

Eoin Cullinane

From: Conor O'Sullivan [cosaarchitect@gmail.com]
Sent: 16 October 2018 15:01
To: Eoin Cullinane
Subject: Section 5 Declaration Application at 19 Lower John St., for Michael Freyne

Re: Section 5 Declaration Application at 19 Lower John Sr.

Eoin,

Further to our recent discussions and on behalf of Michael Freyne I wish to withdraw the above application from consideration by the Planning Authority. If you have any further questions please do not hesitate to contact me.

Regards,

Conor O'Sullivan COSA

Application type	SECTION 5 DECLARATION
Question	<i>Whether the change of use of the premises from a vacant commercial unit to a proposed single dwelling unit 19 Lower John Street, Cork is development or is exempted development.</i>
Location	19 Lower John Street, Cork
Applicant	Michael Freyne (owner) c/o Conor O'Sullivan Architect (agent)
Date	02/10/2018
Recommendation	Is development and is not exempted development

INTERPRETATION

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 APPLICATION

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

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, "*Works proposed are a change of use of the above premises from a vacant commercial unit to a proposed single dwelling unit*".

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Whether the change of use of the premises from a vacant commercial unit to a proposed single dwelling unit 19 Lower John Street, Cork is development or is exempted development.

3. SITE DESCRIPTION

The subject property is a three-storey mid terrace building in the Inner City Residential Neighbourhood zoning area. The area contains a mixture of residential and commercial uses as well as a number of vacant/derelict properties.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the premises from a vacant unit into a 3-storey, 3-bedroom single dwelling unit.

5. RELEVANT PLANNING HISTORY

- TP 00/24093 Permission GRANTED for three storey extension, alterations and change of use at 19 Lower John Street, Cork.
- TP 01/25533 Permission GRANTED for the C.O.U. of portion of first floor to crèche facility at 19 Lower John Street, Cork.
- TP 04/28353 Permission GRANTED for the change of use of portion of first floor from community use to childcare facility at 19 Lower John Street, Cork.

Adjoining & Nearby Properties

- TP 16/37240 Permission GRANTED for the change of use from retail/stores on ground floor, offices/stores on first and second floor to 6 apartments, second floor extension at rear of building, alterations to existing elevations and associated site works at 21 Lower John Street, Cork.

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

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

“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(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, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 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.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

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)

(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 the making of these Regulations until 31 December 2021.

(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 or 6 of Part 4 to Schedule 1.

(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 or 6, 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).

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’. It is clear that the proposal constitutes a ‘material change in the use of any structures’. It is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within **subsections (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

In my opinion this proposal comes within the scope of section 4(2) as the works relate to a change of use. The substantive issues of the case are set out below.

The proposed works comprise the following:

“Works proposed are a change of use of the above premises from a vacant commercial unit to a proposed single dwelling unit”

Essentially this proposal involves the change of use of 19 Lower John Street from a “vacant commercial unit” into 1 no. 3-storey, 3 bedroom dwelling house.

I note that this exemption is being applied for under Article 10 of the Planning and Development Regulations 2001 to 2018 which state that any proposed development seeking exemption under these regulations must meet three specific criteria specified in Article 10 (6) (c). These criteria are:

6 (c)

- 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 or 6, 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,

I note the use of the phrasing “and” in section 6 (c) (ii) above which indicates that all three criteria must be met for an exemption to be granted. Each element of this section will be considered below.

- i) *the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

I note the planning history as stated in section 5 of this report. Permissions have been granted for an extension and a change of use on this property in 2000, 2001 and 2004 previously. I consider that this confirms that the structure was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 and therefore meets the requirement of section 6 (c) (i) above.

- ii) *the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and*

I note the phrasing “of its current use class” in section 6 (c) (ii) above which I consider indicates that the structure must have been in use as a use specified in Class 1, 2, 3 or 6 of Part 4 to Schedule 1 at the time the building became vacant. I note the final use of the building appears to have been as an ‘Osteopathy, Physiotherapy and Rehabilitation Clinic’, based on a site inspection and a desktop study including images from ‘Google Street View’. This use would be considered to be Class 8 (a) of the uses specified in Part 4 of Schedule 1:

“as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose)”.

