



Comhairle Cathrach Chorcaí Cork City Council

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

Conor Murphy,
c/o Brian McCutcheon,
McCutcheon Halley Planning Consultants,
6 Joyce House,
Barrack Square,
Ballincollig,
Cork.

27/11/2023

RE: Section 5 Declaration R809/23 The Southern Star, 9 Southern Road, Cork T12 WN83.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- Article 9 of the Planning and Development Regulations, 2001 (as amended)

The Planning Authority considers that —

-
1. *The replacement of the windows, doors, and the repainting* is consistent with the neighbouring properties and these elements can be considered to come under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore considered **EXEMPT DEVELOPMENT**;
 2. *The replacement of the signs and flags* do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are **NOT EXEMPTED DEVELOPMENT**;
 3. *The alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with*



We are Cork.

canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are **NOT EXEMPTED DEVELOPMENT**.

Further to this, it is considered that a material change of use has occurred and this also has intensified the overall use of the licensed premises. This is **NOT 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, 27th November 2023.

Is mise le meas,



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

PLANNER'S REPORT Ref. R809/23		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<p>1) <i>"Whether the alterations to the façade of the Southern Star involving the upgrade of fenestration, and signage, fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development;</i></p> <p>2) <i>Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:</i></p> <p style="padding-left: 40px;"><i>a) the works fall within the scope of Section 4(1)(h); and</i></p> <p style="padding-left: 40px;"><i>b) the works were not carried out to facilitate any material change of intensification of the overall use of the licensed premises."</i></p>	
Location	Southern Star Pub, 9 Southern Road, Cork	
Applicant	Conor Murphy	
Date	21/11/2023	
Recommendation	See Section at End of Report	

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:

- 1) *"Whether the alterations to the façade of the Southern Star involving the upgrade of fenestration, and signage, fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development;*
- 2) *Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:*
 - a) *the works fall within the scope of Section 4(1)(h); and*

b) the works were not carried out to facilitate any material change of intensification or the overall use of the licensed premises.”

3. Site Description

The property in question is an existing 2 storey pub at the end of a long terrace of two storey residential units.

The pub has been recently repainted, along with the adjoining wall extending towards the flyover bridge. 4 no. flagpoles are hanging in situ and there are various pub and drink related signs on the front façade. The windows appear to have been recently replaced.



Photo 1 (21/11/2023)

There is a side garden section which has its own gated entrance and now contains an archway over same; and the garden area comprises 2 no. number large new permanent canvas roofings supported by permanent steel pillars at various points along the centre; and further secured to steel structures, some of which are attached the boundary wall with the link road. Associated cabling overhangs this boundary wall. There is new with lighting, new speakers and heaters. Lighting and the canvas roofs are visible from the South Link Road. There is a significant number of tables and custom built booths, benches, ledges and accompanying matching seating.



Photos 2 and 3: 21/11/2023



The "upgrade to the furniture and fittings" is extensive with large permanent sound speakers in situ along with permanent lighting and heaters specifically catering for this garden area. Significant wooden panelling and fencing has been erected along the boundaries of the "garden". Booths have been erected and contain high backed permanent cushioned seating. A change in the ground covering has seen artificial grass being laid out to cover the entire area. The works are very clearly to cater for various groups of people, mainly sitting together, and not simply just as a 5-min smoking break area.



4. Planning History

TP23/42290: Permission **refused** to erect an advertising board on gable end of Southern Star Pub.

TP06/31240: Permission **refused** for the retention of tri-vision rotating advertising sign.

TP01/25304: Temporary permission granted to Meteor Mobile for mast. Condition 2: The structure shall be removed on expiration of period of 5 years beginning on the date of this grant of permission. *Note: Masts currently still in situ without a continuing grant of permission.*

R109/07: Telecommunications mast.

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 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.

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

6. ASSESSMENT

The “question” presented contains a number of elements and these shall be dealt with separately individually. This building is not a protected structure, listed on the NIAH, nor located within an Architectural Conservation Area.

The first part present to the Local Authority is as follows:

1. Whether the alterations to the façade of the Southern Star involving the upgrade of
 - (i) fenestration, and
 - (ii) signage,fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development;

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

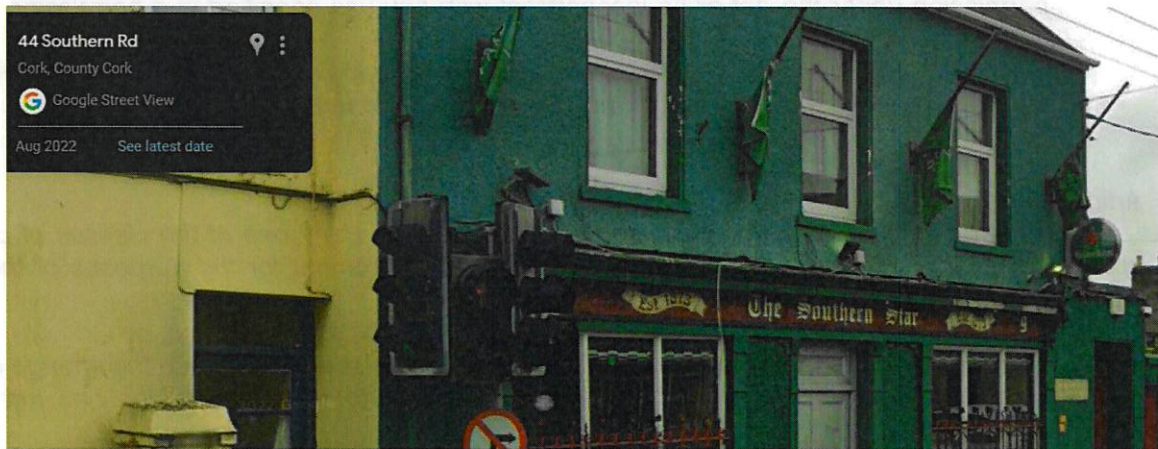
‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’

The “*alterations to the façade*”, according to the additional details supplied regarding the works/development, comprise:

- (i) replacement of windows;
- (ii) replacement of doors;
- (iii) repainting of façade;
- (iv) replacement of pre-existing signs
- (v) replacement of pre-existing flags
- (vi) replacement of side door;
- (vii) repainting of boundary wall.

6.1.1 Fenestration and Facade

Images from 2022 show that there were white uPVC windows at that time and there were wrought iron railing in front of the ground floor windows.



The railings have been removed; and windows and doors replaced, including a section over the entrance door. The façade and wall have been repainted. Flagpoles advertising the Heineken have been removed and new flagpoles advertising the Southern Star have been re-installed in different locations. The former Heineken sign has been removed and a new illuminated sign installed. New strip lighting within the shopfront has been installed. It is considered that these elements constitute construction, alteration, repair, and renewal and are works. This therefore constitutes development.

The question, as asked, is whether these works fall within the scope of Section 4(1) (h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development. The replacement of the windows, doors and the repainting of the façade.



6.1.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The proposed works are not listed within Schedule 2 Part 1 of the Planning and Development regulations 2001 (as amended) which lists Exempted Development.

Section 4(1)(h) states:

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;

The neighbouring structures consist of two-storey residential dwellings (in a terrace), with a post office opposite and some single storey commercial units.



The replacement of the windows, doors, and the repainting is consistent with the neighbouring properties and these elements can be considered to come under Section 4(1)(h).

The flagpoles and signage, however, do render the façade inconsistent with the neighbouring structures. These are unique to the property in question and not a consistent element of residential developments. Therefore, in considering the question as to whether these elements fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended), it is considered that they do not.

There is no historical permission for the pre-existing flagpoles and signs. Notwithstanding that the former elements were in situ for longer than 7 years and are therefore statute barred from enforcement proceedings, they remain unauthorised for the duration they remain in situ. While these have been removed, the new signage and flagpoles erected in lieu of same do not have the benefit of a grant of permission. Article 9 (1) (a) (viii) below applies. The 4 no. flagpoles have been relocated and are now situated in line with the window cills of the first-floor windows. The protruding illuminated sign is over 4m from ground level.



