



Comhairle Cathrach Chorcaí Cork City Council

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

Jane O'Connor,
c/o Ciaran Dineen,
McCutcheon Halley,
6 Joyce House,
Barrack Square,
Ballincollig,
Cork.

07/03/2023

RE: Section 5 Declaration R760/23 33 Marlboro Street, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 09th February 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 2001 (as amended),

It is considered that the proposed *change of use from retail to residential at first and second floor* at 33 Marlboro Street **IS DEVELOPMENT** and is **EXEMPTED DEVELOPMENT**.

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, 07th March 2023.

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT Ref. R760/23		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Change of use of existing commercial premises at 1st floor and 2nd floor levels to 2 no. residential studio apartments.</i>	
Location	33 Marlboro Street	
Applicant	Jane O'Connor	
Date	02/03/2023	
Recommendation	<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:

3. Site Description

The site is an existing 3 storey mid terrace building located in the city centre. It is currently vacant.

4. Planning History

There is no known planning history on this site.

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 177U (9) (screening for appropriate assessment)

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

5.2 The Regulations

Article 9 (1)

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

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

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

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 -*
 - (l) 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.

6. ASSESSMENT

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.’

In this case, there is a material change of use from retail use at 1st and 2nd floor to residential use and therefore this constitutes development as defined above.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The structure is not a protected structure and there are no historical planning permissions known at the time of writing this report. There are therefore no known conditions which could be contradicted. The recent amendment to Article 10 of the Regulations relates to change of use to residential and allows for more exemptions. The scheme must meet the limitations of this article in order to be considered exempt. It is noted that the proposal is for less than 9 units and not change of use to the ground floor is proposed. Further to this, the existing shop front is to remain unaltered and works relate to the interior only. Article 10 (6) (c) (vi) requires “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.”

Sustainable Urban Housing: Design Guidelines for New Apartments, (2020)

Minimum Areas/Widths	Sus. Housing Design Standards for New Studio Apts (2018)	Proposed Unit 1	Proposed Unit 2
Overall Floor Area	37sq.m	37.9sq.m	42sq.m
Widths Areas for Living / Dining Rooms	4sq.m	4.55sq.m	4.6sq.m
Aggregate Floor Areas for Living / Dining / Kitchen Rooms	30sq.m	30.03sq.m	32sq.m
Width for Bedroom	4sq.m	4.55sq.m	4.6sq.m
Storage Space	3sq.m	3sq.m	3sq.m

Revised floor areas and storage space have been provided for the 2 no. units. Dwelling floor areas of the proposed apartments 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” as required for exemption under Article 10 (6) (c) (vi) of the Planning and Development regulations 2001 (as amended).

1. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked whether “*Change if use of existing commercial premises at 1st floor and 2nd floor levels to 2 no. residential studio apartments*”

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed change of use is development and is exempted development.

9. RECOMMENDATION

In view of the above and having regard to —

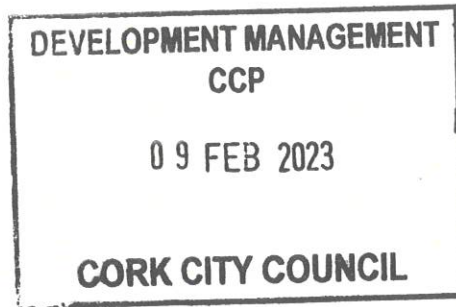
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10 (6) of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed change of use from retail to residential at first and second floor is **Development** and is **Exempted Development**.



Mary Doyle
Executive Planner

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



9 February 2023

Re: Request for a Section 5 Declaration seeking confirmation that the change of use for commercial use at first and second floor levels to provide 2 no. studio apartments at 33 Marlboro Street, 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, Jane O'Connor, who is the owner of 33 Marlboro Street, 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 use at first and second floor levels to provide 2 no. studio apartments at 33 Marlboro Street, is exempted development on the basis that:

- The change of use from commercial use at first and second floor levels to provide 2 no. studio apartments at 33 Marlboro Street, Cork City, is exempted development under the Planning and Development Regulations.
- The associated works to facilitate the proposed use will affect only the interior of the structure and therefore come within the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

The ground floor use which fronts onto Marlboro Street will remain for commercial purposes under its commercial use. The above reasons are outlined in greater detail below. 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 comprises a 3-storey mid terrace building located along Marlboro Street in the City Centre. The building is associated with commercial uses, however the building is now vacant. The surrounding area is comprised of a mix of uses but given its location in the City Centre, primary uses mostly consist of commercial use.

