



PLANNING & DEVELOPMENT ACT, 2000 (as amended)

Application for a Section 5 Declaration
Development / Exempted Development

1. Applicant's address/contact details:

Applicant	MICHAEL ENGLISH
Address	FANNAGOWN, TIPPERARY
Telephone No.	[REDACTED]
E-mail	—

2. Agent's (if any) address:

Agent	SEAMUS Mc ELICOTT.
Address	LOMBARDSTOWN, CANTERCAULISH, Co. LIMERICK
Telephone No.	[REDACTED]
E-mail	[REDACTED]
Please advise where all correspondence in relation to this application is to be sent;	
Applicant []	Agent <input checked="" type="checkbox"/>

3. Location of Proposed Development:

Postal Address or Townland or Location (as may best identify the land or structure in question)	No. 48 MAIN STREET, TIPPERARY (REAR OF)
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4. Development Details:

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

CHANGE OF USE OF DISUSED REAR COMMERCIAL
BUILDING TO USE AS RESIDENTIAL APARTMENTS
IS EXEMPT UNDER S.I. No. 30 OF 2018 AMENDING
ARTICLE 10 ALLOWS EXEMPT CHANGE OF USE
FROM 25 MORTH VARDAN COMMERCIAL TO RESIDENTIAL
Proposed floor area of proposed works/uses: 57.83 sqm

5. Legal Interest of Applicant in the Land or Structure:

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Occupier
	C. Other	
Where legal interest is 'Other', please expand further on your interest in the land or structure		
If you are not the legal owner, please state the name and address of the owner	Name:	Address:

Signature of Applicant(s) S. M. C. T. FOR M. ENGLISH Date: 20-2-24.

Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

GUIDANCE NOTES

(1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.

(2) This application should be accompanied by **TWO COPIES** of the following documentation

- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
- Floor Plans & Elevations at a scale of not less than 1:200
- Site layout plan indicating position of proposed development relative to premises and adjoining properties
- Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)

(3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

This application form and relevant fee should be submitted to:

Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary	<u>OR</u>	Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary
Enquires:		
Telephone 0818 06 5000		
E-Mail planning@tipperarycoco.ie		

FOR OFFICE USE ONLY

DATE STAMP

Fee Recd. € _____

Receipt No _____

Date _____

Receipted by _____



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigí Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary
E91 N512

Comhairle Contae
Thiobraid Árann,
Oifigí Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary
E45 A099

t 0818 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

Date: 21st February 2024

Our Ref: S5/24/23

Civic Offices, Clonmel

Michael English
C/o Seamus McElligott
Lombardstown
Caherconlish
Co. Limerick

Re: Application for a Section 5 Declaration – Change of use of disused rear commercial building to use as residential apartments at the rear of No 48 Main Street, Tipperary Town, Co. Tipperary.

A Chara,

I acknowledge receipt of your application for a Section 5 Declaration received on 20th February, 2024, in connection with the above.