4.1 ELEVATION 1:100 FRONT ELEVATION : EXISTING

From planning application 06/31240 for Southern Star. (Ground level under sign: 16.30, Top of first floor window: approx. 22.20)

Article 9 (1)

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

Planning and development Regulations 2001 (as amended)

PART 2

Article 6

Exempted Development — Advertisements

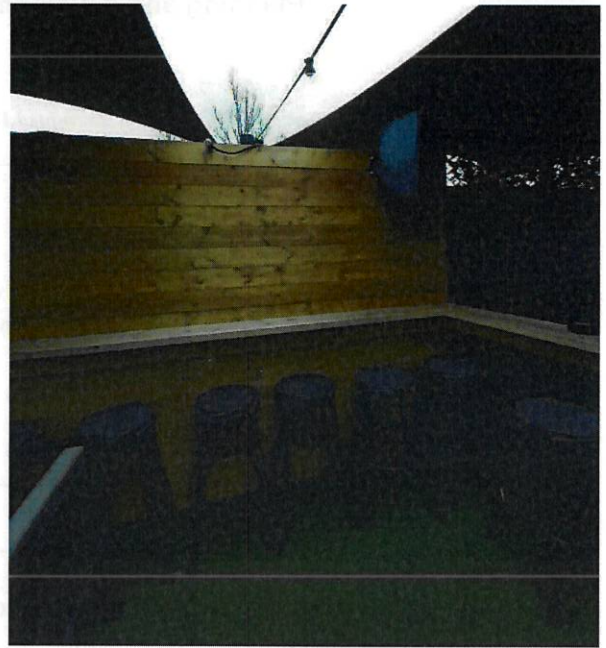
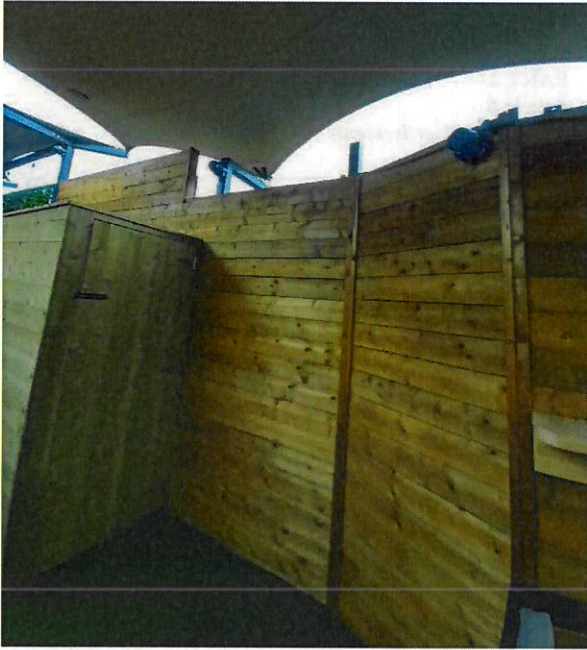
<p>CLASS 4 An advertisement in the form of a flag which is attached to a single flagstaff fixed in an upright position on the roof of a business premises and which bears no inscription or emblem other than the name, device or logo of a person or business occupying the business premises.</p>	<p>Not more than one such advertisement shall be exhibited on a business premises.</p>
<p>CLASS 6 Advertisements relating to any institution of a religious, educational, cultural, recreational or medical or similar character, any guesthouse or other premises (other than a hotel) providing overnight guest accommodation or any public house, block of flats, club, boarding house or hostel, situated on the land on which any such advertisement is exhibited.</p>	<p>1. No such advertisement shall exceed 0.6 square metres in area. 2. No part of any such advertisement or an advertisement structure on which it is exhibited shall be more than 2.5 metres in height above ground level. 3. Not more than one such advertisement or, in the case of premises with entrances on different road frontages, one such advertisement for each such frontage, shall be exhibited in respect of any such premises.</p>

6.2 Second Question put to Local Authority.

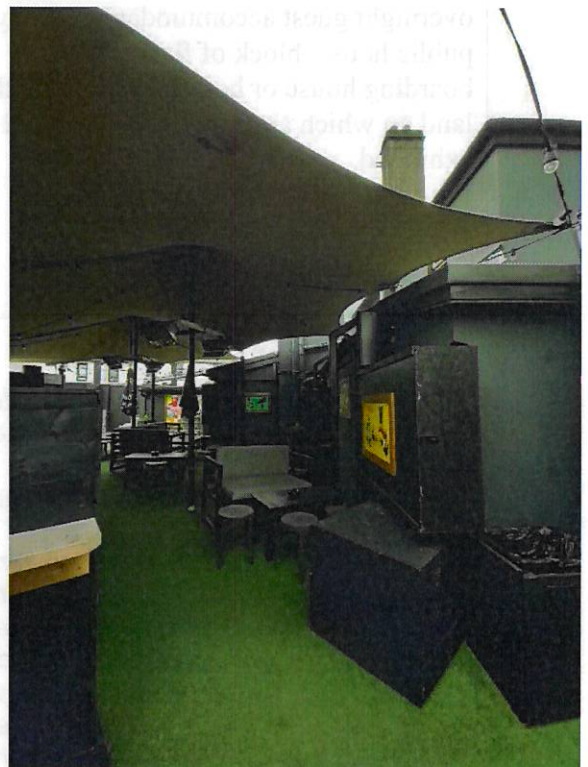
The second part of the question presented to the Local Authority is as follows:

- 2) *Whether the (i) alterations and (ii) improvements to the garden bar of the Southern Star comprising:*
- i) the upgrade of the furniture and fittings; and*
 - ii) the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:*
 - aa) the works fall within the scope of Section 4(1)(h); and*
 - ab) the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises."*

6.2.1 The first issue for consideration is whether or not the matter at hand is 'development'. The applicant has described the elements for consideration as "alterations". Further to this, the roof and supporting steel structures along with the permanent booths etc. are constructions. The elements are considered to be works and therefore development.



Photos 5 and 6: New High panelling on boundary with South Link, ledges, speakers, steel supports, canvas roofing, lighting and security camera.



Photos 7 and 8: Outdoor Area.

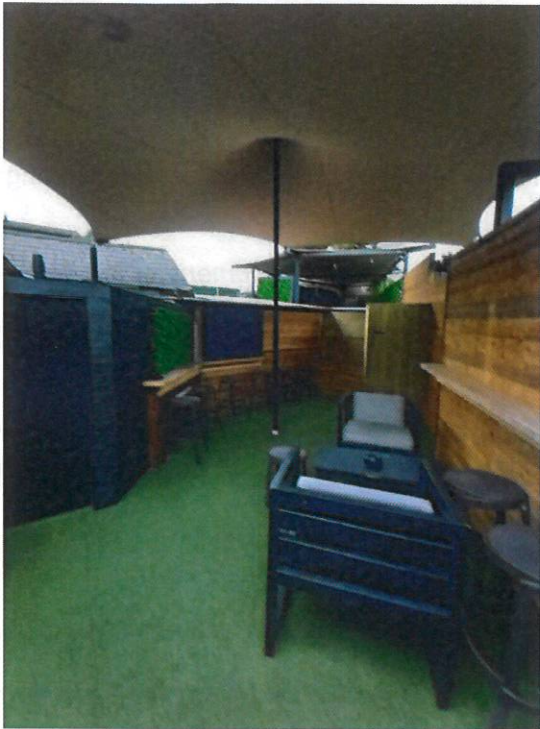


Photo 9: Upper outdoor area to rear closed off with wooden door. Roof, new support structures, and lighting etc. serving same in situ.

Photo 10: New catering truck which has cables going down under the artificial grass.



6.2.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The proposed works are not listed within Schedule 2 Part 1 of the Planning and Development regulations 2001 (as amended) which lists Exempted Development.

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;

The works are external works. Neighbouring structures are 2-storey residential properties in the vast majority. There are no other beer gardens/garden bars in the vicinity. There are no awnings, canvas roofs, steel structure supports, speakers, heaters, catering vans in/on neighbouring

structures. The alterations and improvements comprising of the upgrade to furniture, fittings, the replacement of roof structures, and new catering furniture are not covered by Section 4(1) (h).

The question relates to “alterations and improvements to the garden bar”. There is no historical permission which has granted the use of this outdoor area as a garden bar/beer garden area and any roofed structure or support structures for same. Article 9 (1) (a) (viii) states the following:

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of 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,*

Any previous roofing and fitting etc. would also have been unauthorised and the extension, alteration, repair and renewal of the furniture, fittings, roof structures and new catering furniture and fittings are therefore not exempt.