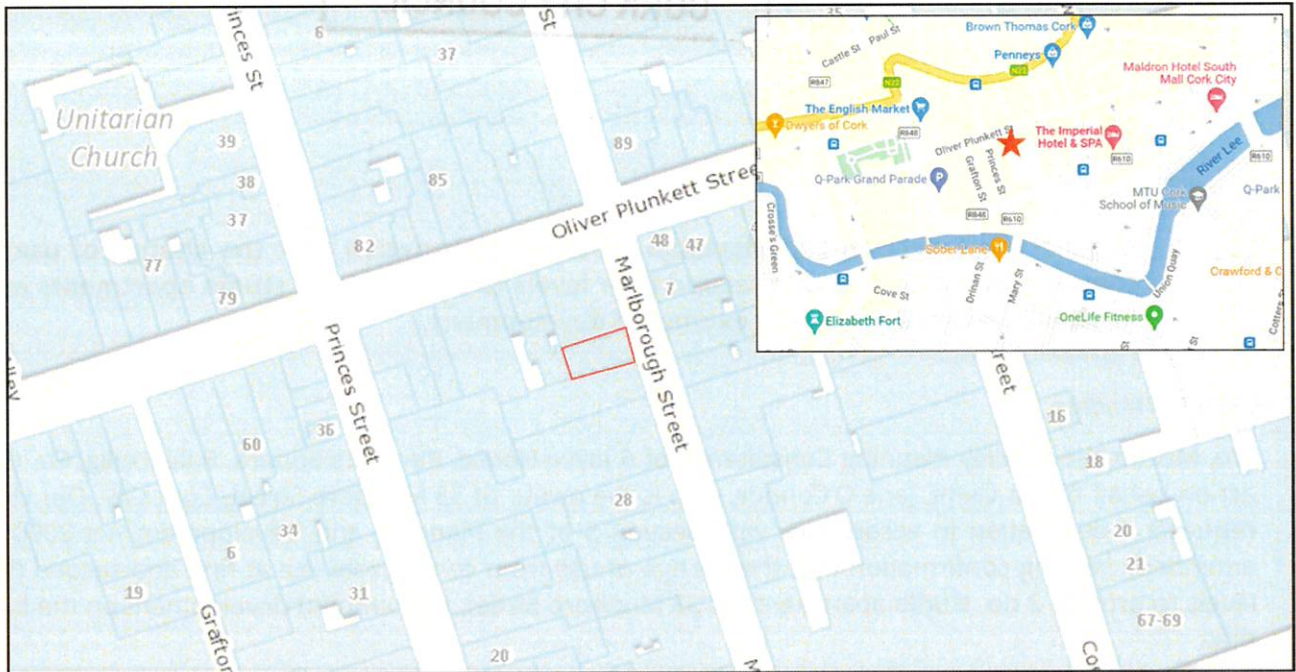


Figure 1 – Property at 33 Marlboro Street

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 the Oliver Plunkett Street ACA, our client does not propose any changes to the exterior finishes of the building and as such there will be no visual change along the streetscape. The building is not registered on the list of protected structures.

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 25th February 2022 the Planning and Development Act (Exempted Development) Regulations 2022 extended to 31st 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 and second floor levels to provide 2 no. studio apartments at 33 Marlboro Street, is exempted development in accordance with the 2022 Regulations, on the basis that:

1. The structure at 33 Marlboro Street 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 8th February 2018 and 31st 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 the carrying out of works to the exterior of a structure within an architectural conservation area – as can be seen from the existing and proposed drawings by DOSA Consulting Engineers, all works are interior and do not affect the external appearance of the building.

It is recognised as part of a previous declaration request, under Planning Reference **R750/22**, that the primary reason provided by the case planner for their consideration that proposed works on this building were not exempted development were because the design proposals did not meet requirements of the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities.

With regards to this, the planner’s report stated the following:

“Dwelling floor areas of the proposed apartments and storage spaces do not 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” as required for exemption under Article 10 (6) (c) (vi) of the Planning And Development regulations 2001 (as amended).”

The report presented the below table outlining where the proposed changes were/were not compliant with meeting this requirement.