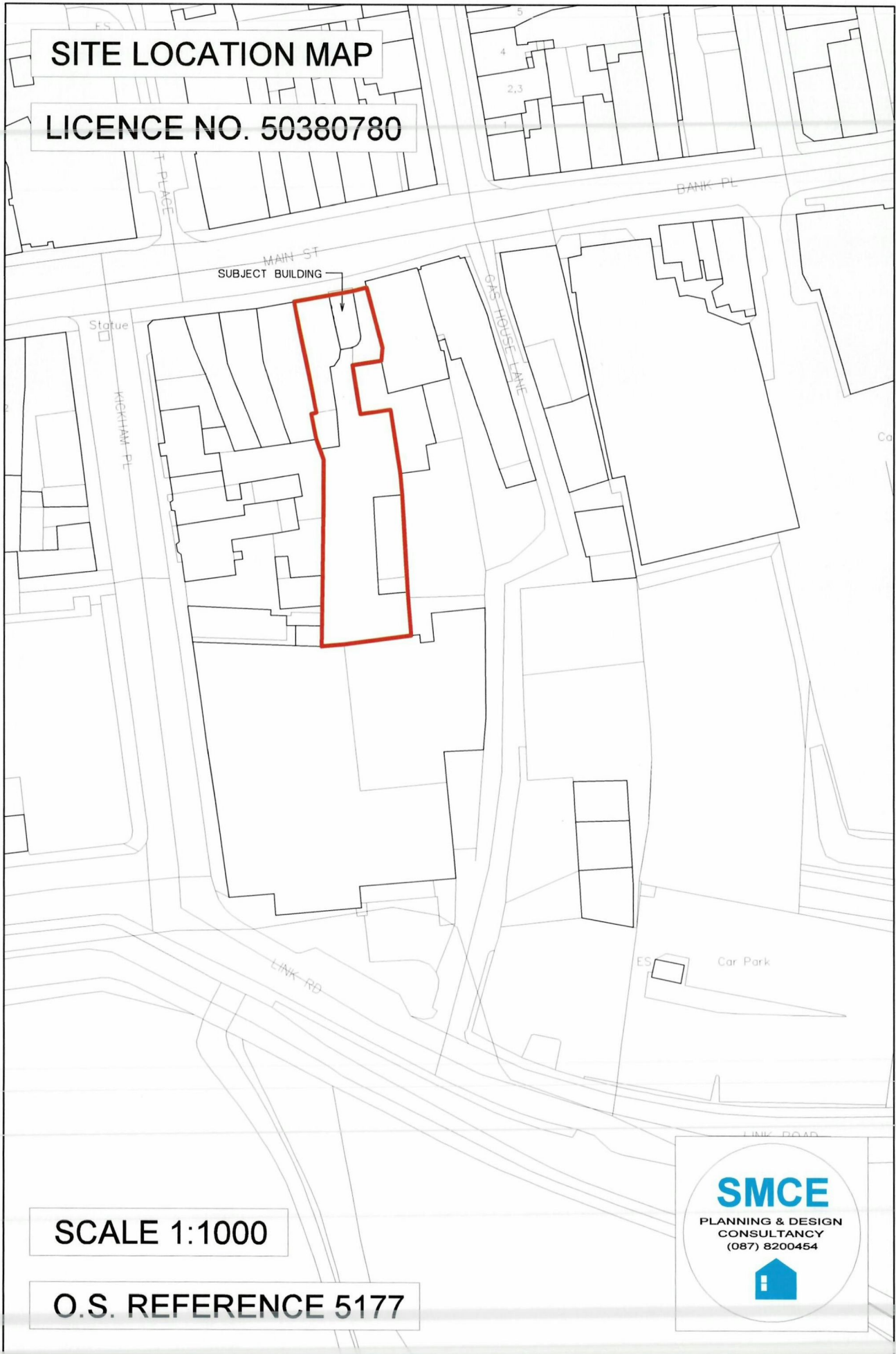
I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully

for **Director of Services**

SITE LOCATION MAP

LICENCE NO. 50380780



SCALE 1:1000

O.S. REFERENCE 5177

SMCE
PLANNING & DESIGN
CONSULTANCY
(087) 8200454



PLANNING SUBMISSION

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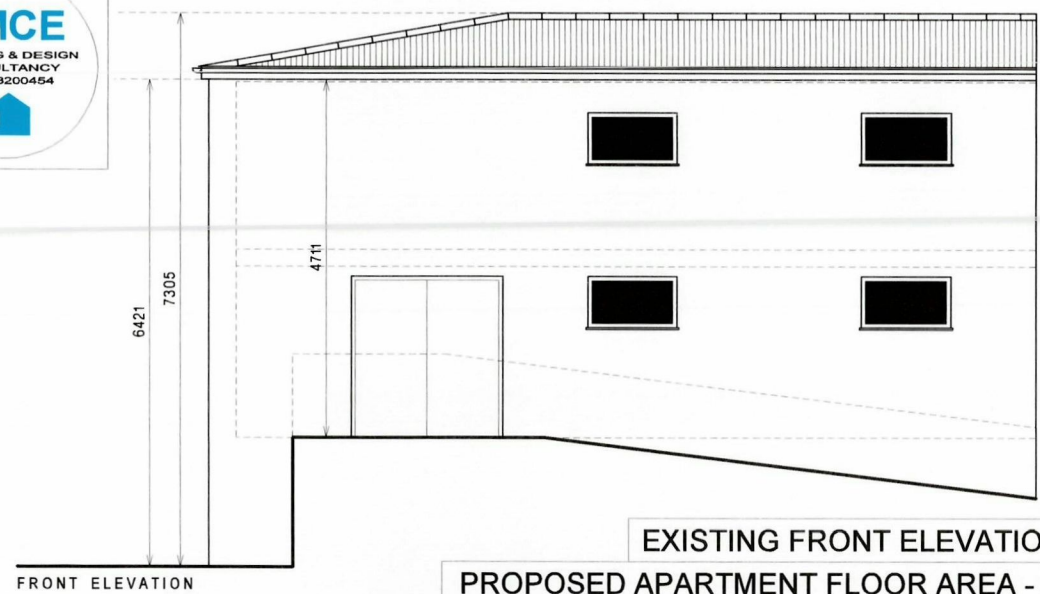


O.S. REFERENCE - 5177

SITE AREA - 0.238 ACRES/0.096Ha

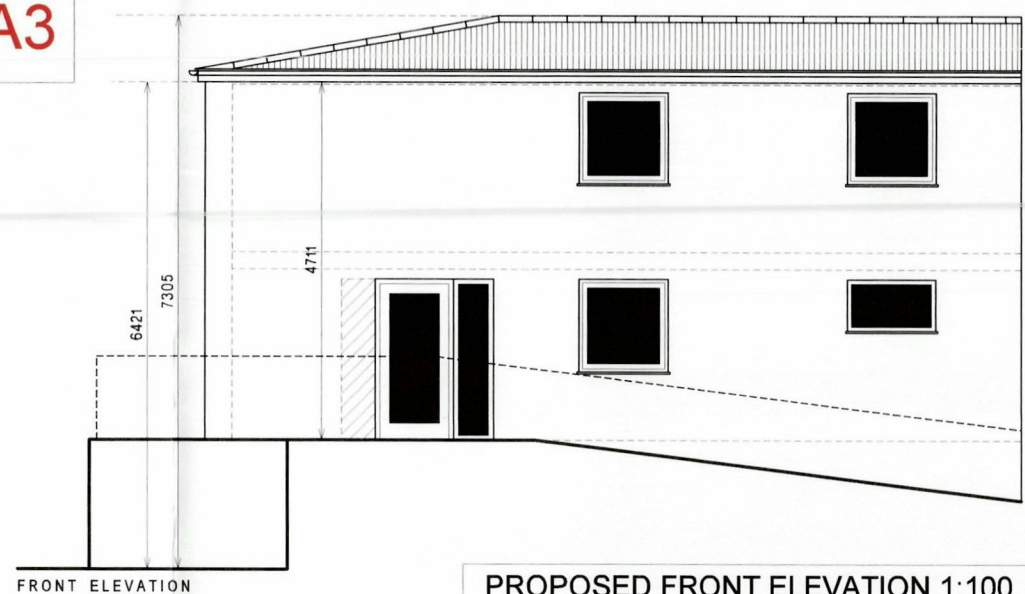
CLIENT: MIKE ENGLISH	
PROJECT: CHANGE OF USE FROM COMMERCIAL TO 2 NO. APARTMENTS + ALL ASSOCIATED SITE WORKS	
DEVELOPMENT ADDRESS: 48 MAIN STREET, TIPPERARY	
TITLE: SITE LAYOUT PLAN	
DATE: FEBRUARY 2024	DRAWING NO: Dwg. 2024.06.204
SCALES: 1:500 / A3	REVISIONS:
SEAMUS McELLIGOTT PLANNING DESIGN CONSULTANCY <small>5 HIGH STREET, CAMERONLISH, CULMURCK, TIPPERARY TEL: (051) 201101 FAX: (051) 302888 MOB: (087) 820684</small>	