6.2.3 Use/Intensification

The latter part of the query asks:

Whether the (i) alterations and (ii) improvements to the garden bar of the Southern Star....fall within Section 4(1) (h) and as such:

- (b) *“the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises.”*

Section 3(1) of the Act refers to material change of use:

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”

As concluded above, the alterations and improvements to the garden bar of the Southern Star (including furniture, fittings and roofing etc.) constitute works and development. This has clearly been done to cater for patrons consuming alcohol outdoors in this space – the garden bar - all year around (roof, heaters, speakers etc.). No planning permission for same has ever been sought or issued. It is therefore considered that this constitutes an extension to the internal seating area of the existing public house and indeed provides a significant additional footprint to allow the pub to cater for a significant increase in the volume of patrons. This has material consequences in terms of the planning of the area i.e. noise, fumes, late-night activity on the amenity of the surrounding properties. Having regard to the material consequences with respect to the proper planning and sustainable development of the area, it is considered that a material change of use has occurred and this also has intensified the overall use of the licensed premises. This is development and further to this, there are no circumstances where the change of use would be exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

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

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island

Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. Conclusion

The question presented to the planning authority is:

1. *“Whether the alterations to the façade of the Southern Star involving the upgrade of fenestration, and signage, fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development;*
2. *Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:*
 - a) *the works fall within the scope of Section 4(1)(h); and*
 - b) *the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises.”*

- 1) The replacement of the windows, doors, and the repainting of the façade and boundary wall is consistent with the neighbouring properties and these elements can be considered to come under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore considered exempt development; while the replacement of the signs and flags do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are not exempted development.
- 2) The alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are not exempted development.
- 3) Having regard to the material consequences with respect to the proper planning and sustainable development of the area, it is considered that a material change of use has occurred and this also has intensified the overall use of the licensed premises. This is development and further to this, there are no circumstances where the change of use would be 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
 - Articles 9 of the Planning and Development Regulations 2001 (as amended),
- 1) The replacement of the windows, doors, and the repainting is consistent with the neighbouring properties and these elements can be considered to come under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore considered exempt development;
 - 2) The replacement of the signs and flags do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are **not** exempted development.
 - 3) The alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised

section at the northern end of the garden bar) do not fall under the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and are **not** exempted development. Further to this, it is considered that a material change of use has occurred and this also has intensified the overall use of the licensed premises. This is **not** exempted development.



Mary Doyle
Executive Planner

**The Development Management Section,
Community, Culture & Placemaking
Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork.**

13 October 2023

Re: Request for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) in regard to the exempted alterations and improvements to the Southern Star, 9, Southern Road Cork.

Dear Sir/Madam,

We act for Conor Murphy who is the licensee of the Southern Star licensed premises at 9, Southern Road Cork and request on his behalf a Declaration under Section 5 of the Planning and Development Act 2000 (as amended)¹ in regard to the current planning status of the premises. We enclose the statutory fee of €80 and the completed application form.

This request is submitted in response to correspondence received on 28/06/23 from the Enforcement Section of the Planning Department which raised concerns in regard to:

- (a) the alterations to the façade involving the installation of new signage and the installation of an archway over the side gate to the garden bar which have allegedly changed the external appearance of the premises;
- (b) the removal of existing sheds and outbuildings and their replacement with canopies, outdoor heaters, external speakers and a trailer kitchen unit and the expansion of the garden bar across two levels which have allegedly intensified the overall use of the licensed premises.

In response to these concerns it is acknowledged that:

- (a) The erection of the decorative arch over the side entrance; and
- (b) The erection of a canopy over the raised area at the northern end of the garden bar

may be outside the scope of Section 4(1)(h) and no declaration is sought in regard to these works. The request is therefore confined to the planning status of the remaining alterations and improvements.

There are two questions to be determined in this request:

¹ Hereafter referred to as "the Planning Act"



1. Whether the alterations to the façade of the Southern Star involving the upgrade of the fenestration and signage fall within the scope of Section 4(1)(h) of the Planning Act and are therefore exempted development; and
2. Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:
 - a. the works fall with the scope of Section 4(1)(h); and
 - b. the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises.

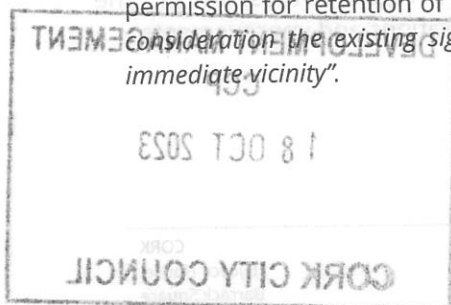
Planning History of the Site

The site has been occupied by the existing licensed premises since before commencement the Planning Act in October 1964. We attach as Appendix 1 the site location map for Folio 183045F which identifies the boundary of the licensed premises and an aerial photo which shows the extent of the roofed structures within the garden bar prior to the recent alterations and improvements. We also attach as Appendix 2 the maps and drawings submitted with the licence application which confirms that the gardens bar forms part of the licensed area.

According to the planning register the following planning applications were made within the licensed area since the commencement of the Planning Act:

Reference	Date	Description	Decision
TP 05/05156	14/01/75	Retention of advertising sign	Permission
TP 83/11197	09/02/83	Ancillary miscellaneous	Permission
TP 86/13367	16/11/86	Retention of advertising hoarding	Permission
TP 01/25304	07/09/01	Retention of telecoms antennae	Permission
TP 06/31240 PL 28.220800	12/09/06	Retention of tri-vision rotating sign	Refusal

It appears that all of these applications related to signage or telecoms structures on the southern gable of the licensed premises and no enforcement issues were raised during the assessment of any of these applications in regard to the nature and extent of the signage (including flags) on the front elevation of the premises. It is reasonable to expect that the applications would have included retention of alterations to the front elevation if there were any concerns regarding the planning status of the fenestration or signage on the façade throughout the period from the commencement of the Planning Act to the most recent decision which was made by An Bord Pleanála on 16/04/07. The Board's decision to refuse permission for retention of a large illuminated rotating sign under PL 28.220800 was made "taking into consideration the existing signage and telecommunications antennae on the building already and in the immediate vicinity".



The elevation drawings and the photographs attached to Planning Register 06/31240 (PL 28.220800) show that, when that application was being assessed by the planning authority and the Board:

- (a) there were already several signs and flags on the front elevation of the premises and
- (b) there were roofed structures within the garden bar area along the gable end of the premises.

In our opinion the fact that neither the planning officer nor the Board's Inspector raised any concerns in regard to the planning status of the front elevation or the garden bar indicates that, apart from the installation of a tri-vision sign on the gable wall, there was no other unauthorised aspects to the external appearance or use of the premises. The planning status of the premises in April 2007 therefore provides a benchmark against which the current status of the premises should be assessed.

Planning Policy Framework

In the Cork City Development Plan 2022-2028, the site is zoned *ZO 01 Sustainable Residential Neighbourhood* and is not designated as part of an *Architectural Conservation Area* or an *Area of High Landscape Value*. Paragraph ZO 1.1 states that

"While they are predominantly residential in character these areas are not homogenous in terms of land uses and include a mix of uses. The vision for sustainable residential development in Cork City is one of sustainable residential neighbourhoods where a range of residential accommodation, open space, local services and community facilities are available within easy reach of residents."

This is an important consideration in assessing the materiality of any change in the character of a licensed premises which provides an important local service with the ZO 01 zone.

The Council's policy on commercial leisure uses is set out in paragraphs 7.60 and 7.61, which state that

"Commercial leisure facilities are those run on a profit basis and include cinemas, family entertainment centres such as bowling, indoor children's play centres, fitness centres, gyms, swimming pools, hotels, restaurants, public houses etc. Commercial leisure facilities generate a high level of movement and are best located in places that offer the highest levels of accessibility to a range of transport modes, in particular public transport."

