



Halla na Cathrach  
Corcaigh  
T12 T997

City Hall  
Cork  
T12 T997

Denis O'Sullivan  
DL Group  
1 Hodders Villas  
Ballincollig  
Cork

20/03/2019

**RE: Section 5 R502/19 1 Parkview, Victoria Road.**

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.

The planning authority considers that —

the change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency at 1 Parkview, Victoria Road, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

Yours Faithfully,

**Paul Hartnett**  
Assistant Staff Officer  
Strategic Planning & Economic  
Development  
Cork City Council

## PLANNER'S REPORT

Ref. R 502/19

Cork City Council  
Development Management  
Strategic Planning and  
Economic Development

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Whether the change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency is exempted development.</i>
Location	1 Parkview, Victoria Road, Cork
Applicant	John Mulcahy (owner) c/o Denis O'Sullivan of DL Group (agent)
Date	14/03/2019
Recommendation	<b>Is development and is not exempted development</b>

### 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, "we wish to apply for a declaration of exemption for the change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency".

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 property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency is development or is exempted development.*

#### 3. SITE DESCRIPTION

The subject property is a three-storey end-of-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 Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation.

#### 5. RELEVANT PLANNING HISTORY

- TP 99/22992      Permission GRANTED drive-in to side of dwelling at 1 Park View, Victoria Road, Cork.
- TP 99/23533      Permission GRANTED for the C.O.U. of dwelling to hostel facility and extension and alterations at 1 Park View, Victoria Road, Cork.
- E4327:            Enforcement investigated a new boundary wall. Case was closed 16/4/2002.

#### 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)**

See section 1 of this report.

**6.2 Planning and Development Regulations 2001 to 2018 as amended**

**Article 6(1)**

Subject to article 9, 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**

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

**Part 4 Exempted Development – Classes of Use**

**CLASS 6**

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

**CLASS 8**

Use—

- (a) 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),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

**CLASS 9**

Use—

- (a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),
- (b) as a hospital or nursing home,
- (c) as a residential school, residential college or residential training centre.

## 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:

*“The change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency”*

The change of use of the dwelling to a 7-bedroom hostel with a minor single storey extension was permitted in 1999 under TP 99/23533.

From reviewing TP 99/23533 it appears that the hostel use permitted would be classified as Class 6 - Use as a residential club, a guest house or a hostel (other than a hostel where care is provided). There was no documentation included with TP 99/23533 indicating that care would be provided at the hostel and so it is assumed that Class 6 would apply.

The proposed use as a counselling facility with offices and overnight accommodation run by a dedicated state agency, given the changing of 4 no. dorm rooms to 2 no. offices and 2 no. counselling rooms, would be considered to be classified as being predominantly within the scope of Classes 8(a), 8(d) and 9(a). Therefore it is reasonable to conclude that both uses

constitute different classes of use and therefore the proposed development is not considered to be exempted development.

## **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**

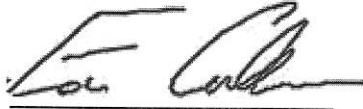
In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and


- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including offices and overnight accommodation run by a dedicated state agency at 1 Parkview, Victoria Road, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



Eoin Cullinane  
Assistant Planner  
14/03/2019



SEP.  
14/3/2019.

