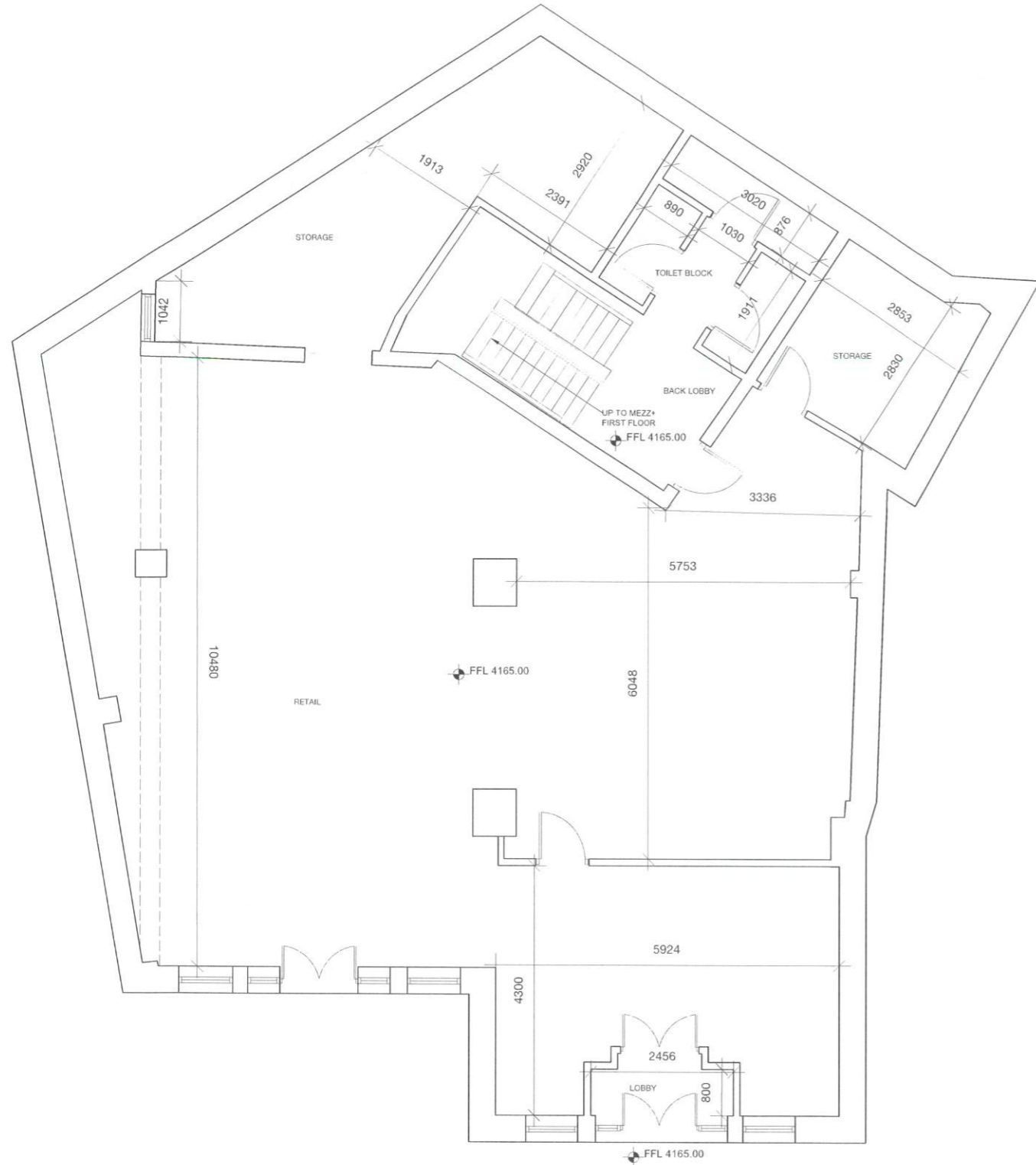
**DEVELOPMENT MANAGEMENT**  
**CCP**  
**08 MAR 2023**  
**CORK CITY COUNCIL**

- Proposed Development Site Boundary
- Boundary of land in ownership of Applicant