However, it is also important to protect the amenities of the City Centre and of residential areas. The City Council will therefore seek to control the location, size and activities of entertainment uses that are likely to attract large numbers of people, in particular 'super-pubs' and night clubs, in order to safeguard residential amenity, environmental quality and the established character and function of parts of the City Centre"

The site is located within walking distance of the City Centre and is well served by public transport and cycle routes. It also has a relatively high background noise level due to the fact that it immediately adjoins the heavily trafficked N27 National Primary Route and the R610 Regional Route.

Alterations to the Facade

We attach as Appendix 3 a series of photographs of the southern and eastern elevations showing the evolution of the external appearance of the premises since the most recent planning decision in April 2007. In our opinion there has been remarkably little change to the street façade over the intervening 16 years. While there have been slight changes in the fenestration these have improved the character of the structure. Similarly, the replacement of existing signs and flags has reduced the amount of visual

clutter. In general, therefore, the changes to the façade were beneficial and they fall within the scope of Section 4(1)(h) of the Planning Act as they:

“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”.

We note that the correspondence issued by the Enforcement Section simply states that these alterations are considered to have materially changed the external appearance of the structure and are therefore not exempt under Section 4(1)(h). Without prejudice to our argument that no material change has actually occurred, we wish to point out that an exemption under Section 4(1)(h) cannot be denied solely on the grounds that there has been a material change, it must also be shown that the change is *“inconsistent with the character of the structure and or neighbouring structures”*. In this case, the photographs in Appendix 3 demonstrate that there has been no perceptible change in the external appearance and character of the Southern Star since 2007.

As previously noted our client intends to remove the arch over the side entrance on the basis that it is a material change even though it could be considered to be an attractive feature which does not adversely affect the overall character of the premises.

Physical Alterations to the Garden Bar

We attach as Appendix 4 a statement by the previous licensee Niall Murphy which explains how the garden bar was used as part of the licensed premises before the recent works. This clarifies that:

- (a) the garden bar has been a feature of the licensed premise for many years;
- (b) the way in which the garden bar has been used has evolved over time due to the smoking ban and the Covid restrictions
- (c) The garden bar has consistently been used for food and beverage and has included a servery, outdoor heating and external speakers;
- (d) As the food and beverage sector is competitive and highly regulated, frequent upgrades to the standard of the equipment and fittings are required to maintain compliance and viability;
- (e) In the case of the Southern Star the necessary upgrades to the garden involved replacing corrugated roofing with canvas awnings and improving circulation by removing partition walls.

As previously noted, this request for a Section 5 Declaration excludes the canopy over the raised section at the northern end of the site and is confined to alterations or improvements to the part of the garden bar which was previously roofed. These works are entitled to exemption under Section 4(1)(h) in so far as they 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”*. As the alterations are at ground floor level, they are largely screened from the public road by the high boundary wall and panel gate. While some of the roofs may be visible, the use of canvas awnings is now a typical feature of pavement cafes and garden bars and is consistent with the normal character of a licensed premises.

Alleged Intensification of Use of the Garden Bar

The letter from the Enforcement Section dated 28/06/23 claimed that works carried out within the garden bar *“have intensified the overall use of the beer garden and therefore are also not considered to be exempted development”*. This seems to imply that, while the works may not actually require permission in

themselves they may be deemed to be unauthorised in this case to the extent that they may facilitate a significantly increased level of activity.

This allegation may be based on what is described as *"the expansion of the beer garden across two levels"*. As previously noted, the applicant intends to remove the canopy at the northern end of the garden bar and the raised area will only be used for ancillary open storage.

In our opinion it is important to make a clear distinction between two separate issues which have been raised by the Enforcement Section in regard to the garden bar area:

- (a) whether the alterations and improvement **works**, in themselves, would require planning permission; and
- (b) whether the works (which may be exempt) have resulted in a change or an intensification of **use** of the garden bar which requires permission because it falls with the definition of "development" in Section 3 of the Planning Act

It has been established in case law and has been confirmed in referral decisions of An Bord Pleanala, that planning permission is only required for a change or intensification of use if the planning authority or the Board have formally determined that the change or intensification would be **material** from a planning viewpoint. The most relevant case law in regard to "materiality" of changes of use under Section 3 of the 2000 Act are the judgements of Barron J. in *McMahon v Dublin Corporation* [1996 WJSC-HC 4138] and *Galway County Council v Lackagh Rock Ltd* [1985 WJSC-HC 1197]. These cases had due regard to the site-specific context and established that there are two main criteria in the assessment of materiality:

- (a) whether the "essential character" of the use has changed; and
- (b) whether the change of use has any effects on the environment of the site

In the case of *McMahon v Dublin Corporation*, the Court found that the planning authority could not have envisaged, when permission was granted for a cluster of family dwelling houses, that some of the units would be rented out to tourists. The Court concluded that a house that is occupied by the same family for several years has a different essential character to a house that is rented out for short term letting and that these impacts could not have been anticipated by the planning authority or third parties when the development as then proposed was being assessed prior to the grant of permission.

This type of unforeseen change in the essential character of the property does not apply in this case having regard to the fact that:

- (a) The property has consistently been used as a licensed premises since before the Planning Act came into operation;
- (b) The external appearance of the premises has not materially changed over the years and has always presented as a licensed premises;
- (c) In so far as there has been any change in the way that food and beverage is served to customers these changes are common to all licensed premises as they have adapted to changes in consumer demand, licensing laws and health and safety regulations.

In our opinion there has been no change in the essential character of the Southern Star as a licensed premises since before the Planning Act came into operation.

In regard to *Galway County Council v Lackagh Rock Ltd.*, the Court found that there is an onus on the planning authority, in considering the materiality of a change of use, to show that there are additional effects on the environment of the site arising from the change or intensification of the use. This would only be the case if:

- (a) there was a significant increase in physical and measurable effects such as traffic, air or noise emissions or hours of operation and,
- (b) there was limited capacity in the receiving environment to cope with the additional effects.

Any assessment of the intensity of use should apply to the entire area of the licensed premises and not just to the specific area where the improvement works were carried out. The use of the garden bar as an integral part of the licensed premises was established before the improvement works were carried out. The fact that food and beverage is regularly served in a garden bar as well as within the main building is typical of the way that all licensed premises have responded over the years to the smoking ban, Covid regulations and changes in consumer preferences. A gradual redistribution of furniture and activity within a licensed premises does not mean that there has been any overall increase in the intensity of use

A recent report from the Drinks Industry Group of Ireland (DIGI) has highlighted the fact that there has been a gradual decline in patronage of licensed premises since 2005. Analysis of Revenue license data and an economic and social analysis by Dublin City University (DCU) shows a 21.2% decline in the number of pubs in Ireland from 2005 to 2021 with a higher than average decline in County Cork (28.5%). In that context the alterations and improvements carried out to the Southern Star could be seen to be essential investment to maintain viability in a declining market rather than a material intensification of an established use.

Fluctuations in turnover apply across all retail sectors and it would be unreasonable for any planning authority to penalise commercial success by requiring an application for retention of intensification of use from local services which appear to be experiencing an increase in consumer demand. In view of the High Court's decision in *Galway County Council v Lackagh Rock Ltd.*, permission should only be required to upgrade a licensed premises if it involved a significant measurable increase in traffic and noise in a relatively quiet area with poor connectivity.

The Southern Star has capacity to cater for an increase in demand as it is within walking distance of the City Centre and Southern Road well served by bus and cycle routes. The site has a relatively high background noise level due to the proximity to two major traffic arteries. As a result, there would be no perceptible impact on the receiving environment if the recent improvements led to some increase in patronage.

Relevant Precedent

A relevant precedent is the Section 5 decision made by An Bord Pleanála under ABP-307417-20 in response to a referral in regard to the Kilmainham Hilton Hotel in Dublin 8. The planning authority had decided that alterations to the ground floor and basement, which had increased the number of bedrooms by 8%, constituted a material intensification of the use of the hotel and that the change of use of some floorspace from office to residential would be a material change of use.

