

Comhairle Contae Chorcaí Cork County Council

John Hickey,
c/o Kieran O' Connor,
Clogheen House,
Mourneabbey,
Mallow,
Co. Cork.

Pleanáil agus Forbairt,
Halla an Chontae,
Bóthar Charraig Ruacháin,
Corcaigh T12 R2NC.
Fón: (021) 4276891
R-phost: planninginfo@corkcoco.ie
Suíomh Gréasáin: www.corkcoco.ie
Planning & Development,
County Hall,
Carrigrohane Road, Cork T12 R2NC.
Tel (021) 4276891
Email: planninginfo@corkcoco.ie
Web: www.corkcoco.ie



8th April 2024

REF: D/206/24
LOCATION: Mitchell House, Main Street, Doneraile, Co. Cork.

**RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 - 2010.**

Dear Sir,

On the basis of the information submitted by you on 6th February, 20th March and 5th April 2024 the Planning Authority, having considered the question whether or not the change of use of the ground floor from a retail shop to residential at **Mitchell House, Main Street, Doneraile, Co. Cork** has declared that it is **development and is not exempted development.**

Reason for Decision

The Planning Authority in considering this referral had particular regard to:

- Sections 3 and 4 of the Planning and Development Act, 2000, (as amended)
- Schedule 2, Part 4, Classes 1,2,3 and 6 of the Planning and Development Regulations 2001 (as amended)
- Articles 6 and 9 of the Planning and Development Regulations 2001, (as amended) and
- The particulars received by the Planning Authority on 6th February, 20th March and 5th April 2024

And Whereas Cork County Council has concluded that –

The change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile is **development and is not exempted development.**

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.



We are Cork.



Recycled

Yours faithfully,



**KEVIN O' REGAN,
SENIOR EXECUTIVE OFFICER,
PLANNING DEPARTMENT.**

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <https://www.corkcoco.ie/privacy-statement-cork-county-council>

Planners Report

Section 5 Declaration Reference D/206/24

The Question

Whether the change of use of the ground floor from a retail shop to residential is / is not exempted development for the purposes of the Planning and Development Act.

Site Context

The subject site comprises a three storey property namely Mitchell House which fronts onto Main Street and the R-581-58. There are a mix of residential and commercial properties along both sides of this street. The site is within the development boundary of Doneraile and is partly situated within Doneraile Court Architectural Conservation Area. The applicant notes that no structural changes are proposed to facilitate the change of use.



Figure 1: Site Location within Doneraile village. Source: Site Location Map, as submitted.

Planning History

There is no planning history on record for the subject site.



Figure 2: Front and rear elevations, as submitted.

Appropriate Assessment / Environmental Impact Assessment

Section 4(4) of the PDA 2000 (as amended) de-exempts any development which requires an EIA or AA.

Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations lists the development types which may require an EIA, for the purposes of Part 10 of the Planning and Development Regulations 2001, (as amended).

Having regard to the above, it is considered that the development proposal would not require a mandatory or sub-threshold EIA. Furthermore, having regard for the nature of the development proposal and the distance to the Natura 2000 site, it is considered that the proposal would not trigger the need for an Appropriate Assessment.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

Section 3 (1) states that,

“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”.

“Works includes any act or operation of construction, excavation demolition extension, alteration, repair or renewal”.

Section 4 (1)(h) states:

“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) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted from development for the purposes of the Planning and Development Act.

Planning and Development Regulations, 2001 (as amended)

Article 6, Part 1

“Subject to article 9, development consisting of a class specified in column 1 of part 1 of schedule 2 shall be exempted for the purposes of the Act, provided that such development complied 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.”

In this regard it is noted that there is no exemption listed under Article 6, Schedule 2 of the *Planning and Development Regulations 2001 (as amended)* for the development described as;

“the change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile.”

The proposal consists of a change of use of the ground floor of an existing building. Therefore Section 4 of the *Planning and Development Act 2000 (as amended)* will be relevant to the assessment of this Section 5 Declaration.

In addition, the regulations cited as the *Planning and Development (Amendment)(No.2) Regulations 2018* are applicable and relevant. Sub-article 10(6) of the regulations (S.I. No. 75/2022) are of note. Under Article 9(1), Development to which article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of the development engages one of the de-exemptions listed.

Request of Further Information & Response

The applicant was requested to submit further information in relation to the following:

1. *You are requested to confirm if the structure concerned has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development.*

Response: The applicant’s response confirms that the property was vacant from February 2013 until April 2015 when Mr. Hickey purchased the property. Affidavits have been submitted by Mr. Hickey via email on 05/04/2024.

2. *You are requested to confirm that the structure has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12. Photographic evidence of its current use/state shall be submitted.*

Response: The FI response states: “The structure was used as a typical main street commercial property with residential accommodation above a ground floor shop. The structure of the ground floor has not been altered and consists of a large ground floor unit with storage at the rear. There is a staircase leading to the upper floors via an internal stairwell. The enclosed photos show the ground floor previous commercial unit.”

3. *You are requested to submit a schedule of floor areas and storage spaces to demonstrate that the proposal complies 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”.*

Response: The applicant states that the entire property is proposed as one residential unit and is not sub-divided into individual apartments. The schedule of areas is as follows:

Ground floor: Total Area, 138.5m², Storage Area 25m².

First Floor: Total Area, 77.25m², Storage Area, 9m²

Second Floor: Total Area, 77.25m², Storage Area, 1.5m²

4. *You are requested to demonstrate that rooms for use as habitable rooms shall have adequate natural light. ‘Habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres.*

Response: The FI response states that all habitable rooms in the property have natural ventilation from a window/door except for the internal en-suite on the second floor. This room is ventilated mechanically which is operated with the light switch upon entering the room.

