

CORK CITY COUNCIL – Planner’s Report – Section 5 Declaration

File Reference: R484/18

Development Description: Use of building by Westview Project (run by Foroige) as office space.

Applicant: Tony and Geraldine Dennehy

Location: Former offices of Dennehy and Dennehy Designs Ltd Architects, Water Course Rd, Cork.

Date: 29/8/2018

SUMMARY OF RECOMMENDATION

The proposed development is **Development** and is **Exempted Development**

SECTION 5(1) OF THE PLANNING AND DEVELOPMENT ACT 2000

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.

DEVELOPMENT DESCRIPTION

Use of building by Westview Project (run by Foroige) as office space.

SITE DESCRIPTION

The subject site comprises part of the ground floor and the entire first floor area of a two storey building located on Watercourse Road. The space was occupied as an Architect’s Office from 2000 to 2010 and previous to that was the regional office of MJ Flood Office Supplies.

STATUTORY PROVISIONS

The following statutory provisions are relevant:

Planning and Development Act 2000 (as amended) (section)

- Section 2 (1) *“In this Act, except where the context otherwise requires...‘development’ has the meaning assigned to it by section 3...”*
- Section 3 (1) *“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of 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.*

Planning and Development Regulations 2001 (as amended) (article)

- Article 6 (1) *“Subject to article 7, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”*
- Article 9 (1) *“Development to which article 6 relates shall not be exempted development for the purposes of the Act—*
 - (a) if the carrying out of such development would—*
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
 - ...*
 - (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 unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.*

ENVIRONMENTAL ASSESSMENT

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.

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.

ASSESSMENT

The premises were used as an Architect's Office from 2000 until 2010. Prior to that, the premises were occupied by MJ Flood Office Supplies as their regional office.

It is considered that there is an established office use for the premises.

The use of the premises by the West View Project Team / Foroige as an office space for the delivery of a programme for young people is considered to also constitute an office space.

'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.

Article 10 of the Regulations provides that a change of use from an activity falling within any of the classes of exempt development specified in Part 4 of Schedule 2 to another activity also within the same use class is exempted development.

The established use of the premises is as office space, ie. most recently as an Architects Office/ Studio.

Under Schedule 2, Part 4, Class 2 is the most relevant use class.

Class 2 - use for the provision of-

- a) Financial Services
- b) Professional Services (other than health or medical services)
- c) Any other service (including use as betting shop)

Where the services are provided principally to visiting members of the public.

An architect's practice is clearly a professional service. It is considered that the Westview Project Office falls within category c - ie. *'any other service' 'which is provided principally to visiting members of the public'*.

It is considered that the use of the premises by the Westview Project falls within the same use class as the established use of the building as an architect's office.

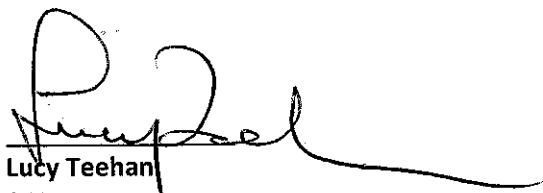
RECOMMENDATION

In view of the above and having regard to:

- Sections 2, 3, and 4 of the Planning and Development Act 2000, as amended.
- Article 5(1) and 10 and Class 2 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 as amended.

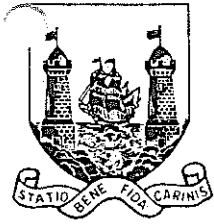
the Planning Authority has concluded that:

the use of the premises by Westview Project (run by Foroige) as office space **IS DEVELOPMENT**
and **IS EXEMPTED DEVELOPMENT**.



Lucy Teehan
SEP
29/08/2018

Comhairle Cathrach Chorcaí Cork City Council



Halla na Cathrach
Corcaigh
T12 T997

City Hall
Cork
T12 T997

Orla O'sullivan
McCutcheon Halley Planning
6 Joyce House
Ballincollig
Cork

31/0818

File Reference: R484/18

Development Description: Use of building by Westview Project (run by Foroige) as office space.