The Inspector noted that the case law in *Galway County Council v Lackagh Rock Ltd.* put the onus on the Planning Authority to prove that the alleged intensification of activity amounted to a material change of use. In the case of the Hilton Hotel the Board overturned the planning authority's decision on the grounds that:

1. *the amendments to the existing hotel at basement and ground floor levels resulting in 10 number additional bedrooms with ancillary uses do not constitute a material change of use,*



2. *the amendments would not constitute an intensification of use or have any material planning impacts over and above the existing operation of the established hotel use or any material consequences in terms of the proper planning and sustainable development of the area,*
3. *the use of the premises remains as established hotel use and is not development, as defined under section 3 of the Planning and Development Act, 2000 (as amended),*
4. *the alterations to the external elevations come under the provision of section 4(1)(h) of the Planning and Development Act, 2001 (as amended) and, as such, are exempted development.*

In our opinion this case is particularly relevant as it undermines the basis for Cork City Council's allegation that there has been a material intensification of the overall use of the Southern Star as a result of the reordering of the garden bar.

Summary and Conclusion

There are two questions to be determined in this request:

1. **Whether the alterations to the façade of the Southern Star involving the upgrade of the fenestration and signage (but excluding the arch over the side entrance) fall with the scope of Section 4(1)(h) of the Planning Act are therefore exempted development.**

This question should be determined on the basis of two criteria:

- (i) Whether there was a **material** changes in the external appearance of the Southern Star; and
- (ii) Whether altered appearance would be inconsistent with the established character of the Southern Star.

The planning history of the site shows that the relevant benchmark is the appearance of the licensed premises in April 2007 when any unauthorised aspects were addressed by the planning authority and An Bord Pleanála. We would argue that, notwithstanding the letter issued by the Enforcement Section on 28/06/23, there have been no material alterations to the external appearance or character of the Southern Star since that date.

The recent improvements to the fenestration and signage are therefore exempt under Section 4(1)(h) of the Planning Act

2. **Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings of a similar footprint (but excluding the canopy over the raised area at the northern end) are exempted development because:**

- (i) **the works fall with the scope of Section 4(1)(h);**
- (ii) **the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises.**

(i) The relevant alteration and improvement works within the garden bar did not materially affect the external appearance of the Southern Star because:

- the works involved the replacement of pre-existing roofed structures with canvas awnings of similar height and footprint;
- the awnings are largely screened by the perimeter walls and panel gate;

- the furniture, fittings and catering equipment within the garden bar are movable and do not fall within the definition of structures.
- the design and external finish of the upgrade works to the garden bar are of a high standard and are consistent with the normal character of a licensed premises.

(ii) The works within the garden bar did not result in any material change or intensification of the overall use of the Southern Star as a licensed premises because:

- The works did not facilitate any material change in 'the essential nature' of the Southern Star as a licensed premises.
- The works did not facilitate any material change in the intensity of the overall use of the Southern Star.
- As the site is located in an area which has a high background noise level and is well served by public transport, the alterations and improvements to the garden bar could not have any material planning impacts over and above the long-established use of the licensed premises.

We therefore request the planning authority to issue a Declaration under Section 5 of the Planning Act confirming that the recent alterations and improvement works to the Southern Star (excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development under Section 4(1)(h) and that the current use of the garden bar is not development as it does not involve any material change or intensification of the established use of the Southern Star as a licensed premises.

Yours sincerely

Brian McCutcheon

Brian McCutcheon
McCutcheon Halley

Appendices

1. Site location map for Folio 183045F and aerial photo of roofed structures within the garden bar
2. Drawings submitted with the licence application
3. Historic photographs of the external appearance of the premises
4. Letter of consent and statement by the owner and former licensee Niall Murphy



COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924709

Lionra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Conor Murphy

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

The Southern Star, 9 Southern Road, Cork T12 WN83

3. QUESTION/ DECLARATION DETAILS

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

1. Whether the alterations to the façade of the Southern Star involving the upgrade of the fenestration and signage fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and are therefore exempted development; and
2. Whether the alterations and improvements to the garden bar of the Southern Star comprising the upgrade of the furniture and fittings and the replacement of roof structures with canvas awnings with a similar footprint (but excluding the arch and the canopy over the raised section at the northern end of the garden bar) are exempted development because:
 - a. the works fall with the scope of Section 4(1)(h); and
 - b. the works were not carried out to facilitate any material change or intensification of the overall use of the licensed premises.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The alteration and improvement works comprised:

Front Elevation: replacement of windows and doors, repainting of façade; replacement of preexisting signs and flags

Side Entrance: replacement of side door; and repainting of boundary wall.

Outdoor Area: replacement of existing roofed structures with new canopies and awnings and new catering furniture and fittings

4. Are you aware of any enforcement proceedings connected to this site? Yes
If so please supply details: Section 152 Warning Letter and Section 8 Notice issued on 13th January 2023

5. Is this a Protected Structure or within the curtilage of a Protected Structure? No

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? N/A

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

If so please supply details:
 06/31240 (PL 28.220800) Refusal of retention of advertising sign. 01/25304 Permission for retention of telecommunications antennae and dish

7. 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	N/A
(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)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ <u>previous use</u> (please circle) Licensed premises with garden bar	Proposed/ <u>existing use</u> (please circle) Licensed premises with garden bar

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/>
---	----------	--

Where legal interest is 'Other', please state your interest in the land/structure in question	Tenant and licensee
If you are not the legal owner, please state the name of the owner if available	Niall Murphy

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

Signature: *Bin McEntee*

Date: 13th October 2023

CONFIDENTIAL CONTACT DETAILS

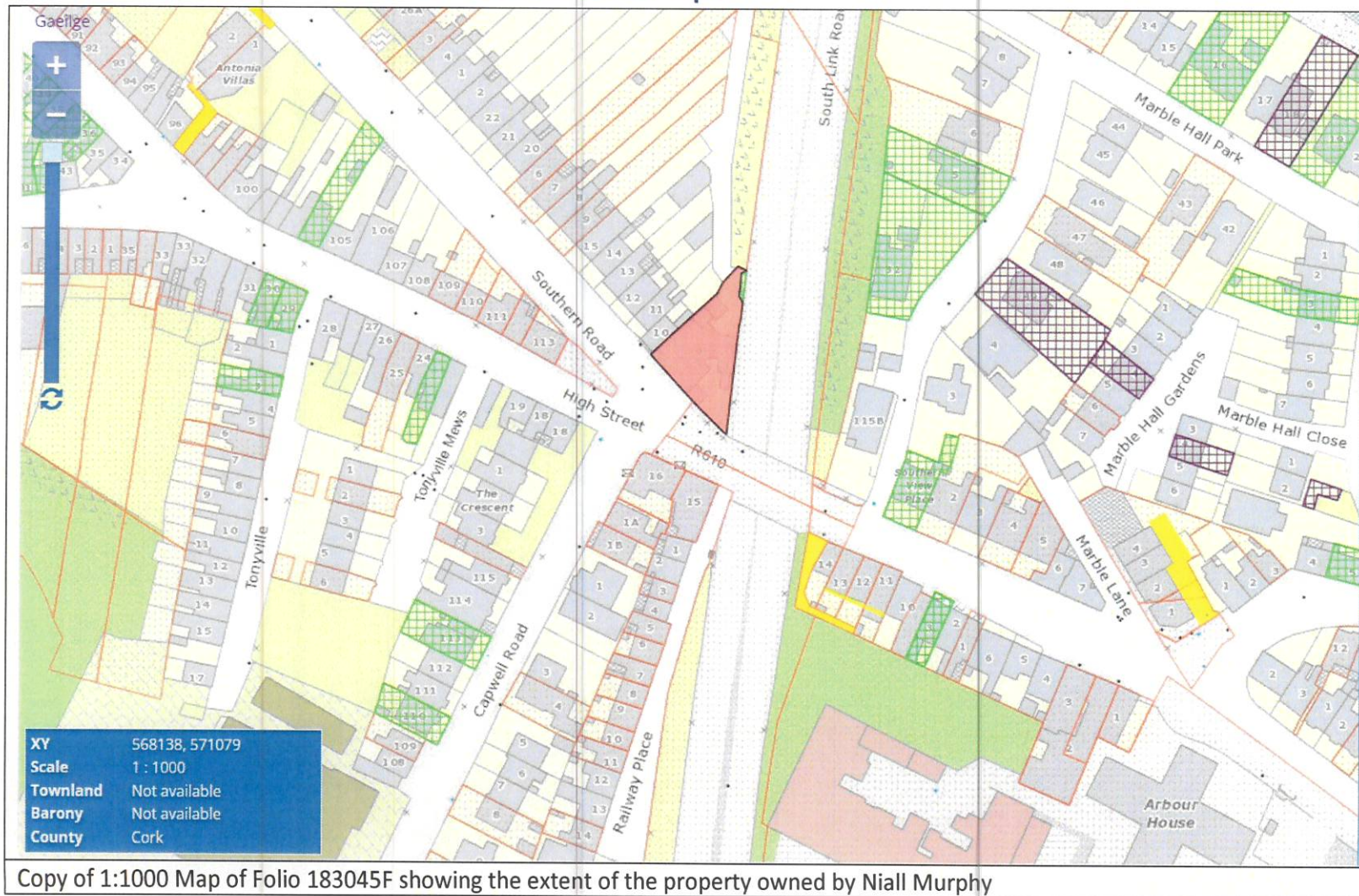
These details will not be made available to the public.