A phone call with Mr. Hickey took place on 05/04/2024 and subsequently affidavits were sent via email also on 05/04/2024 which confirm that Mr. Hickey purchased the property in April 2015. Mr. Hickey also confirmed via email that the change of use from a retail shop to a residential use has already been undertaken at Mitchell House, Main Street, Doneraile and the works were carried out in 2015. It appears from discussions and the submitted documentation that the retail use was abandoned in 2013 by the previous owners and changed to a residential use in 2015 when Mr. Hickey purchased the property.

Assessment

The section 5 pertains to a change of use from retail to residential on the ground floor (40sq.m) of Mitchell House, Main Street, Doneraile. The cover letter dated 23/01/2024 states that no structural changes are required to the building which is welcome as the structure is within an ACA. The application was forwarded to the Conservation Officer but no comments have been received to date.



Class 1: Use as a shop.

Class 2: Use for the provision of (a) financial services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

Class 3: Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

Class 6: Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

Class 12: Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.

Upon receipt of the further information response, it is evident that the property was once in commercial use as the submitted affidavit refers to "Doneraile Stores" however no photographic evidence has been submitted of this previous use. Photographs of the ground floor at present have been submitted which show that the change of use from a retail shop to a residential use has already occurred. The ground floor now appears to be used as a hallway/entrance, kitchen/dining/living space. The applicant has also confirmed via a phone call and via email that these works took place in 2015.

Statutory Instrument No. 30 of 2018 amended Article 10 of the Planning and Development Regulations to provide an exemption, for a temporary period, for the change of use and related works of certain vacant commercial premises to residential without the need to obtain planning permission. The exemption relates to existing buildings that have a **current commercial use** and which fall under Class 1, 2, 3, 6 and 12 of Part 4 to Schedule 2 of the Regulations. The change of use, and any related works, **must occur between when the 2018 Regulation came into operation on 8th February 2018 and the 31st December 2025.** (My emphasis)

It is therefore considered that the applicant cannot avail of this exemption as the property is not a current commercial use as the change of use to residential was undertaken in 2015 and prior to when the Regulation came into effect in 2018. The relevant period on this instance is defined as "the period from 8 February 2018 until 31 December 2025" as per the Regulations.

Recommendation

Having regard to:

- The particulars received by the Planning Authority on 07/02/2024, 20/03/2024 & 05/04/2024
- Sections 3 and 4 of the Planning and Development Act (2000, as amended)
- Schedule 2, Part 4, Classes 1, 2, 3 and 6 of the Planning & Development Regulations 2001 (as amended)
- Articles 6 & 9 of the Planning and Development Regulations (2001, as amended)
- Statutory Instrument No. 75 of 2022.

It is considered that, the change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile “**is development and is not exempted development.**”



Alannah Hurley

Assistant Planner

08/04/2024

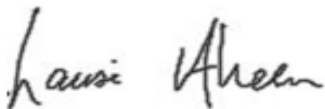
The report of the Area planner is noted and I concur that the subject development is **development** and is **not exempted development.**

Accordingly, whereas a question has been raised regarding whether the change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile is or is not development and is or is not exempted development and having had regard to:

- The particulars received by the Planning Authority on 07/02/2024, 20/03/2024 & 05/04/2024
- Sections 3 and 4 of the Planning and Development Act (2000, as amended)
- Schedule 2, Part 4, Classes 1, 2, 3 and 6 of the Planning & Development Regulations 2001 (as amended)
- Articles 6, 9 and 10 of the Planning and Development Regulations (2001, as amended)
- Statutory Instrument No. 75 of 2022,

it is concluded by the Planning Authority that:

the change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile is **development and is not exempted development.**



Louise Ahern

A/Senior Executive Planner

08/04/2024

Appendix 1 – Article 10(6)

6 (a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

(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

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

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

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(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.

(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

(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.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

Appendix 2 – Photographs of ground floor at present



Shop to back kitchen door

Shop Floor



Back Kitchen

Tracy OCallaghan

From: john Hickey
Sent: Friday 5 April 2024 12:50
To: PlanningInfo
Subject: For the attention of Alannah Hurley
Attachments: Declaration re Possession.pdf

CAUTION FROM CORK COUNTY COUNCIL IT SECURITY: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Alannah,

Further to our conversation today please find attachment from my solicitor .

I wish to confirm that the ground floor of the premises was converted from commercial to residential in 2015.

Ref.No.: D/206/24.

Thank you for your help.

Le meas,

John Hickey

DECLARATION RE POSSESSION

I, RICHARD TOWS, of Allied Irish Banks p.l.c.,


Bankcentre, Ballsbridge, Dublin 4, aged 18 years and upwards

SOLEMNLY AND SINCERELY DECLARE as follows:-

1. This Declaration relates to the property known as Doneraile Stores, Main Street, Doneraile in the County of Cork being property comprised in Folio 20069 F County Cork (hereinafter called "**the Property**").
2. I say that on the 12th day of August 2010 Allied Irish Banks p.l.c. ("**the Bank**") demanded repayment of debts owing by Sharon Woods and Declan Woods to the Bank.
3. I say that on the 31st day of August 2012 the Bank in writing demanded possession of the Property.
4. I say that on the 11th day of April 2013 Declan Woods and Sharon Woods formally surrendered vacant possession of the property to the Bank and signed a Deed of Surrender on said date and I beg to refer to a true copy of the said formal surrender signed by Declan Woods and Sharon Woods and dated the 11th day of April 2013 and upon which marked with the letter "A" I have signed my name prior to the swearing hereof.
5. I make this solemn Declaration, conscientiously believing the same to be true and for the benefit of John Hickey and by virtue of the Statutory Declarations Act, 1938.