As this use class is not a class which is specified in section 6 (c) (ii), i.e. Class 1, 2, 3 or 6 of Part 4 to Schedule 1, it is not considered to meet the requirement of section 6 (c) (ii) above. I note that the previous use of the building, from reviewing previous planning applications for the subject site, was as that of a day centre which would be considered to be Class 8 (d) of the uses specified in Part 4 of Schedule 1. This use would, also, not be considered to meet the requirement of section 6 (c) (ii) above

- 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,*

I note that no evidence of the period of time for which the subject property has been vacant is included as part of the application for this exemption on behalf of the applicant. If all other criteria for exemption have been satisfactorily complied with, further information should be requested for documentary proof of the vacancy of the building for a period of 2 years or more immediately prior to the commencement of the proposed development.

As the proposed development does not comply with 6 (c) (ii) specified in section 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 it is not considered that an exemption applies under the Planning and Development (Amendment) (No. 2) Regulations 2018.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is not exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
 - (b) as respects which an environmental impact assessment or an appropriate assessment is required,*
- to be exempted development.*

Section 177U(9)

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.

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 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 **environmental impact assessment is not required.**

8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. 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 these European sites. Accordingly it is considered that **appropriate assessment is not required.**

9. 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 5(2), 9 and 10 and Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018

the planning authority has concluded that —

- the proposed development does not comply with Article 10 (6) (c) (ii) of the Planning and Development Regulations 2001 to 2018

and therefore the planning authority considers that —

the change of use of the premises from a vacant commercial unit to a proposed single dwelling unit 19 Lower John Street, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



Eoin Cullinane
Assistant Planner
02/10/2018

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

Ref: 1036

17 September 2018

**Re: Section 5 Declaration Application,
At 19 Lower John Street, Cork.
For Michael Freyne.**

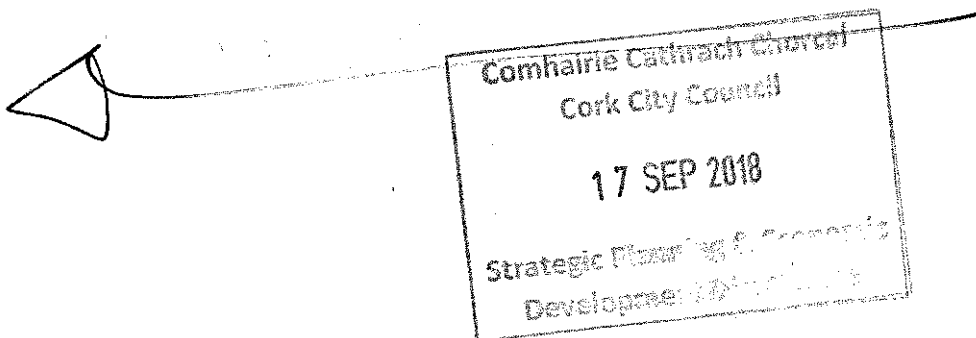
Dear Sirs,

On behalf of Michael Freyne we wish to apply for a Section 5 Declaration for the above property and accordingly enclose the following:

1. Completed application form.
2. Extract from OS quality map scale 1/1000 indicating site location.
3. Drawings 1036 Sk-1 + 2 showing proposed building layout.
4. Drawing 9925-05 B showing existing building layout.
5. Cheque for fee of €80.00.

Please acknowledge receipt of this application,

Yours sincerely,



encl.

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

19 Lower John St., 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.
Works Proposed are A Change of Use of the Above Premises from A Vacant Commercial Unit To A Proposed Single Dwelling Unit.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).
Two Works are Covered Under the Amended Planning and Development Regulations,
Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)
- Providing An Exemption, for A Period of Time, for the Change of Use, and Related Works, of Vacant Commercial Premises for Residential Purposes.

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	196m ² + STORE IN BTTC (50m ²)
(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 checked="" type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and/or building(s), please state the following:	
Existing/ <u>previous use</u> (please circle)	<u>Proposed</u> existing use (please circle)
VACANT Commercial UNIT	SINGLE RESIDENCE

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Michelle Freyne
Applicants Address		Dromshoo, Malton, Co. Cork
Person/Agent acting on behalf of the Applicant (if any):	Name:	Conor O'Sullivan, Architect
	Address:	'SIRACUS' Church Hill, Glenmire, Co. 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: _____

Date: _____

(MICHAEL FREYNE)
14 SEPTEMBER 2018

7. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Contact number	
Email address	

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.