Applicant: Tony and Geraldine Dennehy

Location: Former offices of Dennehy and Dennehy Designs Ltd Architects, Water Course Rd, Cork.

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above named property.

Having regard to:

- Sections 2, 3, and 4 of the Planning and Development Act 2000, as amended.
- Article 5(1) and 10 and Class 2 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 as amended.

the Planning Authority has concluded that:

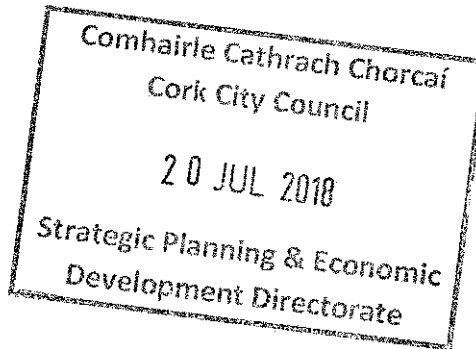
the use of the premises by Westview Project (run by Foroige) as office space **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours Faithfully,

Paul Hartnett



The Development Management Section,
Strategic Planning & Economic Development
Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork



18 July 2018

**Re: Request for Declaration under Section 5(1) of the Planning and Development Act 2000 (as amended).
Use of the Former Offices of Dennehy and Dennehy Designs Ltd. Architects at Watercourse Road, Cork by the Westview Project (Operating under the Management of Foroige and part of the Department of Justice and Equality).**

Dear Sir / Madam,

We act on behalf of Tony and Geraldine Dennehy (herein referred to as 'the client') and submit on his behalf this request for a Declaration under Section 5(1) of the Planning and Development Act, 2000 (as amended) (herein referred to as 'the Act').

This declaration is sought in relation to the former offices of Dennehy and Dennehy Designs Ltd. Architects (herein referred to as 'D and D Designs') and is shown on the attached site location map. The property in questions forms part of the lower ground floor and spreads across the entire upper floor of the building as indicated on the attached floor plans by MB Precision Land Info on behalf of the client. The question we wish to raise under Section 5(1) is whether the proposed use of the building by the Westview Project as office space is or is not exempted development.

In our opinion the use of the proposed building by the Westview Project as office space is exempted development given the established use of the building as an architect's office which falls under the same use class.

We hereby apply for a Declaration under Section 5(1) of the Act and enclose a cheque for the statutory fee of €80.

Established Use and Planning History of the Property

The use of the subject premises as office space was long established prior to the client's ownership and occupation of the building from the year 2000 onwards. Prior to the use of the building by D and D Designs as an architects/design office, the building was occupied by M.J. Flood Office Supplies as their regional office. The building continued under the same use up until 2010 when, due to economic circumstances, D and D

www.mhplanning.ie

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Designs vacated the building in 2010 and went into liquidation the following year. The building has remained vacant since that time, with some intermittent use by Camara Studios since 2015 for dance/music classes.

There are no planning applications relevant to the subject property, however the following 2 no. applications are of relevance:

07/32414

The subject site falls within the blue line established in this planning application which sought the construction of a new two-storey extension at the rear of existing furniture store and associated site works. Permission was granted for the development on the 12th December 2007 and subsequently extended on the 5th December 2012.

16/36917

In June 2016, Con and May McCarthy applied for permission for the change of use of the ground floor unit, (located within the same building as the subject development but outside the redline boundary) from retail to café/restaurant including all alterations to signage and all ancillary site development works. Following the clarification of some minor issues relating to landownership and parking, permission was granted for the development in the 13th August 2016 subject to 12 no. conditions.

Proposed Use of the Building

In May 2018, the client was approached by the Westview Project who identified their interest in leasing the property for use as office space. The Westview Project, which is one of the projects of Foroige (a not for profit voluntary youth organisation), and funded by the Department of Justice and Equality, offers out-of-school youth and educational development in partnership with the Young Persons Probation Service. The project was established in March 2009 and since then has operated from Westview House, 17 Audley Place, St. Patrick's Hill. The service develops and implements appropriate interventions for young people under the age of 21 who are under court order and who are of a moderate to high risk of reoffending. Their engagement with the programme is completely voluntary which represents their commitment to changing their past behaviour.