Declared before me by the said
Richard Todd
at 168 Pembroke Rd
in the City of Dublin
before me a Commissioner for
Oaths/Practising Solicitor
and I know the Deponent.




**Commissioner for Oaths /
Practising Solicitor**
21/01/2015

CILIAN MCKENNA
SOLICITOR
168 Pembroke Road
Ballsbridge, Dublin 4.

Exhibit "A" referred to in the Declaration re; Possession.

Dated the 21st day of January 2015.

Signed.....

Signed.....
Commissioner for Oaths/Practising Solicitor.

DEED OF SURRENDER

To: AIB Mortgage Bank and
Allied Irish Banks, p.l.c.,
Bankcentre,
Ballsbridge,
Dublin 4.

Dear Sirs,

Pursuant to the Deed of Charge herein dated the 26th of July 2009, we hereby formally surrender vacant possession of ALL THAT AND THOSE the property situated in the townland of Doneraile and being the property comprised in Folio 20069F of the Register County Cork.

Dated the 11th day of *April* 2013

Signed: *Declan Woods*
Declan Woods

Signed: *Sharon Woods*
Sharon Woods

Dated the day of

2012

DEED OF SURRENDER

**BARRY C. GALVIN & SON
SOLICITORS
91, SOUTH MALL
CORK**

DPG/TT/AIB002/0267p

KIERAN O'CONNOR BEng(Hons) HND MIEI
Consulting Engineer/Project Manager
Clogheen House, MourneAbbey, Mallow, Co. Cork.

087/8126698

occonnorkieran6@gmail.com

Tracy O'Callaghan,
Planning Department,
Cork County Council,
County Hall,
Cork.

Wednesday, 20 March 2024

Ref: D/206/24

RE: John Hickey: Mitchell House, Main Street, Doneraile, Co. Cork

Dear Tracy,

1. I have been informed by John Hickey's solicitor that the property was vacant from February 2013 until April 2015 when Mr Hickey purchased the property. Linda Kelleher from Matthew Nagle Solicitors in Mallow can provide affidavits to this effect.
2. The structure was used as a typical main street commercial property with residential accommodation above a ground floor shop. The structure of the ground floor has not been altered and consists of a large ground floor unit with storage at the rear. There is a staircase leading to the upper floors via an internal stairwell. The enclosed photos show the ground floor previous commercial unit.
3. The entire property is proposed as one residential unit and is not sub-divided into individual apartments. The schedule of areas is as follows:
 - a. Ground floor: Total Area, 138.5m², Storage Area 25m².
 - b. First Floor: Total Area, 77.25m², Storage Area, 9m²
 - c. Second Floor: Total Area, 77.25m², Storage Area, 1.5m²
4. All habitable rooms in the property have natural ventilation from a window/door except for the internal en-suite on the second floor. This room is ventilated mechanically which is operated with the light switch upon entering the room.

Kieran O'Connor BEng(Hons) HND MIEI



Shop to back kitchen door



Shop Floor



Back Kitchen

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Web: www.corkcoco.ie

John Hickey,
c/o Kieran O' Connor
Consulting Engineer/Project Manager,
Clogheen House,
Mourneabbey,
Mallow,
Co. Cork.

1st March 2024

REF: D/206/24
LOCATION: Mitchell House Main Street, Doneraile, Co. Cork.

**RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 - 2010.**

Dear Sir,

I refer to your application for a Declaration of Exemption in relation to the above. In respect of the proposal submitted, you are requested to submit the following further information in accordance with Section 5 (2)(b):

1. You are requested to confirm if the structure concerned has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development.
2. You are requested to confirm that the structure has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12. Photographic evidence of its current use/state shall be submitted.
3. You are requested to submit a schedule of floor areas and storage spaces to demonstrate that the proposal complies 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"*.
4. You are requested to demonstrate that rooms for use as habitable rooms shall have adequate natural light. 'Habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres.

Yours faithfully,

Tracy O' Callaghan,
SO Planning Department.

Planners Report

Section 5 Declaration Reference D/206/24

The Question

Whether the change of use of the ground floor from a retail shop to residential is / is not exempted development for the purposes of the Planning and Development Act.

Site Context

The subject site comprises a three storey property namely Mitchell House which fronts onto Main Street and the R-581-58. There are a mix of residential and commercial properties along both sides of this street. The site is within the development boundary of Doneraile and is partly situated within Doneraile Court Architectural Conservation Area. The applicant notes that no structural changes are proposed to facilitate the change of use.



Figure 1: Site Location within Doneraile village. Source: Site Location Map, as submitted.

Planning History

There is no planning history on record for the subject site.



Figure 2: Front and rear elevations, as submitted.

Appropriate Assessment / Environmental Impact Assessment

Section 4(4) of the PDA 2000 (as amended) de-exempts any development which requires an EIA or AA.

Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations lists the development types which may require an EIA, for the purposes of Part 10 of the Planning and Development Regulations 2001, (as amended).

Having regard to the above, it is considered that the development proposal would not require a mandatory or sub-threshold EIA. Furthermore, having regard for the nature of the development proposal and the distance to the Natura 2000 site, it is considered that the proposal would not trigger the need for an Appropriate Assessment.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

Section 3 (1) states that,

“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”.

“Works includes any act or operation of construction, excavation demolition extension, alteration, repair or renewal”.

Section 4 (1)(h) states:

“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) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted from development for the purposes of the Planning and Development Act.

Planning and Development Regulations, 2001 (as amended)

Article 6, Part 1

“Subject to article 9, development consisting of a class specified in column 1 of part 1 of schedule 2 shall be exempted for the purposes of the Act, provided that such development complied 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.”