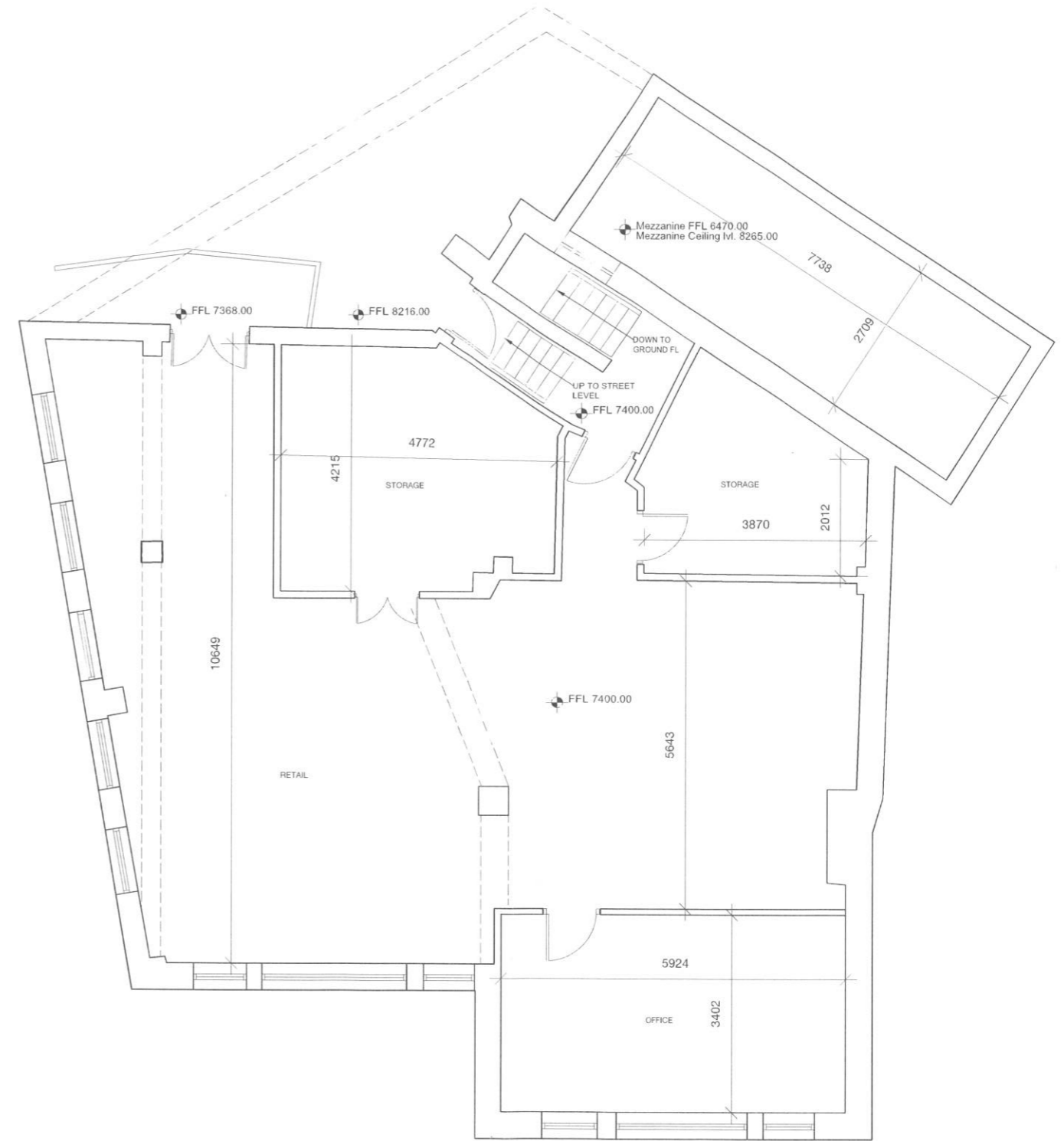


# EXISTING FLOOR PLANS SURVEY



1 EXISTING GROUND FLOOR PLAN  
1:100

FLOOR AREA 201 SQ M



2 EXISTING FIRST FLOOR PLAN  
1:100

DEVELOPMENT MANAGEMENT  
CCP  
08 MAR 2023  
CORK CITY COUNCIL

Survey conducted by  
B & M Burns Consultancy LTD

**Butler \ Cammoranesi architects**  
6 George's Quay, Cork  
T +353 21 2417273 \ E info@butlercammoranesi.ie  
butlercammoranesi.ie