# Land Registry Compliant Map

**CENTRE COORDINATES:**  
ITM 568395.571823

**PUBLISHED:** 13/12/2018  
**ORDER NO.:** 50038677\_2

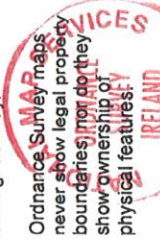
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**MAP SHEETS:** 6383-06  
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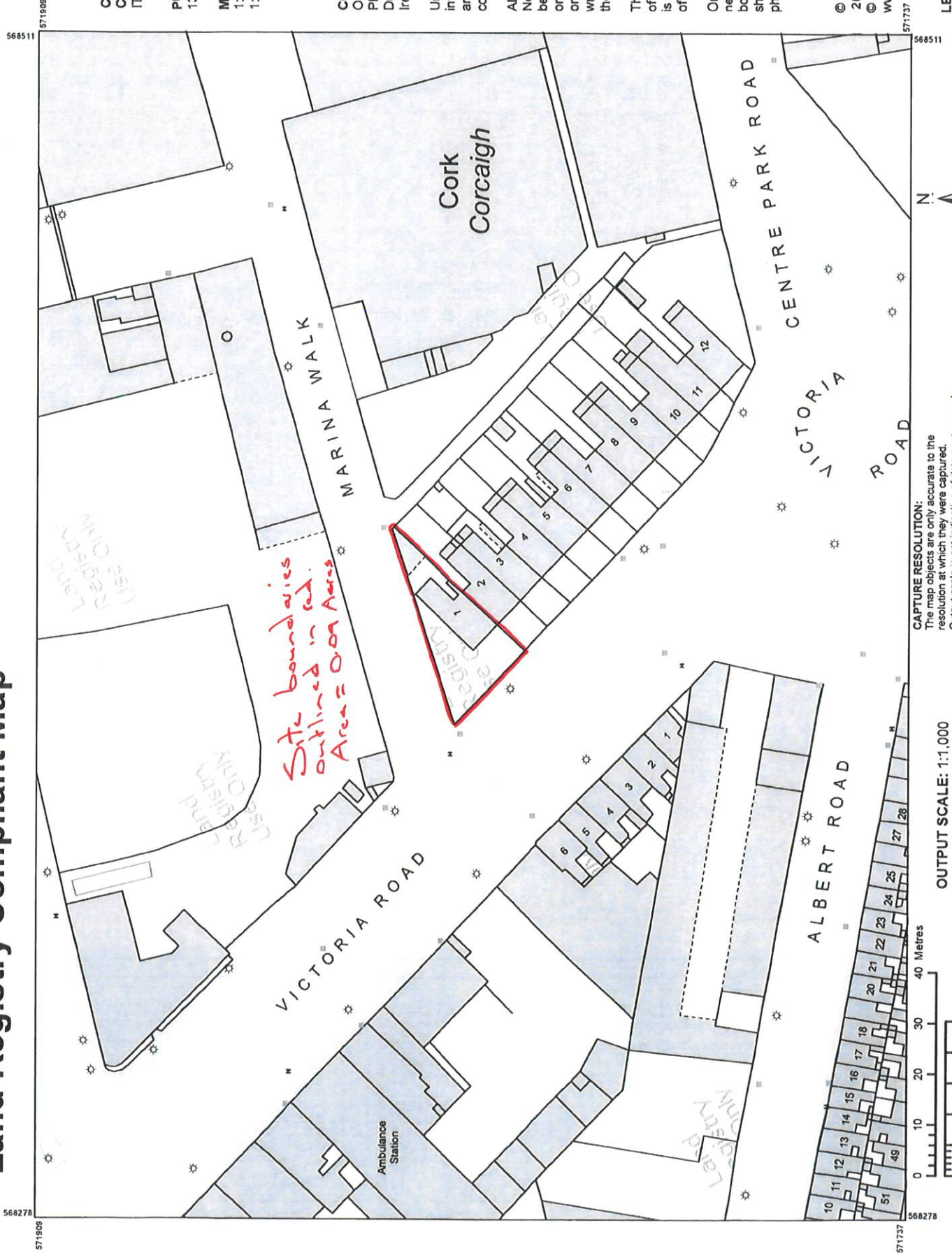
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Our Ref: 66718/CC/DOS

Your Ref:

Date: 12.02.19

**Cork City Council**  
**Planning Department**  
City Hall  
Anglesea Street,  
Cork

*Re/ John Mulcahy*  
**Property at 1 Parkview, Victoria Road, Cork**  
**Planning Number T.P. 23533/99 – Granted**



Dear Sir/Madam,

We act on behalf of our client who owns the above property which has previous planning permissions granted under Planning Number T.P. 23533/99. We wish to apply for a **Declaration of Exemption** for the change of use of the property from a Hostel Facility to use as a Counselling Centre Facility including Offices and Overnight Accommodation run by a dedicated State Agency.

We attach 2no. copies of the site location map of the site in question.

We also attach a cheque made payable to Cork City Council to the value of €80.00.

I also attach layout plans as per the planning drawings and the layout plans as per current use. 2no. copies of each drawing have been provided.

Can you please provide a Declaration of Exemption if the change of use qualifies?

Could you please forward a receipt of payment also?

If you require any further information, please don't hesitate to contact me.