In this regard it is noted that there is no exemption listed under Article 6, Schedule 2 of the *Planning and Development Regulations 2001 (as amended)* for the development described as;

“the change of use of the ground floor from a retail shop to residential at Mitchell House, Main Street, Doneraile.”

The proposal consists of a change of use of the ground floor of an existing building. Therefore Section 4 of the *Planning and Development Act 2000 (as amended)* will be relevant to the assessment of this Section 5 Declaration.

In addition, the regulations cited as the *Planning and Development (Amendment)(No.2) Regulations 2018* are applicable and relevant. Sub-article 10(6) of the regulations (S.I. No. 75/2022) are of note. Under Article 9(1), Development to which article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of the development engages one of the de-exemptions listed.

Assessment

The section 5 pertains to a change of use from retail to residential on the ground floor (40sq.m) of Mitchell House, Doneraile. The cover letter dated 23/01/2024 states that no structural changes are required to the building which is welcome as the structure is within an ACA. The application was forwarded to the Conservation Officer but no comments have been received to date.



Fig. 3 Ground floor plan change of use outlined in blue.

Having regard to the question posed to the Planning Authority, the proposal constitutes “development” as set out under Section 3 of the Planning and Development Act 2000, in that “works”, which by interpretation as set out under Section 2 of the Act, includes “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal” and a material change of use is proposed to be carried out to the existing building.

The question therefore is whether or not these “works” constitute “exempted development”, for the purposes of this Act.

The key question therefore is whether the proposal is or is not exempted development. As shown above in figure 2, the applicant has outlined in blue the proposed change of use area from retail to residential however, details regarding the proposed internal layout have not been submitted. It is unclear whether internal subdivision of this room is required to facilitate the change of use, if apartments are proposed and how many.

The regulations cited as the *Planning and Development (Amendment)(No.2) Regulations 2018* are noted. Sub-article 10(6) of the regulations (S.I. No. 75/2022) is noted (see Appendix). The exemption applies to existing buildings that have a current commercial use with reference to Classes 1, 2, 3, and

6 of Part 4 to Schedule 2 of the Planning and Development Regulations 2001. The definition of these Classes is set out below:

Class 1: *Use as a shop.*

Class 2: *Use for the provision of (a) financial services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.*

Class 3: *Use as an office, other than a use to which class 2 of this Part of this Schedule applies.*

Class 6: *Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).*

Class 12: *Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.*

The applicant has stated that the current use is a retail/shop, however, the applicant will need to clarify that the structure concerned has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development.

In the event that the applicant wishes to pursue apartment(s) on the ground floor, details including the number of units/beds and a schedule of floor areas and storage spaces are required to demonstrate that the proposal complies 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*”.

The applicant should be requested to demonstrate that rooms for use as habitable rooms have adequate natural light.

Recommendation

It is considered that the Planning Authority does not have sufficient information to determine this Section 5. I recommend that the applicant is requested to submit the following further information in accordance with Section 5 (2)(b):

1. You are requested to confirm if the structure concerned has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development.
2. You are requested to confirm that the structure has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12. Photographic evidence of its current use/state shall be submitted.
3. You are requested to submit a schedule of floor areas and storage spaces to demonstrate that the proposal complies 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”*.

4. You are requested to demonstrate that rooms for use as habitable rooms shall have adequate natural light. ‘Habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres.



Alannah Hurley

Assistant Planner

28/02/2024

Appendix 1 – Article 10(6)

- (6) (a) In this sub-article—
- ‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;
- ‘relevant period’ means the period from 8 February 2018 until 31 December 2025.
- (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
- (c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—
- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
 - (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and
 - (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,
- then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(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.

(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

(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.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

KIERAN O'CONNOR BEng(Hons) HND MIEI
Consulting Engineer/Project Manager
Clogheen House, MourneAbbey, Mallow, Co. Cork.

087/8126698

[oconnorkieran6@gmail.com](mailto:connorkieran6@gmail.com)

Planning Department,
Cork County Council,
County Hall,
Cork.

Tuesday, 06 February 2024


Ref:

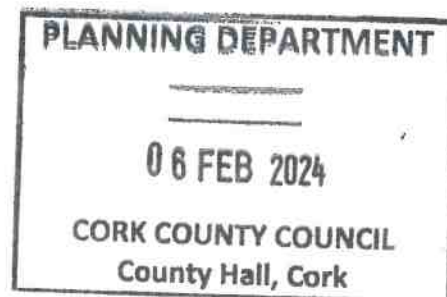
RE: John Hickey: Mitchell House, Main Street, Doneraile, Co. Cork

A Chara,

Please find enclosed the drawings requested for an application for a Section 5 Exemption Cert for the above client and property. The exemption cert is for a change of use from retail to residential on the ground floor. The portion to be changed is outlined with Blue.

Signed:


Kieran O'Connor BEng(Hons) HND MIEI



KIERAN O'CONNOR BEng(Hons) HND MIEI
Consulting Engineer/Project Manager
Clogheen House, MourneAbbey, Mallow, Co. Cork.

087/8126698

oconnorkieran6@gmail.com

Planning Department,
Cork County Council,
County Hall,
Cork.

Tuesday, 23 January 2024

Ref: P/T. 21/04477

RE: Property in Main Street, Doneraile, Co. Cork : John Hickey

A Chara,

Please find enclosed a submission for Section 5 Exemption for the above client. The application is for a change of use from a retail unit on the ground floor to residential. No structural changes are required to the building so I have not included any plans.