Project name  
7 Pope's Quay

Project no  
22130

Client  
Belmount Developments Limited

Drawing  
Existing Floor Plans Survey

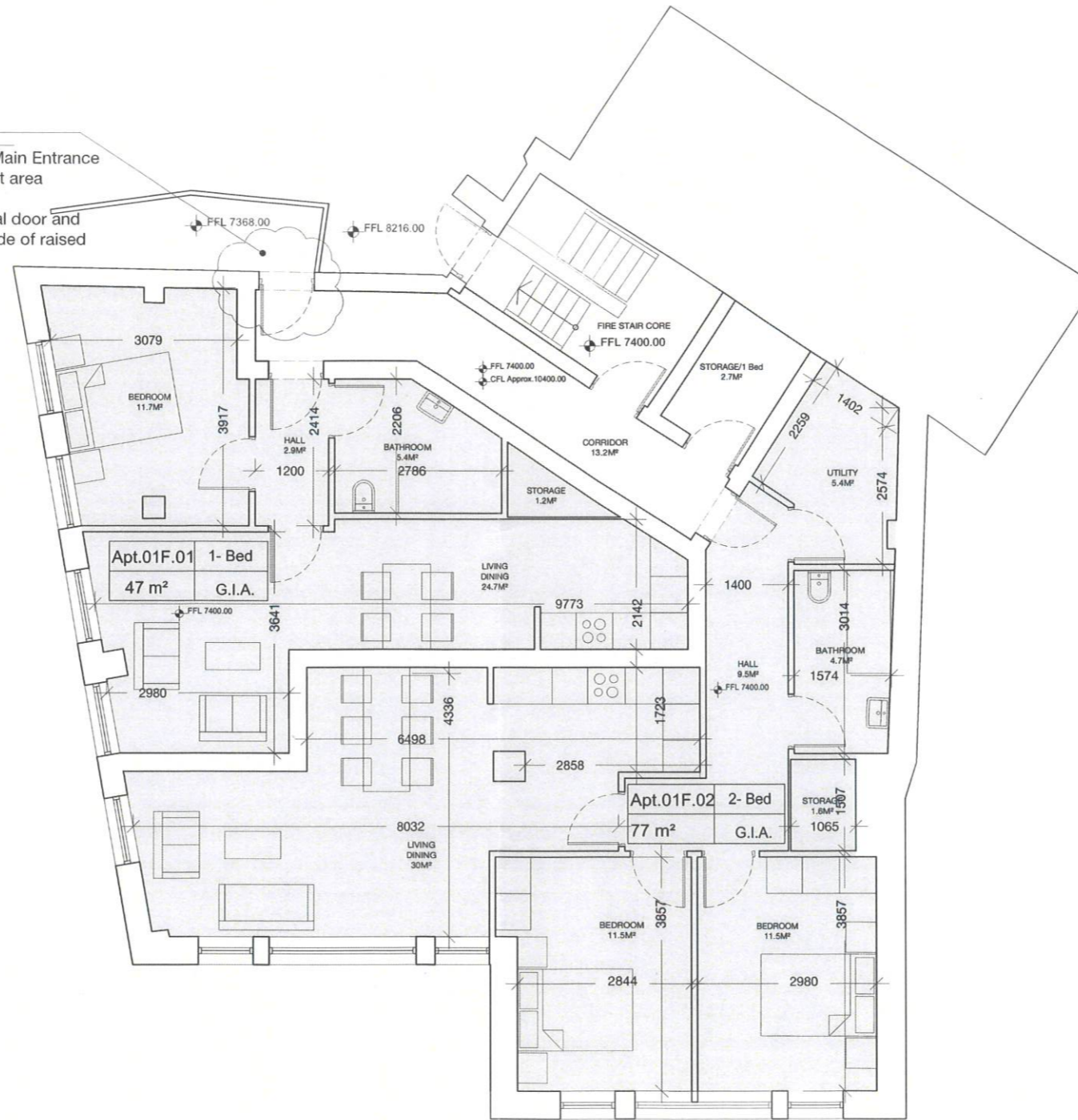
Series  
Planning  
Scale  
1: 100 @ A3

Drawing no.  
EX 01-01

Date  
2023/02/07  
Revision  
A

# PROPOSED FIRST FLOOR PLAN

**Alteration 1**  
 Repositioning of Main Entrance door for apartment area allowance.  
 Removal of original door and repositioning to side of raised pavement.