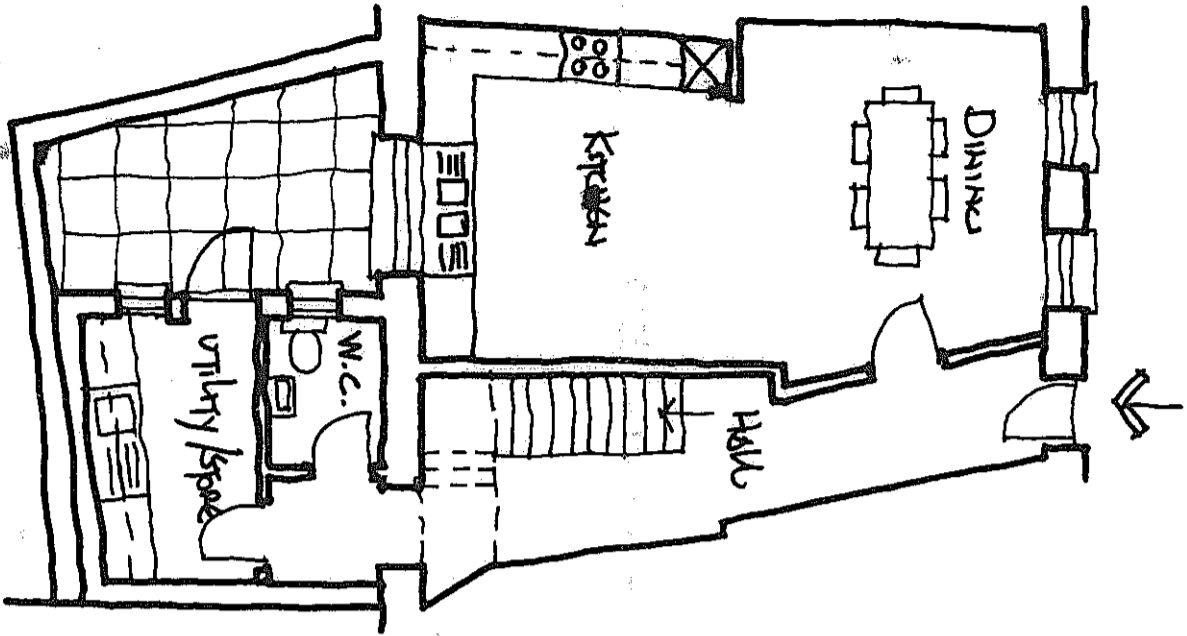
Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

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.

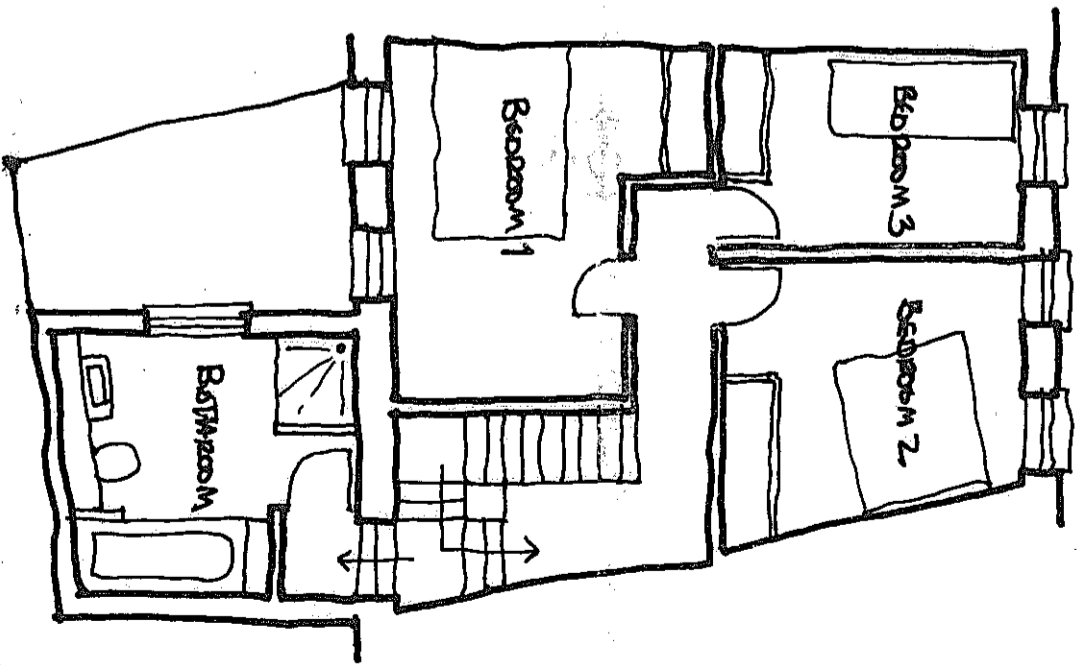
The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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.