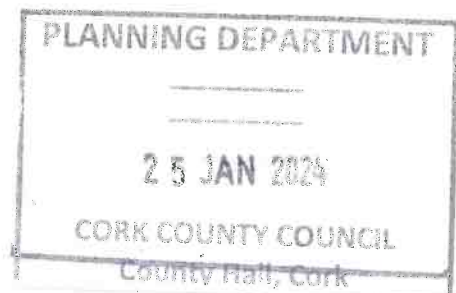
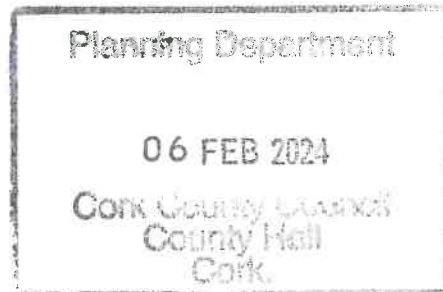
Included are:

1. 4 copies of the application form.
2. 1 copy of contact details.
3. 4 copies of 1:2500 map
4. 4 copies of 1:10560 map
5. Application fee

Signed:



Kieran O'Connor BEng(Hons) HND MIEI





CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

- 4 No. Copies of Application Form:
- 1 No. Copy of Contact Details:
- 4 No. Copies 6" O.S. Maps:
- 4 No. Copies 25" O.S. Maps:
- 4 No. Copies of Site Layout Plan:
- 4 No. Copies Scaled Drawings of Development:
- €80 Application Fee:

(Please tick ✓)

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>



FOR OFFICE USE ONLY

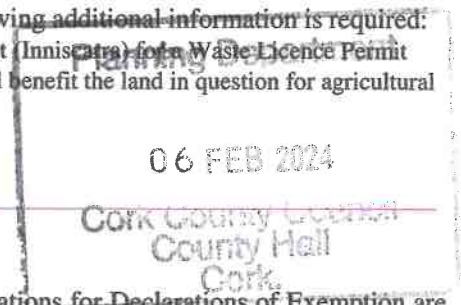
Receipt No.	PLG-0043306
Cash/Cheque/ Credit Card	Cash
Date	6/2/24
Declaration Ref. No.	D/206/24

DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.



DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at <http://www.corkcoco.ie/Privacy-Policy> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

1. NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

John Hickey

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

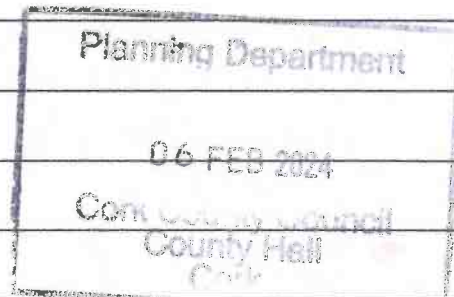
Mitchell House, Main Street, Doneraile, Co. Cork

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought

Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

The change of use for the ground floor from a retail shop to residential.



4. 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 metres (m²)

(a) Floor area of existing/proposed structure(s):	40m ²
(b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1 st October, 1964 (including those for which planning permission has been obtained):	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following: Existing/previous use Retail	Proposed use Residential
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s):

5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:		
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):		

Planning Department
25 JAN 2024
Cork County Council
County Hall
Cork.

6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please state relevant reference No. _____
Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes <input type="checkbox"/> No <input type="checkbox"/>

Planning Department
Cork County Council
County Hall
Cork.

7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <http://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Planning Authority

I give permission for my personal information to be processed for the purpose stated above

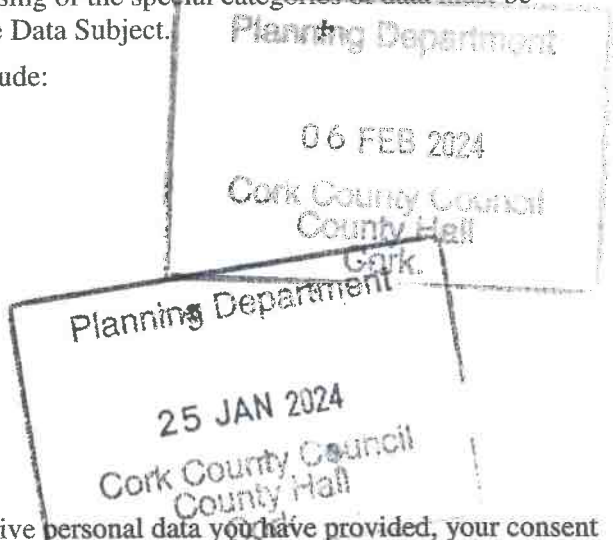
Signed (By Applicant Only)	John D. Mackey
Date	11/01/24

GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation



In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <https://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	John D. Mackey
Date	11/01/24

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please note that all information / supporting documentation submitted will be available publicly to view at the Planning Authority offices.


ADVISORY NOTES:

The application must be accompanied by the required fee of €80
 The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.
 Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.
 The application should be sent to the following address:
 The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and on which the Declaration of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption decision.
- In the event that no Declaration of Exemption is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a Declaration of Exemption was due to be issued by the Planning Authority.

*The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the **Planning** Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations, 2001, as amended.*

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the Planning and Development Acts 2000, as amended and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	
Date	25-01-2024

Planning Department
 25 JAN 2024
 Cork County Council
 County Hall
 Cork.

Planning Department
 06 FEB 2024
 Cork County Council
 County Hall
 Cork.