Minimum Areas/Widths	Sus. Housing Design Standards for New Studio Apts (2018)	Proposed Unit 1	Proposed Unit 2
Overall Floor Area	37sq.m	36.80sq.m *	40.0sq.m
Widths Areas for Living / Dining Rooms	4sq.m	4.55sq.m	4.55sq.m
Aggregate Floor Areas for Living / Dining / Kitchen Rooms	30sq.m	28.75sq.m	31.95sq.m
Width for Bedroom	4sq.m	4.55sq.m	2.38sq.m
Storage Space	3sq.m	0sq.m	2.28sq.m
Private Space	4sq.m	0sq.m	0sq.m
Communal Amenity Space	4sq.m	0sq.m	0sq.m

Table 1 – Table outlined in Planning Reference R750/22 detailing design standards from the Apartment Guidelines. *An error was made with regards to the overall floor area of the first floor apartment as part of the R750/22 Declaration. The overall floor area of this floor is in fact 37.90 sqm as illustrated in the drawings provided by DOSA. The second floor was similarly incorrect, as this has an actual floor area of 42 sqm.

Considering the above, our client has revised their proposals in order to further meet the listed requirement noted in the above table. However, we would like to note that under Article 10 (6) (c) (vi) of the Planning and Development regulations 2001 (as amended), while reference is made to requirements regarding dwelling floor areas, this does not specify private space and communal amenity space. As such, we contend that this subsection of Article 10 does not apply with regards to private space and communal amenity space, rather on overall floor areas.

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, including communal areas such as Bishop Lucey Park (250 metres) and Cork City Library (200 metres), along with a plethora of cultural and civic amenities found within the City Centre.

However, as part of the response to the decision made under R750/22, our client recognised that further consideration of the design and layout of the proposed studio apartments were required in order to align more closely with the Apartment Guidelines, but more importantly to deliver a higher-quality living standard of accommodation. In this respect the Council were approached via email, requesting feedback over new design proposals which were being proposed. Based on this feedback, it was considered that providing a high-quality living environment was of principal importance.

The revised design for the internal floor areas of both proposed apartments has been considered thoroughly. These layouts are indicated below.

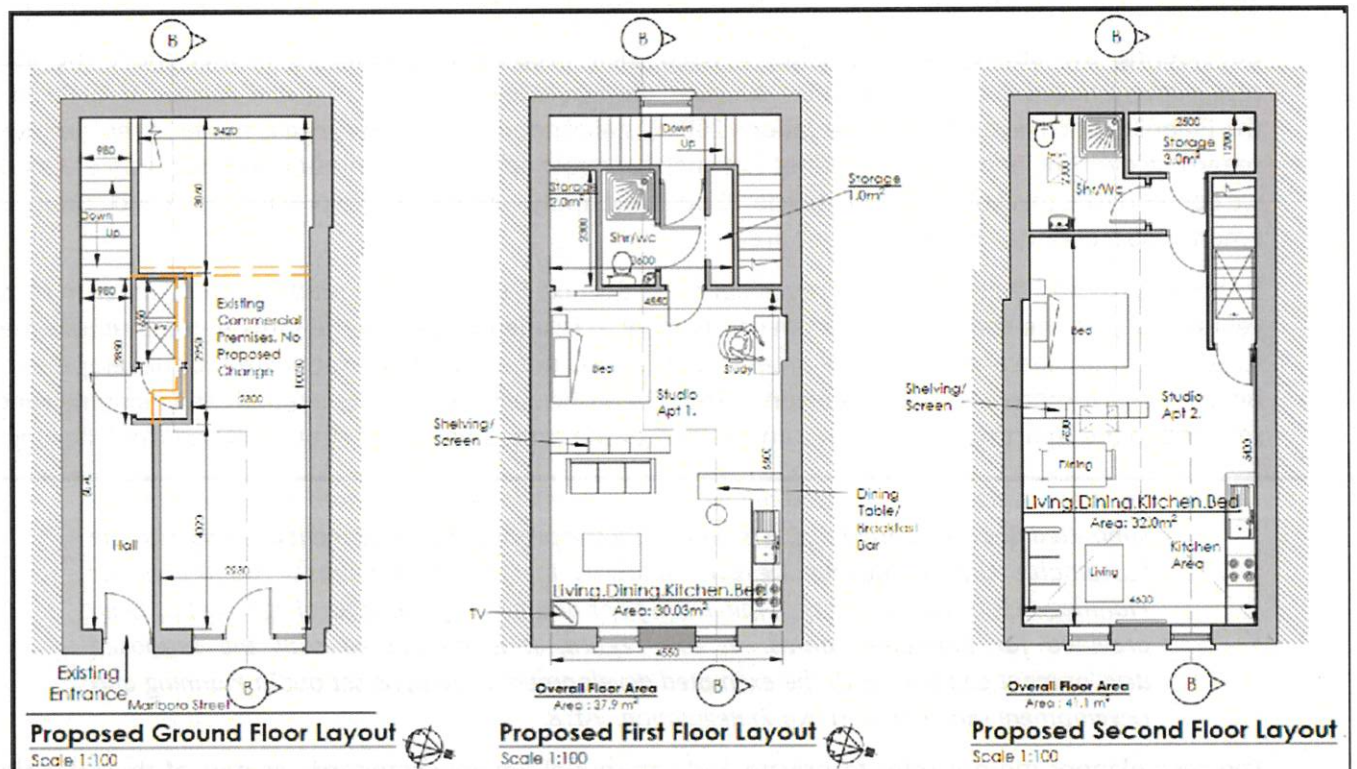


Figure 2 – Proposed floor layouts.