Ground floor



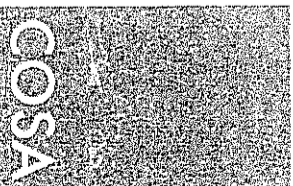
First floor



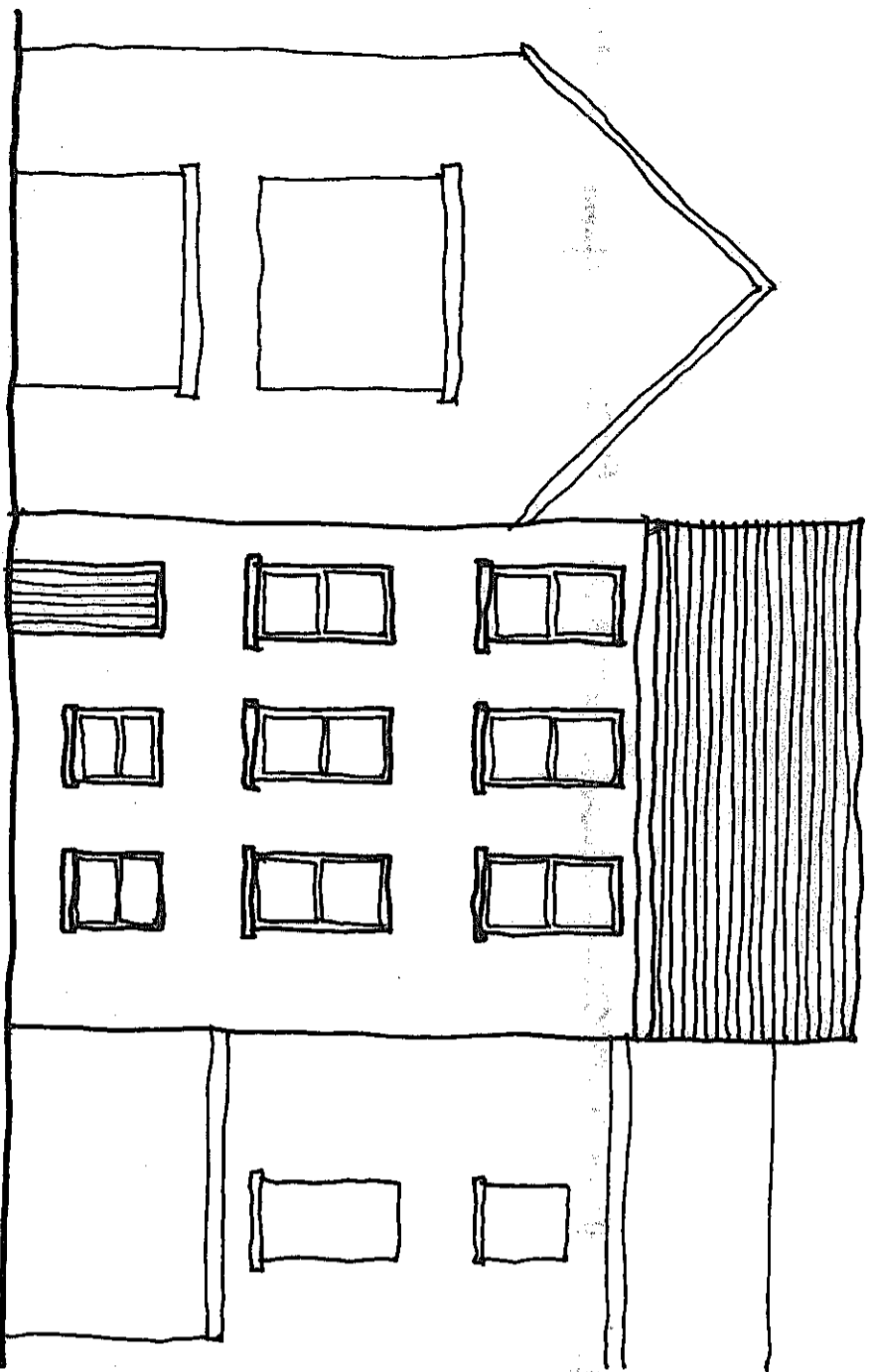
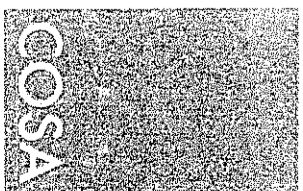
Second floor

Floor Plans - 19 Lower Down St., Cork.
Scale 1/100.