The programme is delivered by a number of staff, particularly managers, project coordinators and youth officers, who work with Youth Probation Officers to design and deliver a planned programme of intervention for each young person referred to the project. Each programme is completely personalised to the respective young person, and the team continuously work with, review and evaluate the progress of the young person to ensure that offending behaviour is reduced, stability is facilitated, and progression is promoted.

With regard to the proposed use, the building will be used as an office space by the Westview Project team, offering them a place to plan and deliver each individual programme of intervention. The majority of engagement with referred young people takes place in a one-to-one setting, though small groups of 2-3 are also catered for. Attendance by referred youths is strictly by appointment only, with a maximum of 6 sessions / appointments offered daily; no drop-in service is facilitated by the project.

Justification for Section 5 Declaration

The concept of development is central to Irish planning law and legislation, and the various elements of this legislation, for example the requirement to obtain planning permission, are triggered by the act of development. Section 3(1) of the Act states the following in respect of 'development':

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 a material change in the use of any structures or other land.

Section 1-03 of Planning and Development Law by Garrett Simmons (2004) outlines that where there is development, planning permission is required except where it is exempted development. Article 10 of the Regulations provides that a change of use from an activity falling within any of the classes of exempt development specified in Part 4 of Schedule 2 to another activity also within the same use class is exempted development. Thus, a change of use within a class will be exempted development. Section 1-348 of Planning and Development Law by Garrett Simmons (2004) further outlines that the correct approach to identifying whether the development in question is exempted development is to:

1. Establish the use class in which the current activity is found; and
2. Identify whether the proposed activity/use falls under the same use class.

With regard to step 1 above, the existing established use of the building is as office space, most recently by D and D Designs as an architect's office/studio. Under Schedule 2, Part 4, class 2 is the most relevant use class in this regard: which are of relevance to this use office development, namely:

Class 2 – use for the provision of-

- a) *Financial services*
- b) *Professional services (other than health or medical services)*
- c) *Any other services (including use as a betting office)*

Where the services are provided principally to visiting members of the public.

Professional services clearly relate to recognised professions such as solicitors, accountants, engineers and as is relevant to the subject property, architects. Therefore, the use of the building as an architect's office falls within class 2.

With regard to step 2 outlined above relating to the identification of the use class of the proposed activity, part (c) offers a catch all term where the only requirement is that the service is provided principally to visiting members of the public. We consider that the proposed use of the building by the Westview Project falls under this category, whereby the service they offer (i.e. designing and delivering a planned programme of intervention for referred young persons who are under court order) is given primarily to visiting members of the public (i.e. the young people themselves).

Therefore, MH Planning consider that the proposed use of the building by the Westview Project falls within the same use class as the established use of the building as an architect's office. While the building has not been used as an architect's office for since 2011 due to the economic downturn, the occupation of the building by the Westview Project would see the resumption of the authorised class 2 use as an office.

With regard to the potential implications on the proper planning and sustainable development of the area, the Council will note that:

- The service offered by the Westview Project is by strictly appointment only which mitigates the likelihood of loitering / anti-social behaviour and therefore there will be no impact on residential amenity. The service has operated successfully from their current premises on St. Patrick's Hill without any impact on the residential amenity of that area.
- The proposed use does not rely on the provision of car parking as both staff and those benefiting from the services offered generally travel by foot or via public transport. Also, there will no impact on the local road network in terms of traffic impact given the limited nature of the services offered.

Therefore, the proposed use of the building will have a limited effect on the surroundings and would not offend against the principles of proper planning and sustainable development.

Summary and Conclusions

MH Planning consider that the proposed use of the building by the Westview Project is exempted development given that:

- The established use of the building as an architect's office is considered to be a 'professional service' which falls within Class 2;
- The proposed use of the building by the Westview Project, offering a service to young people in conjunction with the Probation Service, is considered to fall under Part (c) of Class 2 as 'any other service' where the services are provided principally to visiting members of the public.
- Both the established use and the proposed use fall within Class 2 of Schedule 2, Part 4 of the Regulations.