Site Location Map

CENTRE COORDINATES:
ITM 559998,607379

PUBLISHED:
05/05/2022

ORDER NO.:
50266263_1

MAP SERIES:
6 Inch Raster
6 Inch Raster

MAP SHEETS:
CK017
CK025

Planning Department

25 JAN 2024
Cork County Council
County Hall
Cork.

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

06 FEB 2024

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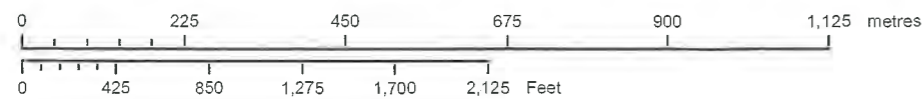
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Output scale is not indicative of data capture scale
Further information is available at:
<http://www.osi.ie>, search 'Capture Resolution'

N



Planning Pack Map

CENTRE COORDINATES:
ITM 559998,607379

PUBLISHED: 05/05/2022 ORDER NO.: 50266263_1

MAP SERIES: 1:2,500 1:2,500 1:2,500 1:2,500
MAP SHEETS: 5747-B 5747-D 5748-A 5748-C

Planning Department
25 JAN 2024
Cork County Council
County Hall
Cork
COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

06 FEB 2024
Cork County Council
County Hall
Cork

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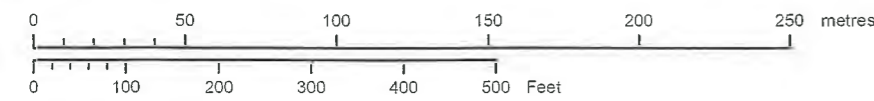
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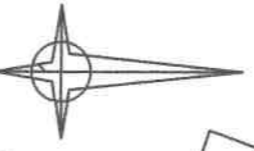
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NORTH

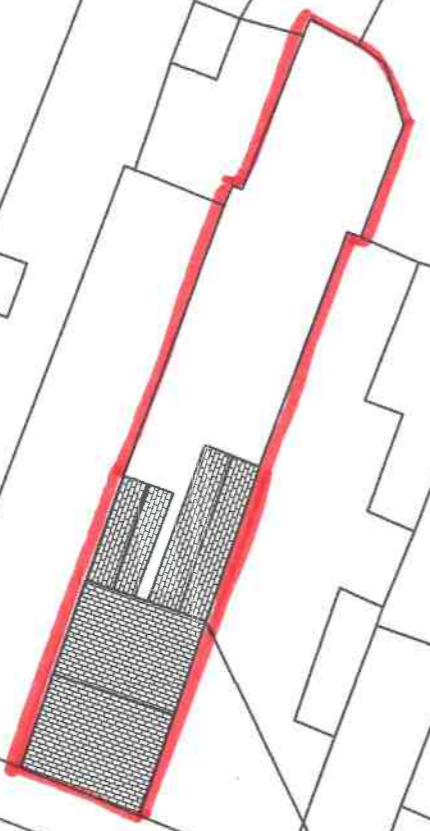


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7



Site Outlined
with Red

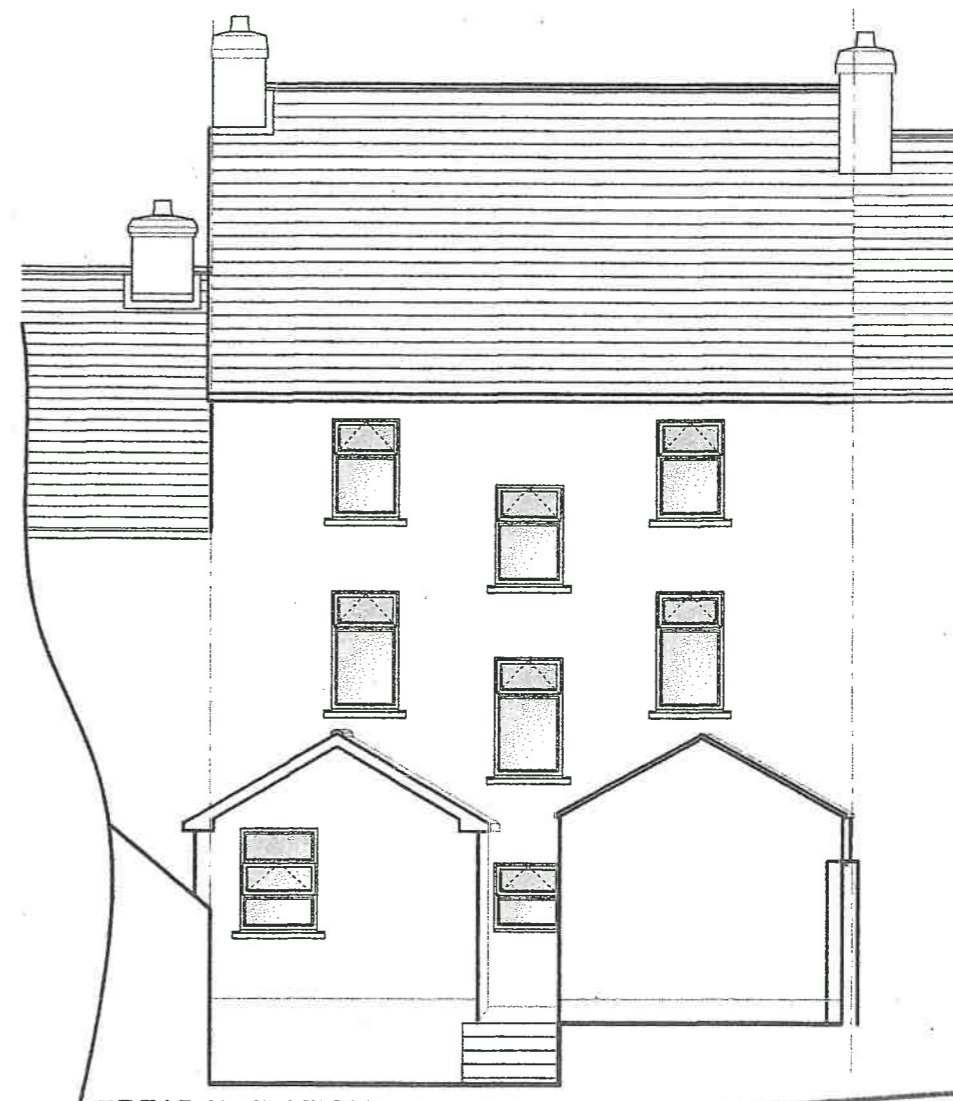
PLANNING DEPARTMENT
06 FEB 2024
CORK COUNTY COUNCIL
County Hall, Cork