As can be seen, the proposed floor plans for the studio apartments includes living, dining and kitchen spaces, as well as areas for storage. The proposed first floor level contains bedroom furniture for the purposes of study, therefore suitable for prospective residents who have the opportunity to study and to work from home.

In order to provide a separation between the bedroom space and the living/dining/kitchen space, it is proposed to erect a shelving screen, which are often found in studio apartments, at both first floor and second floor level. It is proposed that the screen to be used will allow natural light to pass through from the existing windows, enabling it to reach the bedroom space. Please see Figure 3 below which provides an example of what such a shelving screen would look like.



Figure 3. Example of proposed shelving/screen

This is considered to be a useful piece of bedroom furniture which helps to separate the bed area from other spaces within the studio apartment, as well as providing additional storage opportunity. Additionally, it is proposed at first floor level that a dining table/breakfast bar be incorporated as part of an extension to the kitchen area. Again, this is considered to be a regular feature of studio apartments, offering a quirky and modern solution for studio apartment living.

Overall, considerable thought has gone into the revised design of the two proposed studio apartments. Table 2 below indicates that minimum requirements have been met but in addition to this, a rethink of the layout of the first and second floors has resulted in a high-quality living space, which offers a high-quality standard of living opportunity for prospective residents, in the heart of the City Centre.

Minimum Area/Widths	Sus. Housing Design Standards for New Studio Apts (2022)	Proposed Unit 1	Proposed Unit 2
Overall Floor Area	37.00sq.m	37.90sq.m	42.00sq.m
Width Areas for Living / Dining Rooms	4.00m	4.55m	4.60m
Aggregate Floor Areas for Living / Dining / Kitchen Rooms	30.00m ²	30.03m ²	32.00m ²
Width for Bedroom	4.00m	4.55m	4.60m
Storage Space	3.00m ²	3.00m ²	3.00m ²

Table 2 – Proposed measurements/dimensions of floor spaces in context of the Apartment Guidelines 2022

1.4 Conclusion

The proposed change of use from commercial use at first and second floors to provide 2 no. studio 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 use to provide 2 no. studio apartments at 33 Marlboro Street, Cork City, is exempted development on the basis that:

- **The change of use from commercial use at first and second floor levels to provide 2 no. studio apartments at 33 Marlboro Street, Cork City, is exempted development under the Planning and Development Regulations.**
- **The associated works to facilitate the proposed use will affect only the interior 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:

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

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

Ciaran Dineen
McCutcheon Halley





Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924762
Lionra/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

33 Marlboro Street, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Change of use of existing commercial premises at First and Second Floor Levels

to 2 no. residential studio apartments.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

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:

Not Known

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	106.0 sqm
(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) Commercial	Proposed/existing use (please circle) Residential

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other
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: 09/02/2023



Site Location Map
Scale : 1:1000



Description:
Historic 6" Latest Edition

Publisher / Source:
Ordnance Survey Ireland (OSI)

Data Source / Reference:
CK074
Revision Date =
Survey Date = 31-Dec-1928
Levelled Date = 31-Dec-1956

File Format:
Tagged Image File Format (TIFF)

File Name:
R_50299232_1.tif

Clip Extent / Area of Interest (AOI):
LLX,LLY= 563948.5405,569487.9011
LRX,LRX= 570958.5405,569487.9011
ULX,ULY= 563948.5405,574681.9011
URX,URY= 570958.5405,574681.9011

Projection / Spatial Reference:
IRENET95_Irish_Transverse_Mercator

Centre Point Coordinates:
X,Y = 567453.5405,572084.9011

Data Extraction Date:
26-Oct-2022

Product Version:
1.3

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

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Ana thionsú agus ana fhoisiú ag Suirbhéireacht Ordanáis Éireann, Páirc an Fhionnuisce, Baile Átha Cliath 8, Éire.

Sáraíonn atáirgeadh neamhúdaraithe cóipeacht Shuirbhéireacht Ordanáis Éireann agus Rialtas na hÉireann.