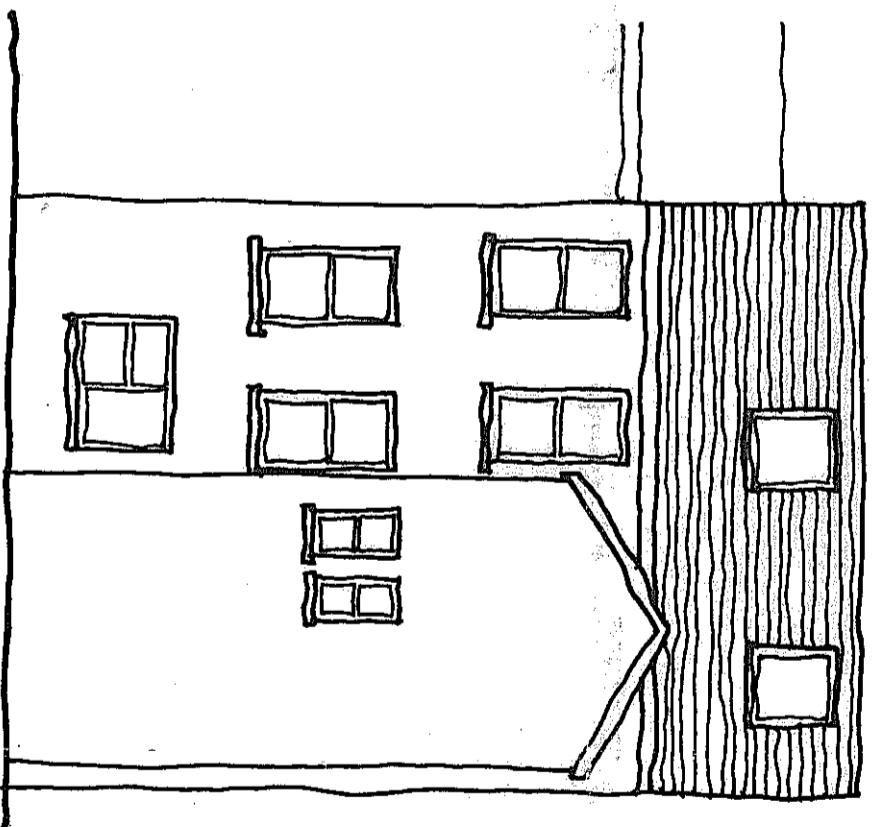
CONOR O'SULLIVAN ARCHITECT



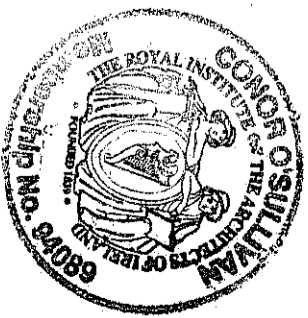
1036.sk 1



Front Elevation

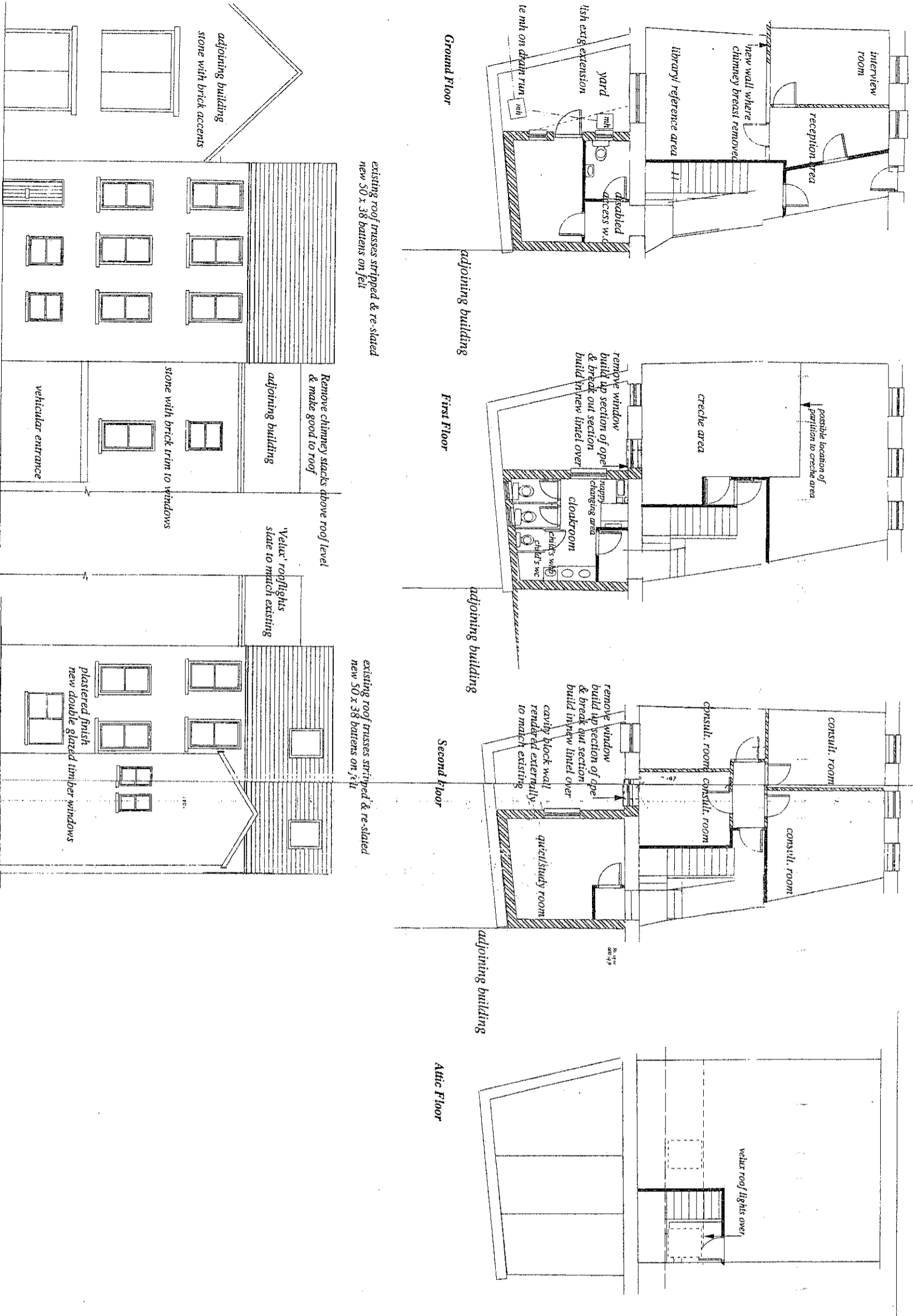


Rear Elevation





Elevations - 19 Lower John St., Cork
Scale 1/100

1036.sk 2



Notes:
 1) All works to comply with 1997 Building Regulations
 2) All new roof timbers to comply with IS444: 1998

 new construction
 fire rated partition

revisions:

rev.	date	description
A	Sept 01	existing roof profile retained to existing building
B	July 01	height of roof to extension lowered
		July 01 alterations to cloakroom and proposed creche area

This drawing is copyright and must not be copied or reproduced without the Architects written consent.
 Figured dimensions only shall be taken from this drawing.
 All contractors must visit the site and be responsible for taking and checking all dimensions that relate to this work.

Mary D'oran Architects
 12 Salmon View Terrace, Sunday's Well Avenue
 Cork tel.: 30 24 82

drawing title
Floor Plans & Elevations

drawing number
9925-05 B
 scale
1:100
 date
 Sept 2000
B

Premises at 19 Lower John Street, Cork for CWI

Existing Front Elevation

Proposed Rear Elevation - showing roof to rear extension lowered by 3'0"