Appendix 1 Site Location and Layout

1.1 Site location Map 1:1000 Showing Extent of Land Ownership

1.2 Aerial Photo Showing Extent of Previous Roofed Structures

1.1 Extent of Land Ownership



1.2 Extent of Previous Roofed Structures

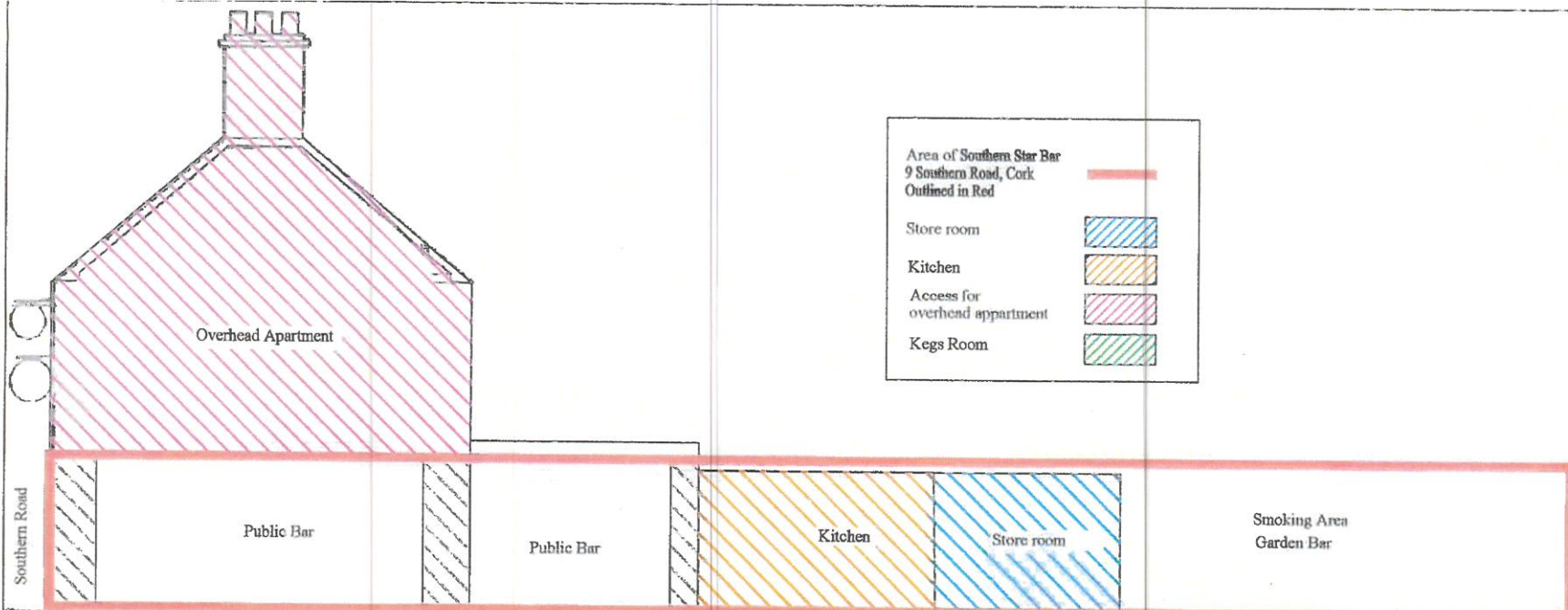


Aerial Photo showing the extent of the roofed structures within the Garden Bar prior to the recent improvements

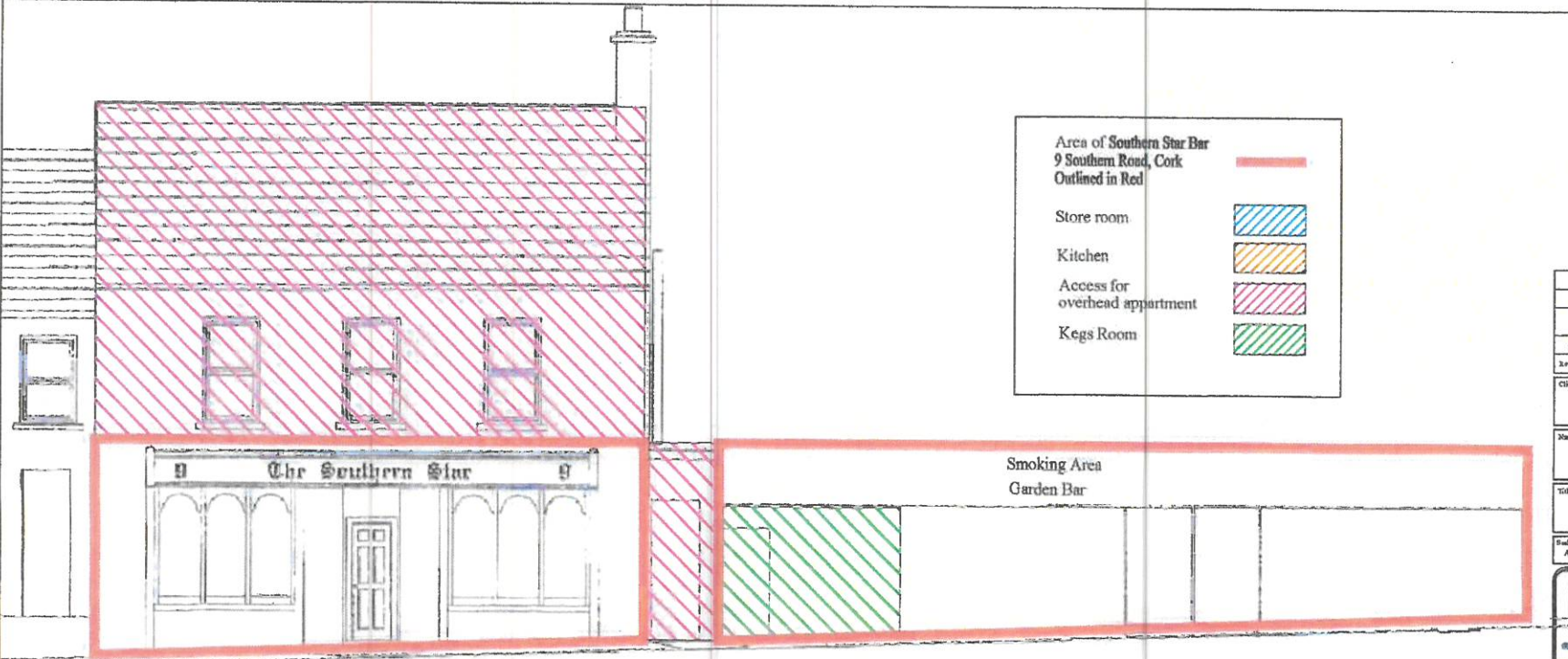
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Appendix 2 Drawings for Licence Application