Gach cead ar cosnamh. Ní ceadmhach aon chuid den fhoilseachán seo a chóipeáil, a atáirgeadh nó a tharchur in aon foirm ná ar aon bhealach gan cead i scríbhinn roimh ré ó úinéirí an chóipchirt.

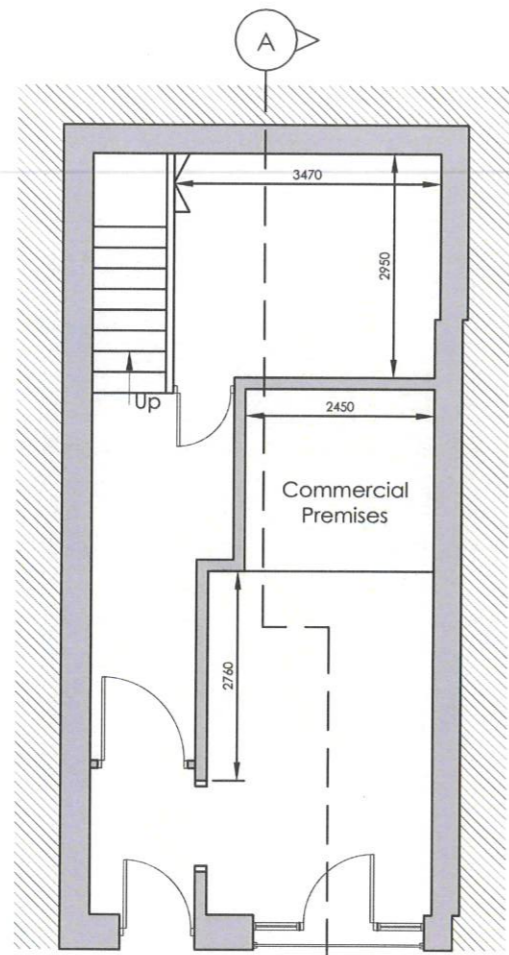
Ní hionann bóthar, bealach nó cosán a bheith ar an léarscáil seo agus fianaise ar chead slí.

Ní thaispeánann léarscáil de chuid Ordanáis Shuirbhéireacht na hÉireann teorann phointí dleathúil de mhaoin riamh, nó úinéireacht de ghnéithe thisiúla.

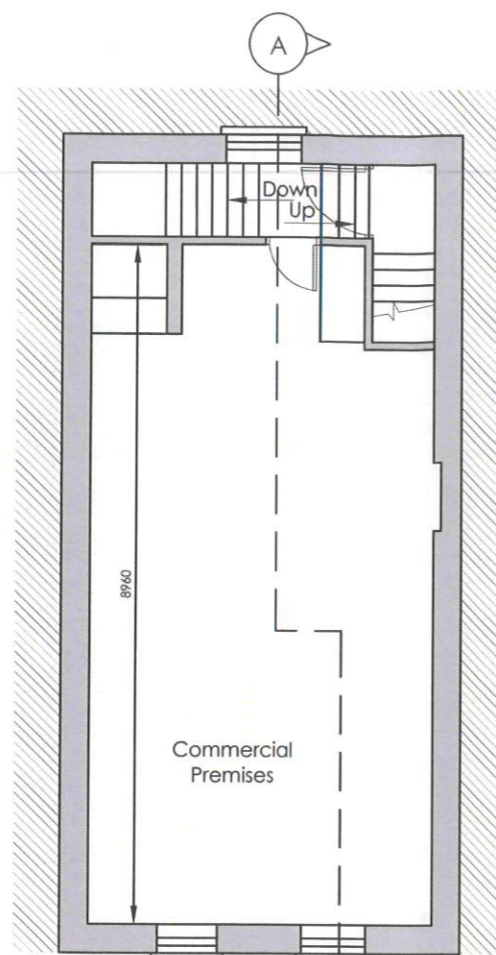
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A	P.N.	W.K.	C.O.S.	03.11'22	Issued for Planning