Street

Client		Kieran O'Connor, Beng MIEI, Clogheen House, Mallow, Co. Cork. Tel: 087/8126998	
Project		John Hickey Doneraile, Co. Cork.	
Reference	Date	Issue	
1.500	Feb 2024	Site Layout	02-24-JH-3



FRONT ELEVATION (Eastern)
SCALE 1:100

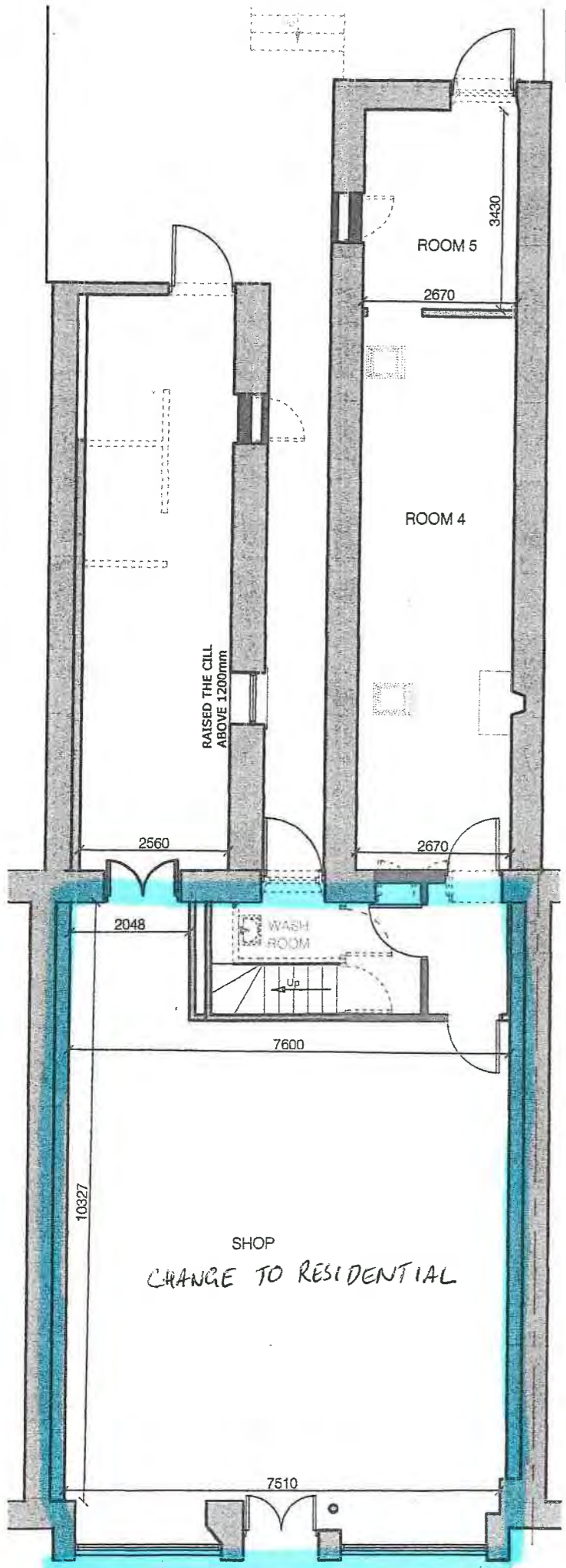


REAR ELEVATION (Western)
SCALE 1:100

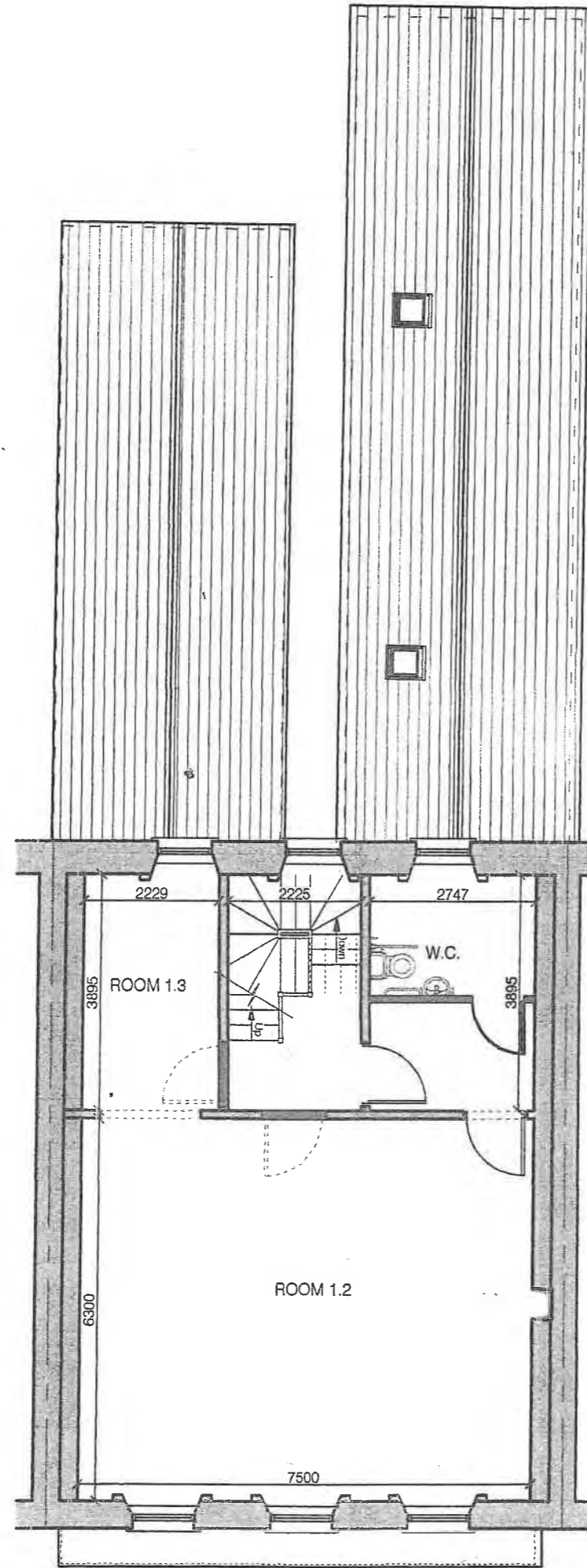
PLANNING DEPARTMENT
06 FEB 2024
CORK COUNTY COUNCIL
County Hall, Cork