DEVELOPMENT MANAGEMENT  
 CCP  
 08 MAR 2023  
 CORK CITY COUNCIL

1 FIRST FLOOR PLAN

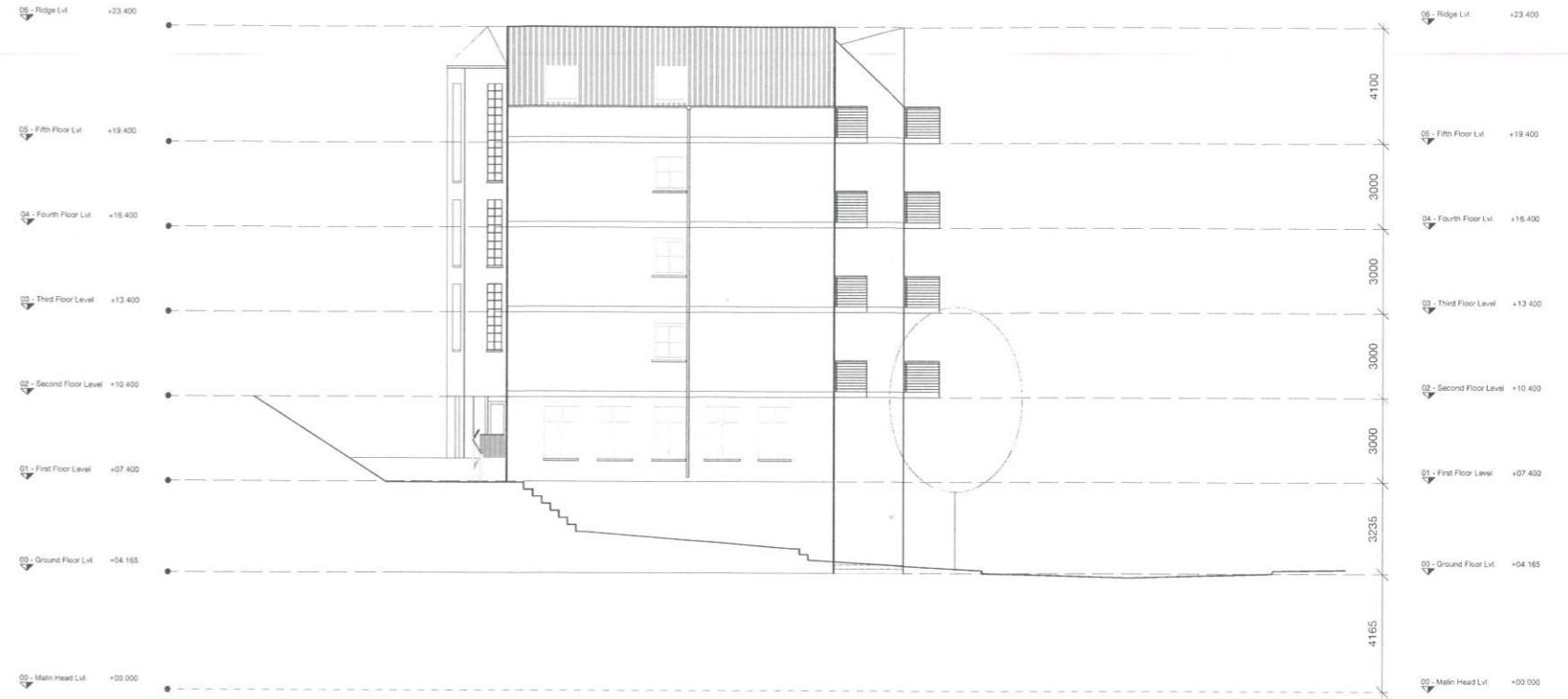




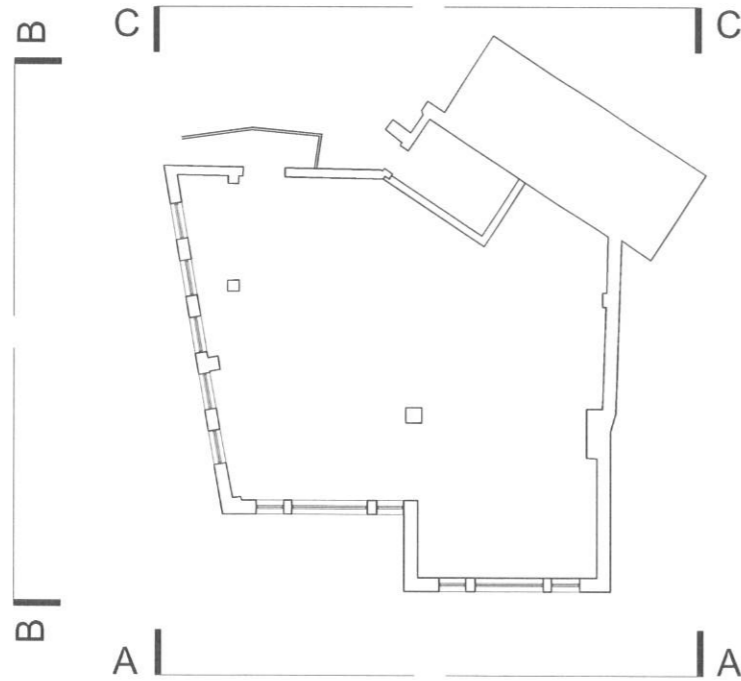
# EXISTING ELEVATIONS



South Elevation A - A  
SCALE 1 - 250



West Elevation B - B  
SCALE 1 - 250



Key Plan  
SCALE 1 - 250



North Elevation C - C  
SCALE 1 - 250

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