CLIENT	Ted O'Connor
PROJECT	33 Marlboro Street, Cork

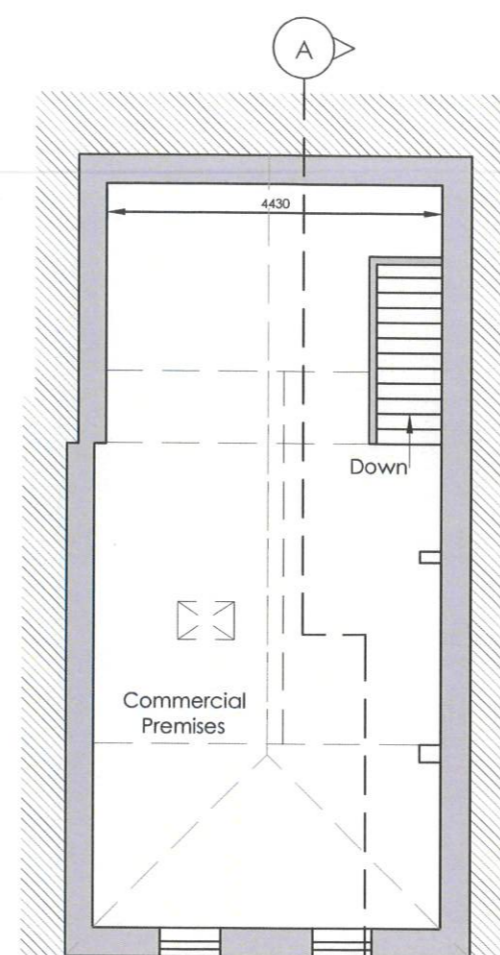
DRAWING TITLE		Site Location Map		
SHEET	SCALE	PROJECT NO.	DRAWING NO.	STATUS/ISSUE
A3	1:1000	6657	1000	A