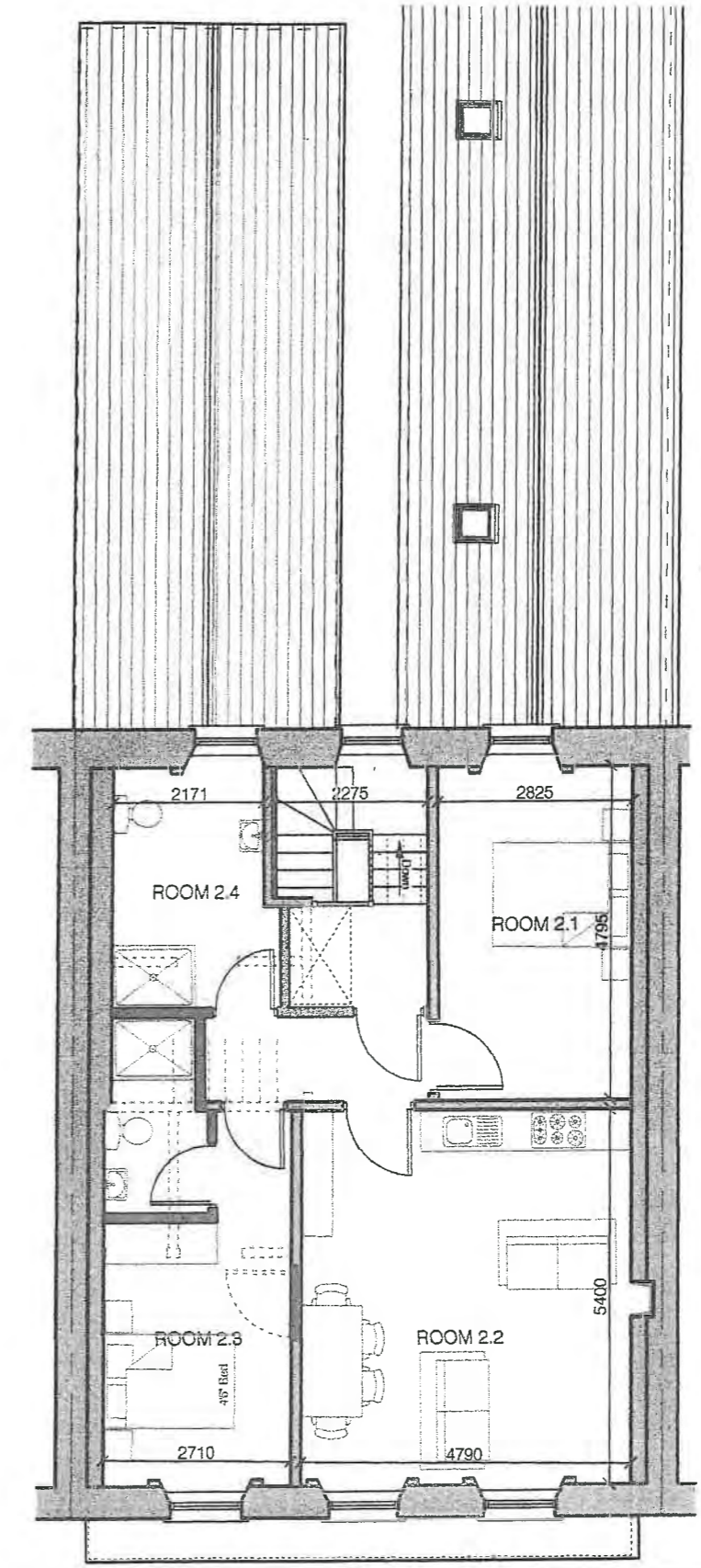
Kieran O'Connor, BEng (Hons) HND MIEI, Clogheen House, Mallow, Co. Cork.		
oconnorkieran6@gmail.com		Tel: 087/8126698
Client: John Hickey, Doneraile, Co. Cork.		
Project: Exemption	Title: Elevations/Section	
Scale: 1:100	Date: Feb 2024	Drawing No: 02-24-JH-2



GROUND FLOOR PLAN



FIRST FLOOR PLAN
SCALE 1:100



SECOND FLOOR PLAN
SCALE 1:100



PLANNING DEPARTMENT
06 FEB 2024
CORK COUNTY COUNCIL
County Hall, Cork

Kieran O'Connor, BEng (Hons) HND MIEI,
Clogheen House, Mallow, Co. Cork.
oconnorkieran6@gmail.com Tel: 087/8126698

Client:
John Hickey,
Doneraile, Co. Cork.

Project: Exemption	Title: Plans
Scale: 1:100	Date: Feb 2024
Drawing No: 02-24-JH-1	