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Section A-A



FRONT ELEVATION

Rev	Date	Description	Drawn	Checked
A	23.11.23	Issued for Licensing	DK	EW

Client/Addr: Ernest Hogan

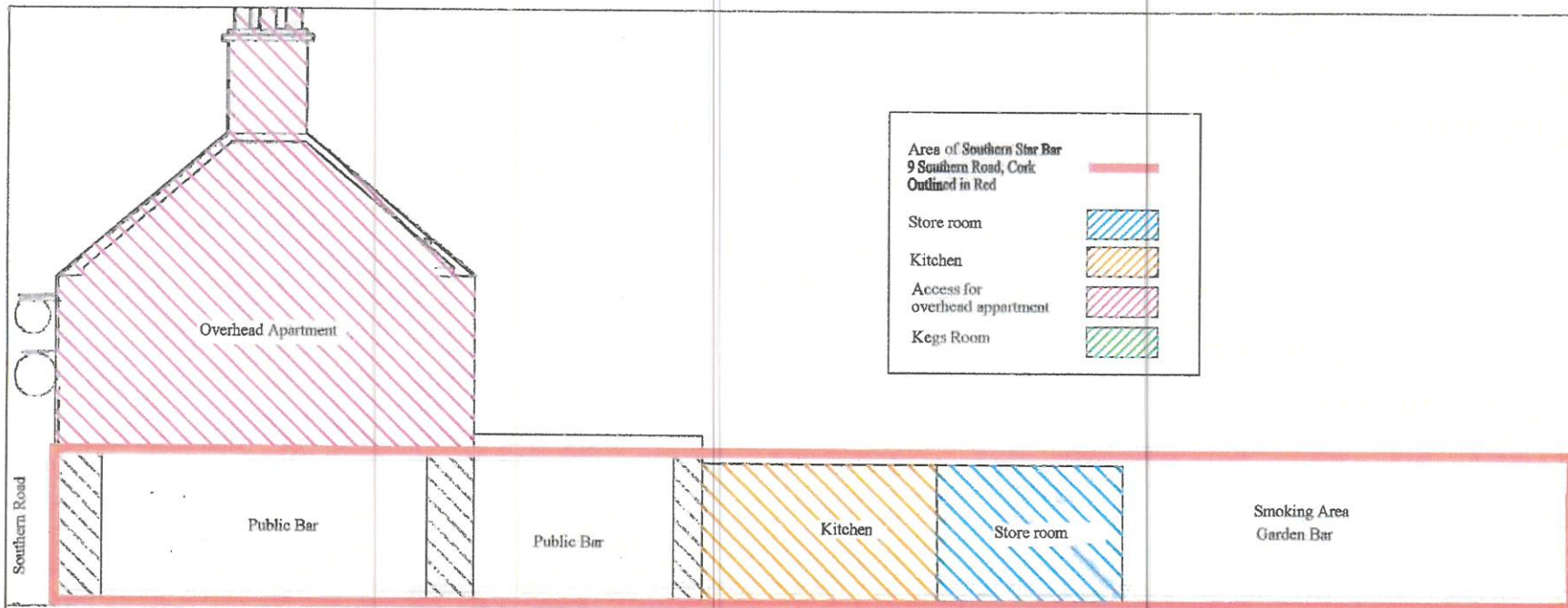
Name of Job: Southern Star Bar
9 SOUTHERN ROAD, T12 WN83

Title of Drawing: Licensing Application, Front Elevation & Section

Scale	Date	Drawn	Checked
A3-420W(A3)	23.11.23	DK	EW

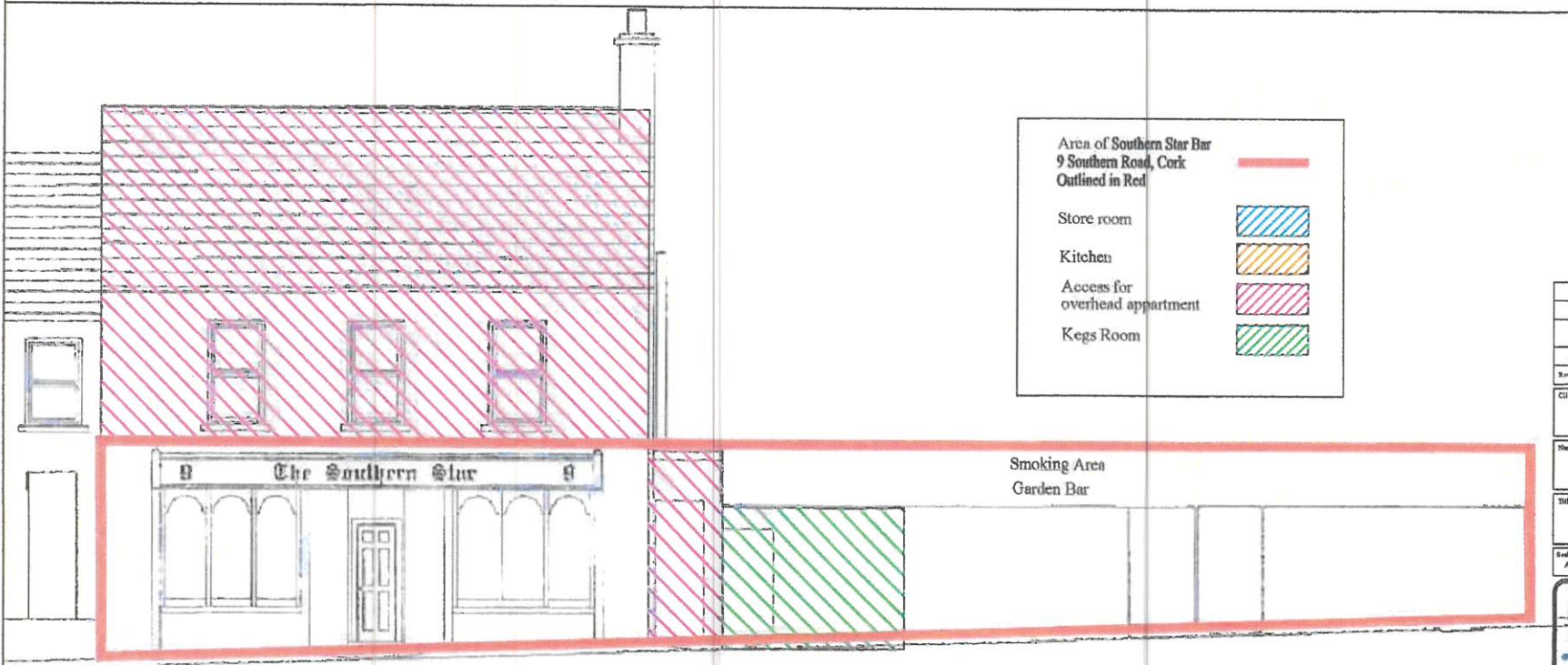
WK Waterman Kolly
CONSULTING CIVIL & STRUCTURAL ENGINEERS

Waterman Kolly, Unit 14A South Ring Shopping Park, Skerries Road, Co. Wick, T12 H9V6, Ireland
9th Colton Quay, Cork, T12 DV9K, Ireland
Web: www.watermankolly.ie | Tel: 021 491 1100 / 4014270 | Email: info@watermankolly.ie