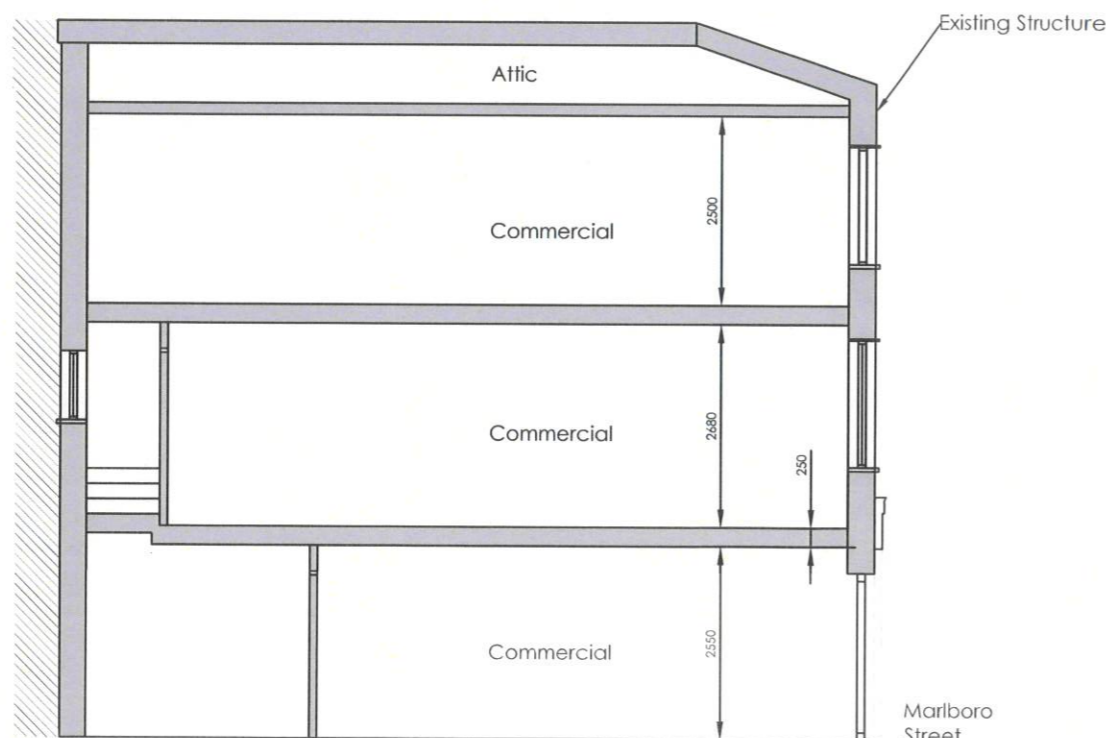
Ground Floor Plan
Scale 1:100



First Floor Plan
Scale 1:100



Second Floor Layout
Scale 1:100



Section A-A
Scale 1:100

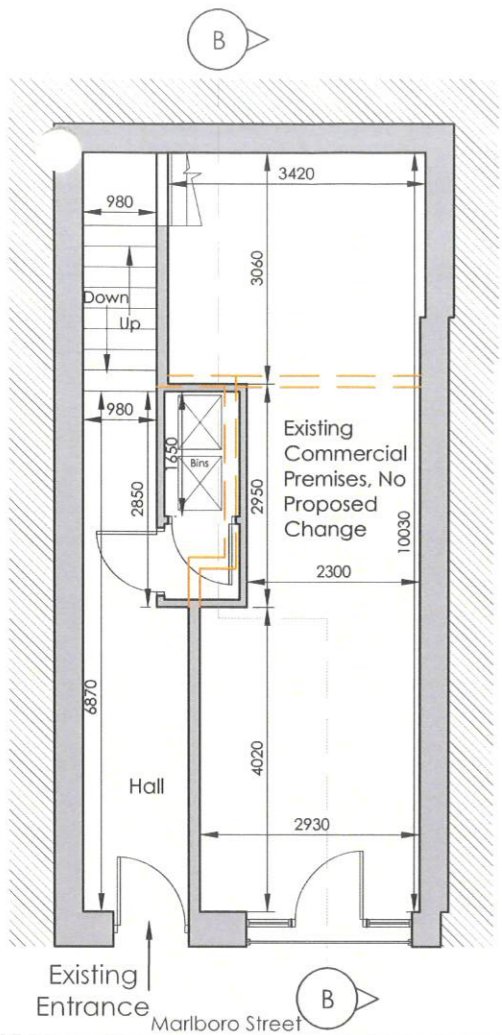


Front Elevation (No Change)
Scale 1:100

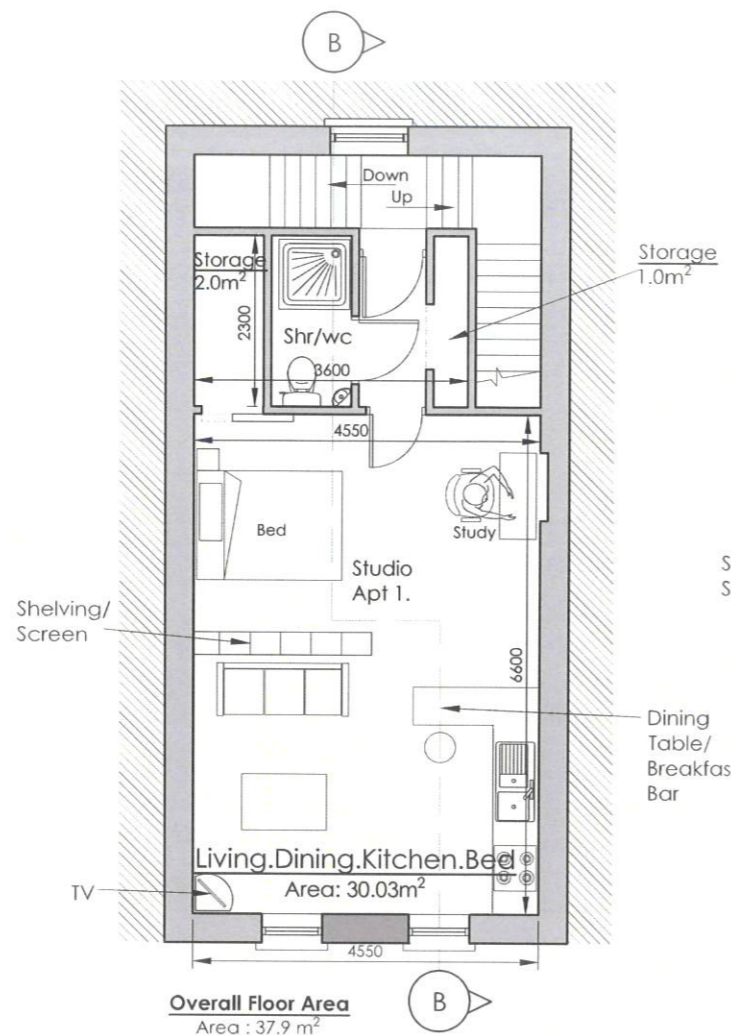
REV.	P.N.	W.K.	C.O.S.	DATE	DETAILS
A	P.N.	W.K.	C.O.S.	03.11'22	Issued for Planning