existing roof trusses stripped & re-slatted new 50 x 38 battens on felt

existing roof trusses stripped & re-slatted new 50 x 38 battens on felt

Remove chimney stacks above roof level & make good to roof

Velux' rooflights slate to match existing

adjoining building stone with brick accents

adjoining building

stone with brick trim to windows

vehicular entrance

new double glazed timber windows plastered finish

Ground Floor

First Floor

Second Floor

Attic Floor

adjoining building

adjoining building

adjoining building

adjoining building



reference

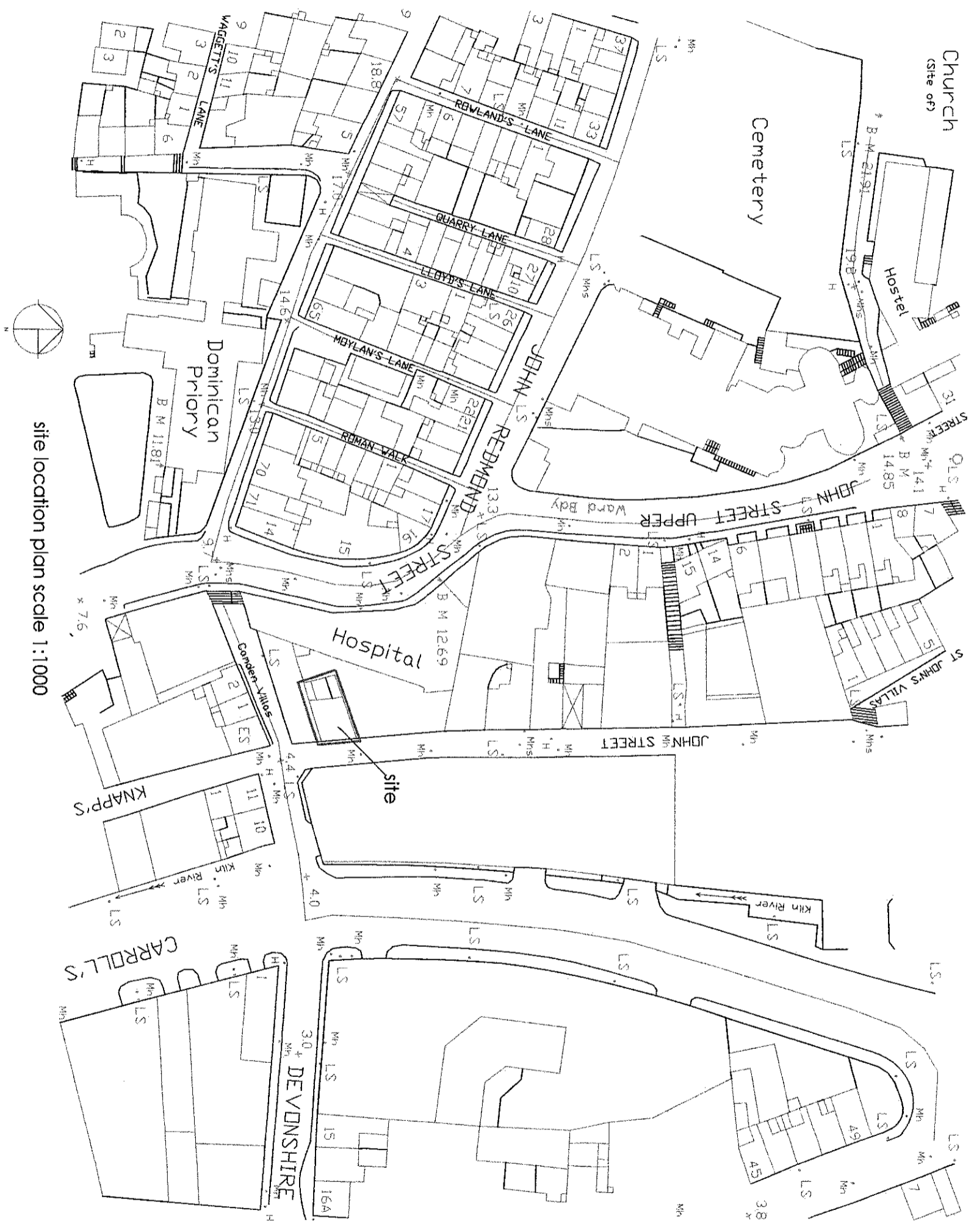
drawing type: site location plan
 scale: 1/1000
 date: september 2018

client: corner of uliamh bualann, dno. architec. rudi. lba
 architect: monika church ltd, galway, co. ckn
 web: www.monikachurch.com
 tel: 093 530 7303
 email: info@monikachurch.com

prepared development for michael f. rye at 19 lower jordan street, cork

drawing no: 1036 AK-001

COSA



site location plan scale 1:1000