Furthermore, the proposed use will not have any impact on the traffic, parking or residential amenity of the area.

We therefore request the Planning Authority to issue a Declaration under Section 5 that the proposed use is exempted development.

Yours Sincerely,



Orla O'Sullivan
McCutcheon Halley Planning

Enclosures:

1. Cheque for €80 made payable to Cork City Council;
2. Section 5 Declaration Application Form;
3. Site Location Maps @ 1:1000;
4. Current Internal Layout Plan by MB Precision Land Info.

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

FORMER OFFICES OF - DENNEHY & DENNEHY DESIGNS LTD ARCHITECTS
WATERCOURSE ROAD
CORK T23 YD58

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 USE OF THE BUILDING BY THE WESTVIEW PROJECT (RUN BY FOROIGE) AS OFFICE SPACE EXEMPTED DEVELOPMENT UNDER CLASS 2 OF SCHEDULE 2, PART 4 OF THE PLANNING & DEVELOPMENT REGULATIONS (AS AMENDED) 2001?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- ESTABLISHED USE OF THE BUILDING IS OFFICE SPACE, MOST RECENTLY AS AN ARCHITECTS OFFICE WHICH IS CLASSIFIED AS A PROFESSIONAL SERVICE UNDER CLASS 2
- THE WEST VIEW PROJECT INTEND TO USE THE BUILDING AS OFFICE SPACE, OFFERING THEIR SOCIAL SERVICE PRIMARILY TO VISITING MEMBERS OF THE PUBLIC - ALSO CLASS 2
- *SEE COVER LETTER BY MH PLANNING FOR FURTHER DETAILS

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		294.95QM
(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"/> 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)	
ARCHITECTS OFFICE	OFFICES FOR WESTVIEW PROJECT / FOROIGE.	

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		TONY & GERALDINE DENNEHY	
Applicants Address		7 WOODLANDS CLOGHROE CO. CORK T23 D780	
Person/Agent acting on behalf of the Applicant (if any):	Name:	ORLA O SULLIVAN	
	Address:	M ^c CUTCHEON HALLEY 6 JOYCE HOUSE BARRACK SQUARE BALLINCOLLIG, CORK	
	Telephone:		
	Fax:		
	E-mail address:		
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 <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		

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

Signature: DeDe O'Sullivan

Date: 18/07/2018

Planning Pack Map



National Mapping Agency

CENTRE COORDINATES:
ITM 567384.572979

PUBLISHED: 03/07/2018
ORDER NO.: 50014149_1

MAP SERIES: 1:1,000
MAP SHEETS: 6337-25
1:1,000 6382-05

COMPILED AND PUBLISHED BY:

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Dublin 8,
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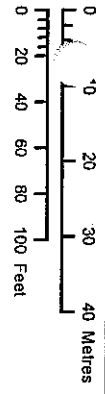
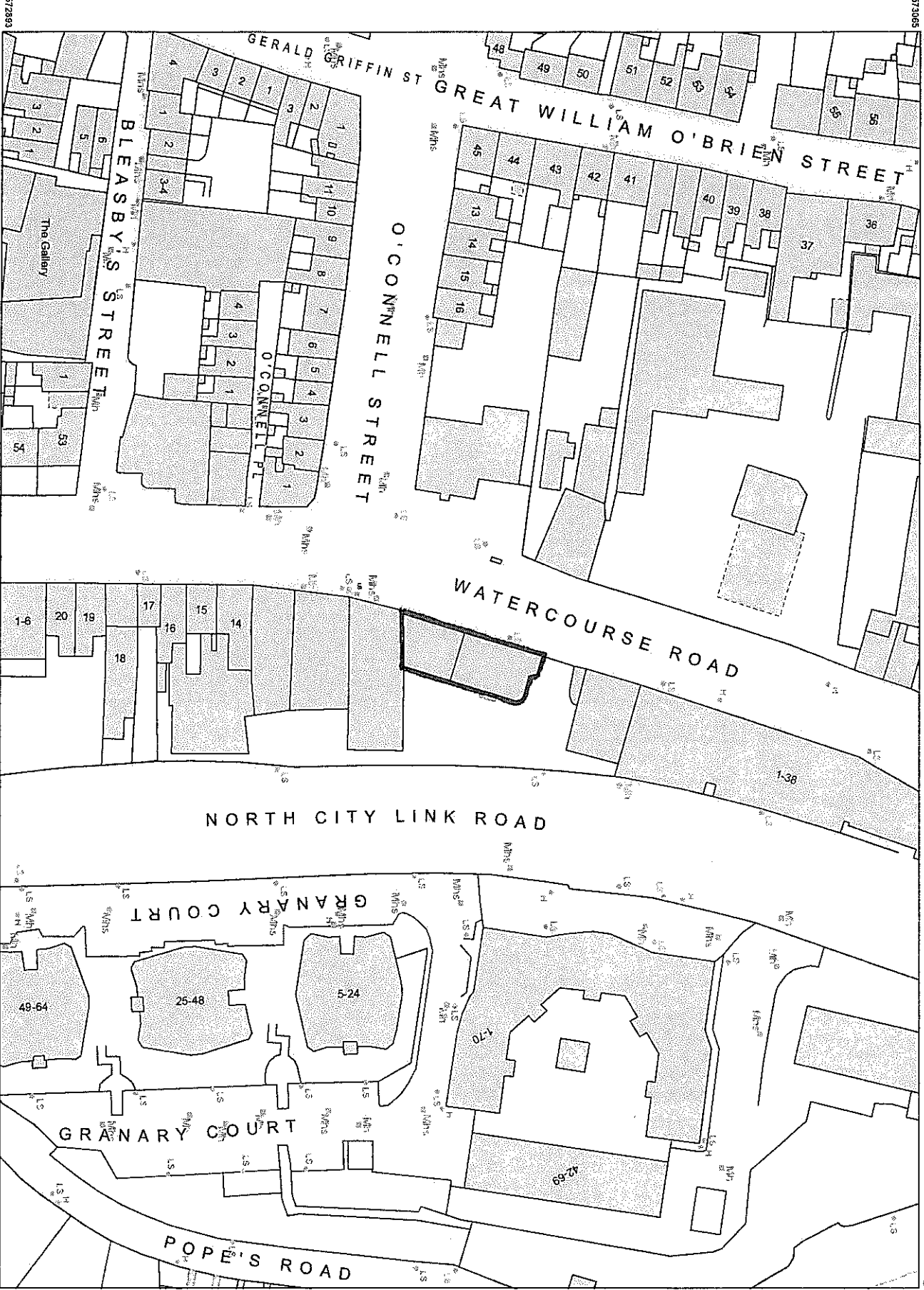
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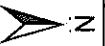
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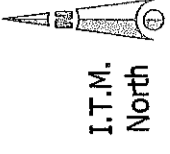


OUTPUT SCALE: 1:1,000

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Further information is available at
<http://www.osi.ie> search 'Capture Resolution'



LEGEND:
<http://www.osi.ie>
search 'Large Scale Legend'



I.T.M.
North

Total GF = 84.8m²
 Total FF = 210.1m²
 Total Area on 2 floors
 enclosed by
 Red outline = 294.9m²

Note:
 All levels related to
 OS Datum (Malin Hd.)