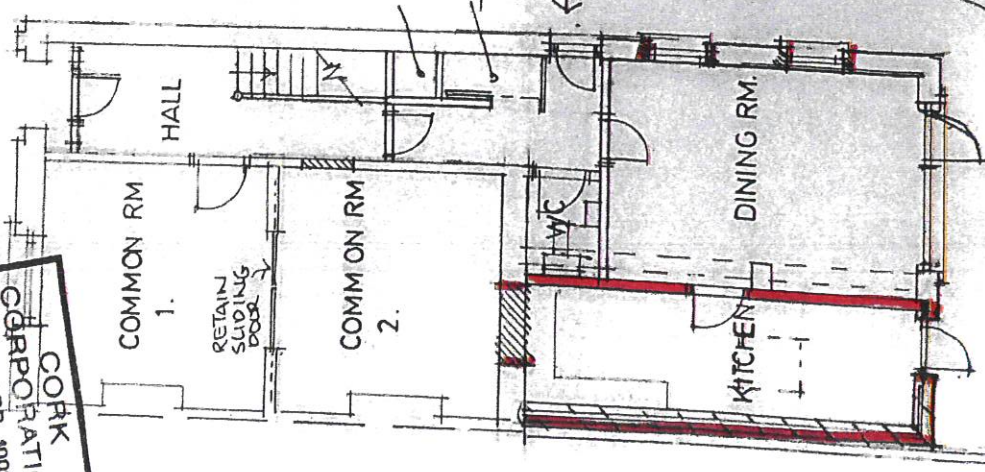
Yours sincerely,

**Denis O' Sullivan, B.Eng., M.I.E.I.**

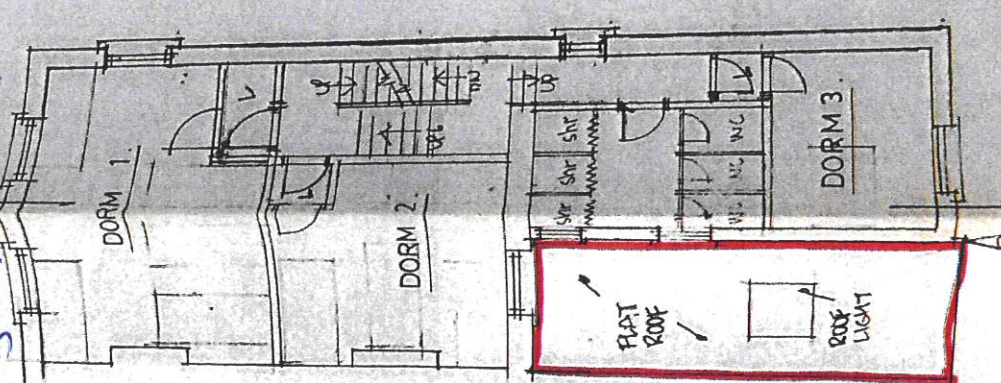


Layout Plans as per  
 Planning Application T.P. 23533/99

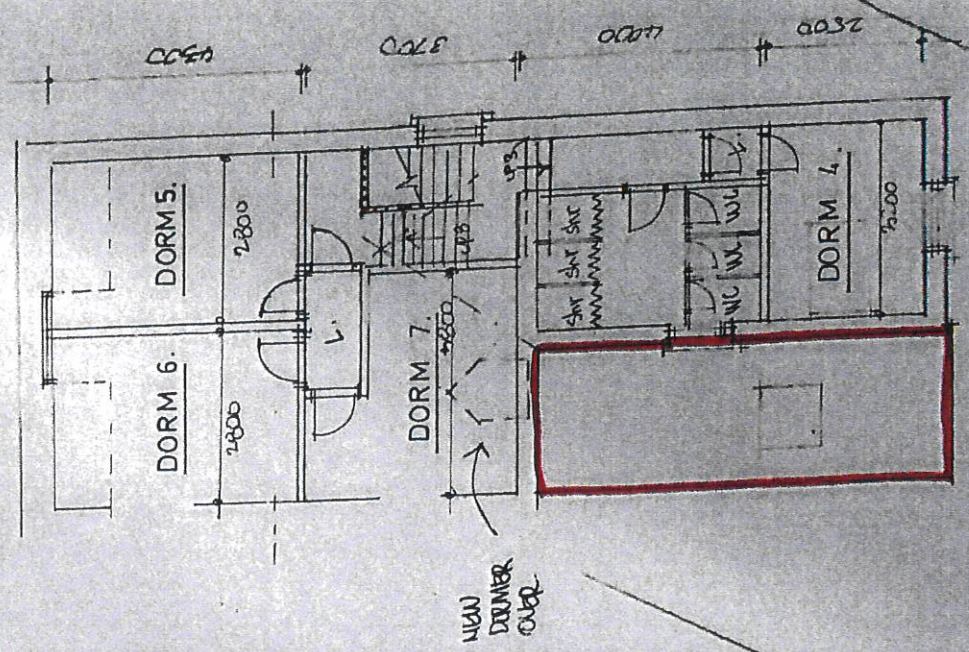
CORK CORPORATION  
 02 SEP 1999  
 PLANNING DEPT 99  
 T.P. NO. 23533/99