CLIENT	Ted O'Connor
PROJECT	33 Marlboro Street, Cork

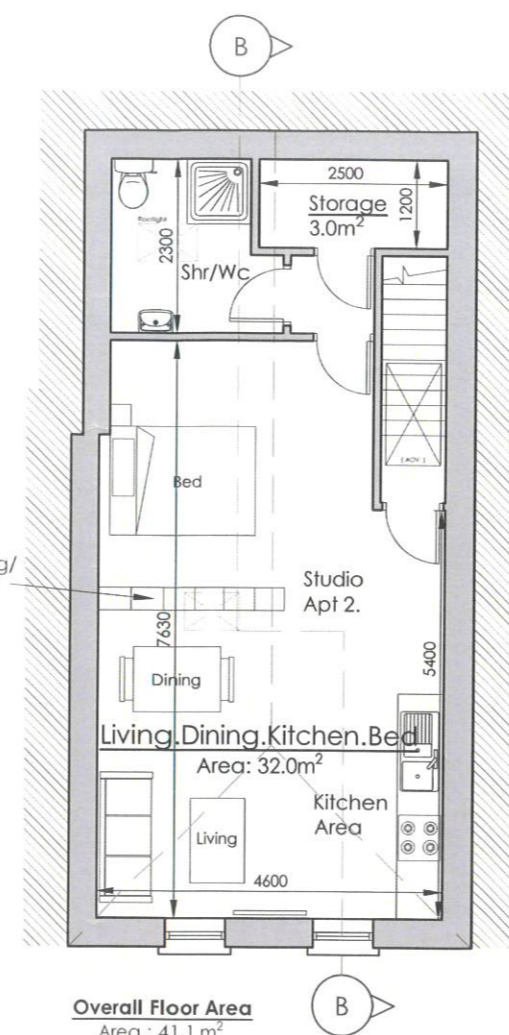
DRAWING TITLE		Existing Plans, Section and Elevation							
SHEET	A3	SCALE	1:100	PROJECT NO.	6657	DRAWING NO.	1002	STATUS/ISSUE	A



Proposed Ground Floor Layout
Scale 1:100



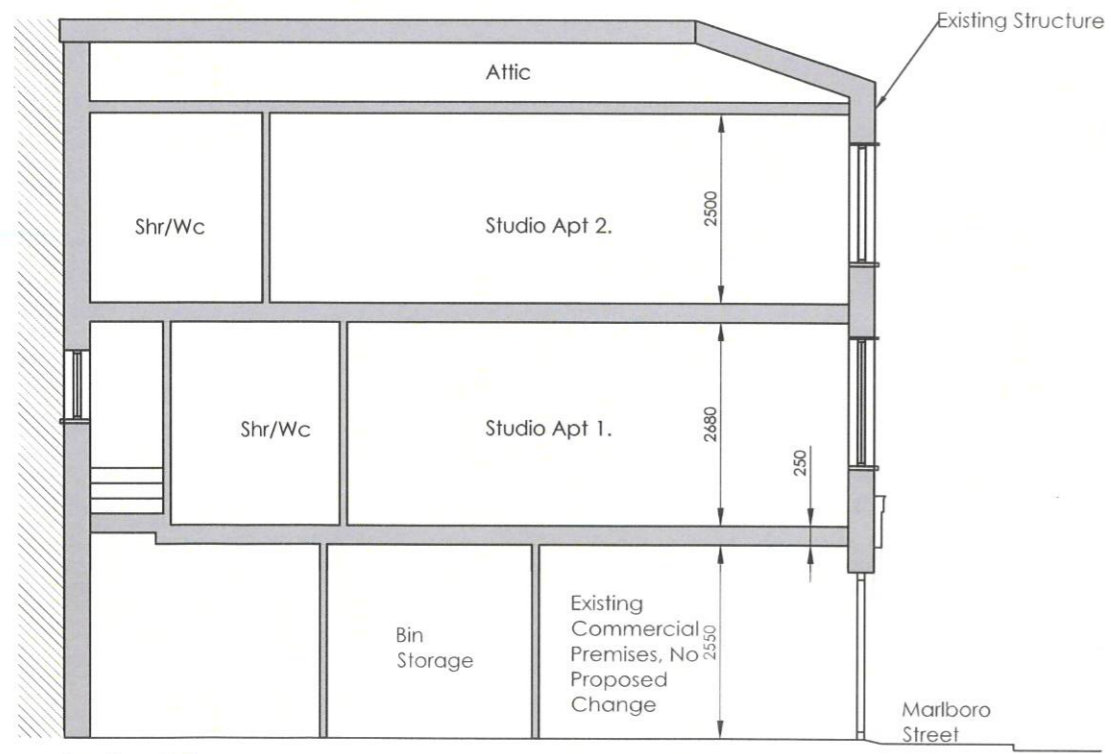
Proposed First Floor Layout
Scale 1:100



Proposed Second Floor Layout
Scale 1:100



Site Layout Plan
Scale 1:250



Section B-B
Scale 1:100



Front Elevation (No Change)
Scale 1:100



Example of Shelving/Screen

Minimum Area/Widths	Sus. Housing Design Standards for New Studio Apts (2022)	Proposed Unit 1	Proposed Unit 2
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