Rev.	Drm	Date	Initial Issue	Description
0	MB	08/09/2016		



MB PRECISION LAND INFO
 Land, Site & Building Surveyors, Site Control,
 Setting Out, GPS, Civil Engineering
 Fermhill, Ballinverrig, Waterfall, Cork.
 Tel: 021-494553 Fax: 021-494558 E-mail: mail@precision.ie

Client:

Mr Tony Dennehy

Job Title:

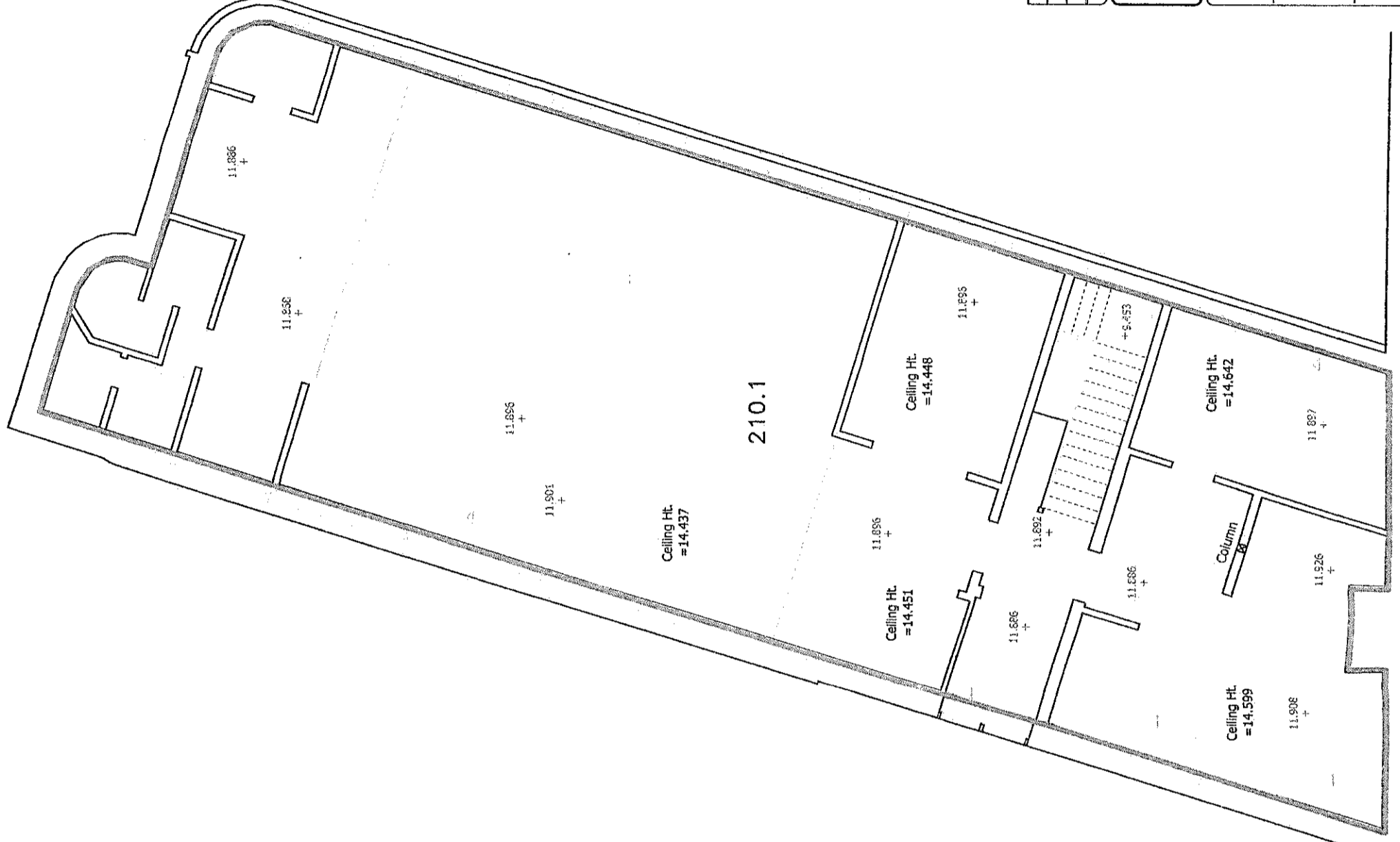
Building Survey of property
 at Watercourse Road, Cork.