Area of Southern Star Bar
9 Southern Road, Cork
Outlined in Red

- Store room
- Kitchen
- Access for overhead apartment
- Kegs Room



Area of Southern Star Bar
9 Southern Road, Cork
Outlined in Red

- Store room
- Kitchen
- Access for overhead apartment
- Kegs Room

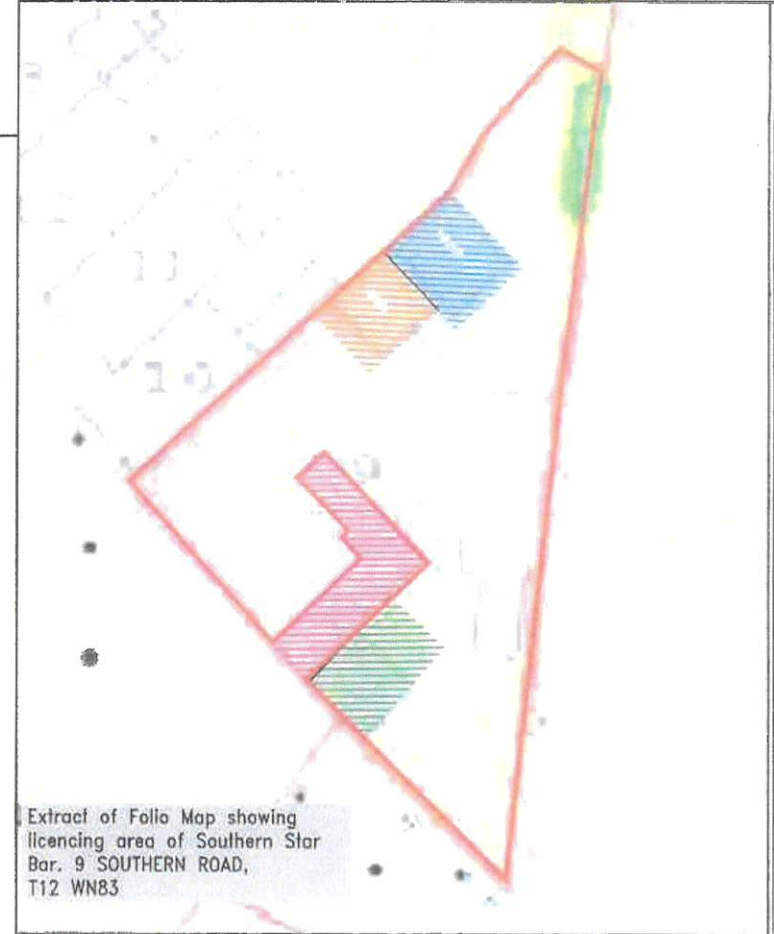
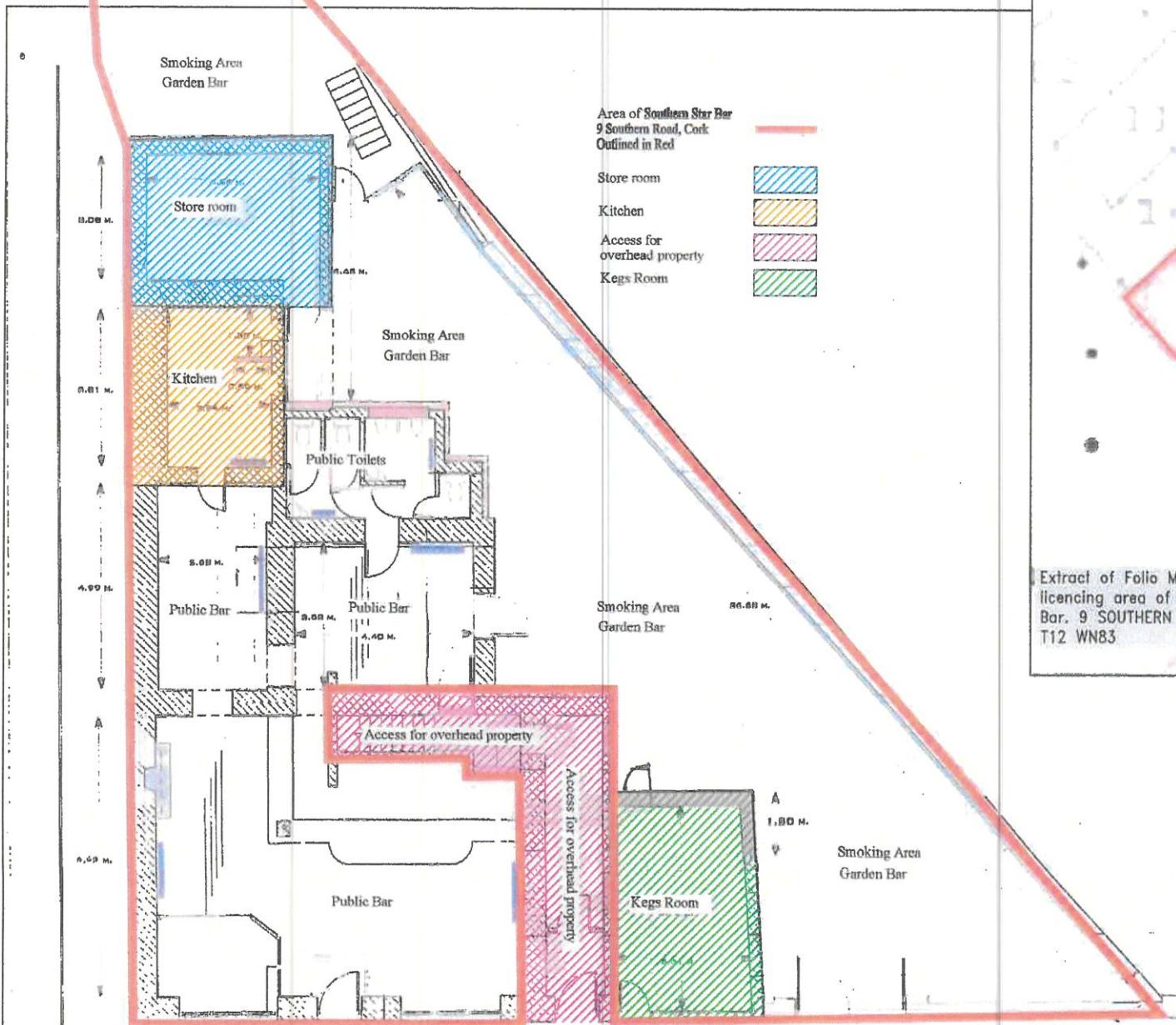
A	23.11.22	Issued for Licensing	EK	EW
Revision	Date	Description	Drawn	Checked
Client/Name	Ernest Hogan			
Name of Job	Southern Star Bar 9 SOUTHERN ROAD, T12 WN83			
Title of Drawing	Licensing Application, Front Elevation & Section			
Scale	Date	Drawn	Checked	
AS SHOWN(S)	23.11.22	EK	EW	

WK Waterman Kelly
CONSULTING CIVIL & STRUCTURAL ENGINEERS

Waterman Kelly, Unit 18A, Bally Hill Business Park, Mallow Road, Cork, T12 1K7H, Ireland
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Rear Access



Scale 1:100

Southern Road

Revision	Date	Description	Drawn	Checked
A	23.11.23	Issued for Licencing	DK	EW

Client/Arch: Ernest Hogan

Name of Job: Southern Star Bar
9 SOUTHERN ROAD, T12 WN83

Title of Drawing: Licencing Application

Drawn	Date	Drawn	Checked
AS-SHOWN(AS)	23.11.23	DK	EW

WK Waterman Kelly
CONSULTING CIVIL & STRUCTURAL ENGINEERS

Waterman Kelly, Unit 10A South Ring Business Park, South Ring Road, Cork, T12 WN83, Ireland
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Web: www.watermankelly.ie | T: 02027 201133 / 409292 | Email: info@watermankelly.ie

3.1 Photos of the Southern Elevation 2009, 2022, 2023



June 2009



July 2022



October 2023

3.2 Photos of the Eastern Elevation 2011, 2022, 2023



September 2011



August 2022



October 2023

Appendix 4 Letter of Consent and Statement by Niall Murphy

12th October 2023

The Secretary
Planning Department
Cork City Council
Anglesea Street
Cork

Dear Sir/Madam

I refer to the request being made by Conor Murphy for a Declaration under Section 5 of the Planning Act in regard to the current planning status of the Southern Star licensed premises at 9 Southern Road, Cork. As the freehold owner of the premises, I hereby confirm my consent to the submission of this request. Furthermore, as the former licensee, I would like to confirm the following details in regard to the layout and previous use of the premises.

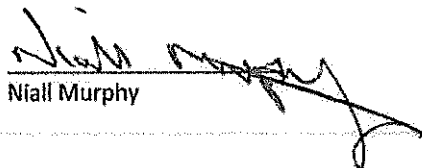
I operated the pub from 1993 until I decided to close the premises in March 2020 after the introduction of the Covid restrictions. During the period when I was the licensee, the customers had access to the garden bar and this area was used for serving food and beverages. As most of the area along the gable end of the main building was roofed, the garden bar was routinely used by customers after the smoking ban was introduced in March 2004.

In my experience, the fact that the garden area was accessible to customers did not result in an intensification of use of the overall premises as it simply meant that the customers were spread over a wider area.

Since the new licensee has taken over, the garden area has been refurbished by replacing the roofed areas with awnings and upgrading the furniture, fittings and catering equipment. In my opinion this upgrade of the premises has been achieved without changing the essential character of the Southern Star or the intensity of the established use of the licensed premises.

From my experience of the hospitality sector the changes made by the current licensees are typical of how the pubs which succeeded in reopening after the pandemic have had to adapt to changes in customer demand.

Yours sincerely,


Niall Murphy