GROUND FLOOR PLAN  
 1:100



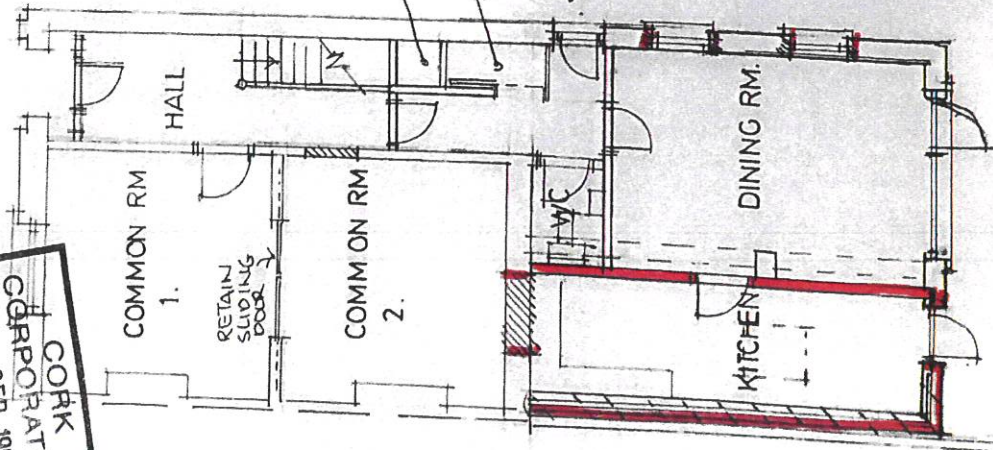
FIRST FLOOR PLAN  
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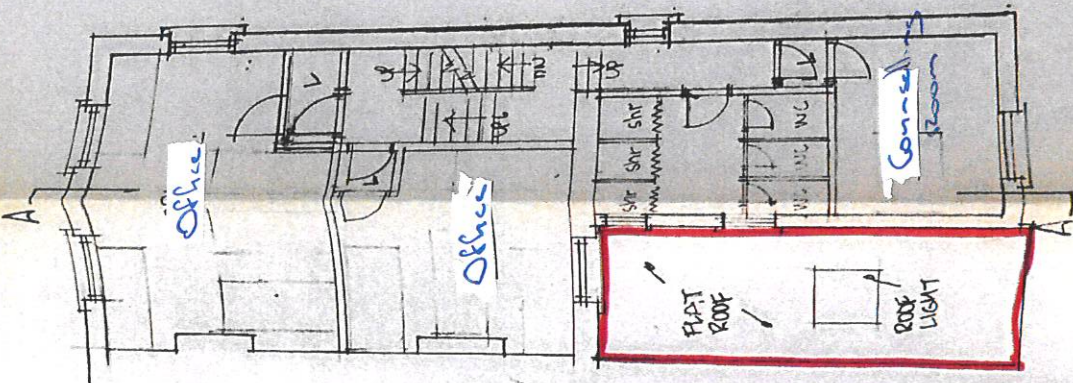
SECOND FLOOR PLAN  
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Layout Plans as per current use.

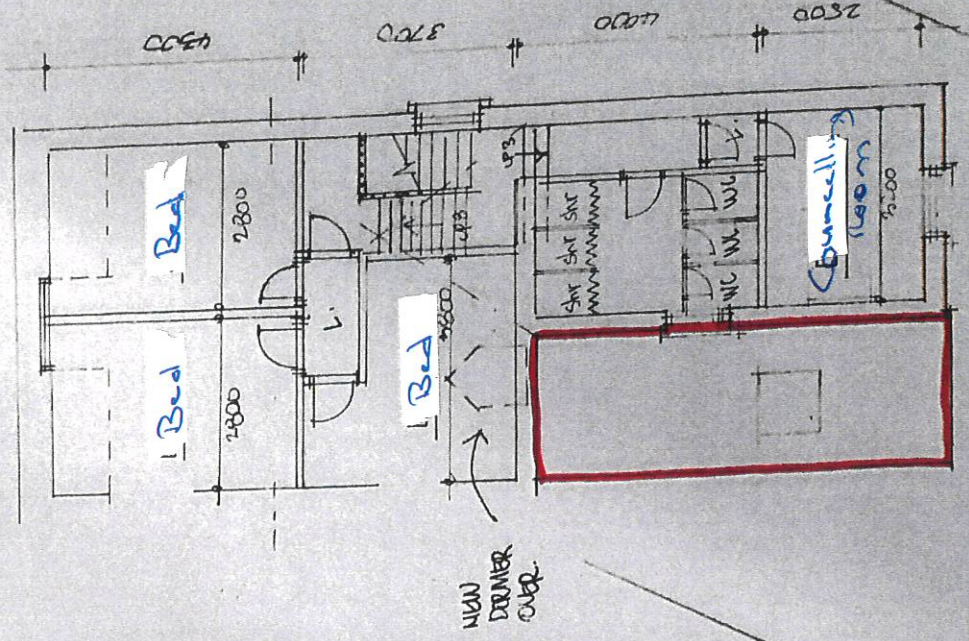
COFAK CORPORATION  
 02 SEP 1999  
 PLANNING PRT 9  
 T.P. No. ....



GROUND FLOOR PLAN  
 1:100



FIRST FLOOR PLAN  
 1:100



SECOND FLOOR PLAN  
 1:100



Layout Plans as per current use.

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