Drawing Title:

FLOOR PLANS

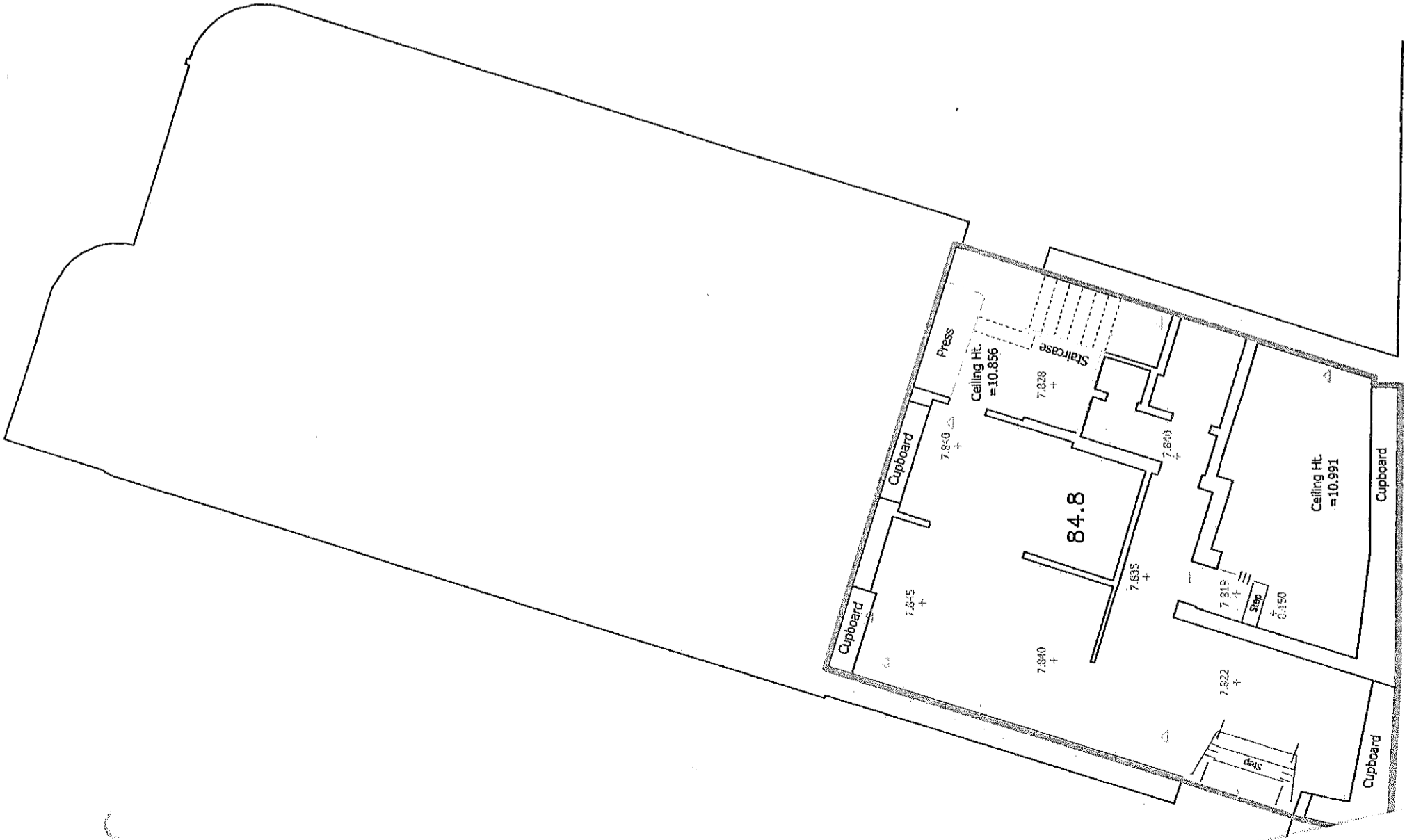
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Dwg No.: TD 1609-01 | Rev.: 0



10.000m
 Scale: 1=100 (Fit on A3)

FIRST FLOOR



ROUND FLOOR