A4

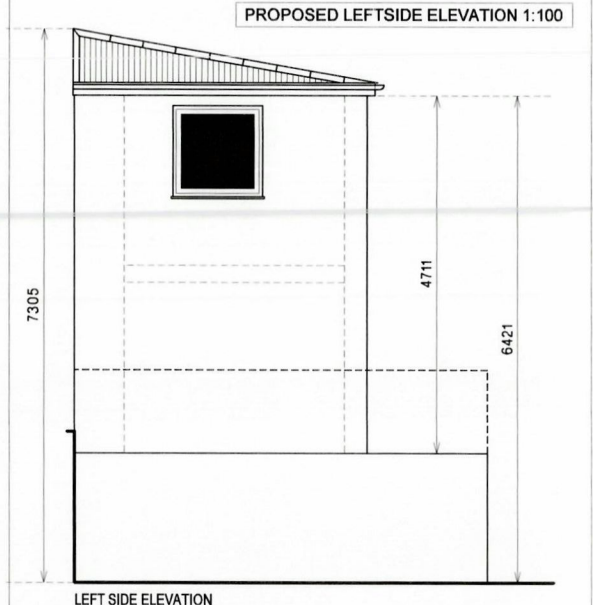


EXISTING FRONT ELEVATION 1:100
PROPOSED APARTMENT FLOOR AREA - 57.85M²

A3

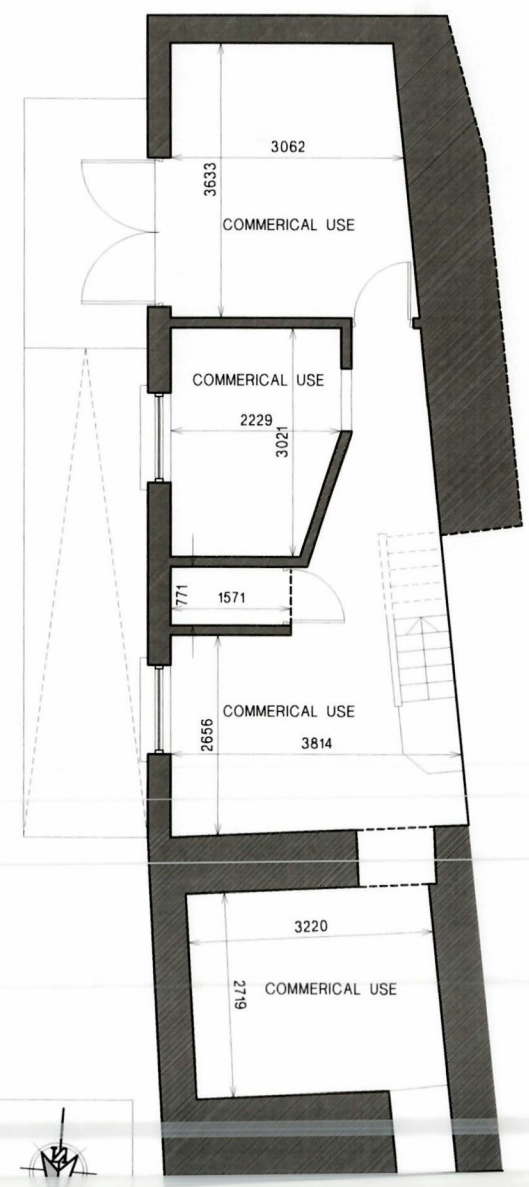


PROPOSED FRONT ELEVATION 1:100

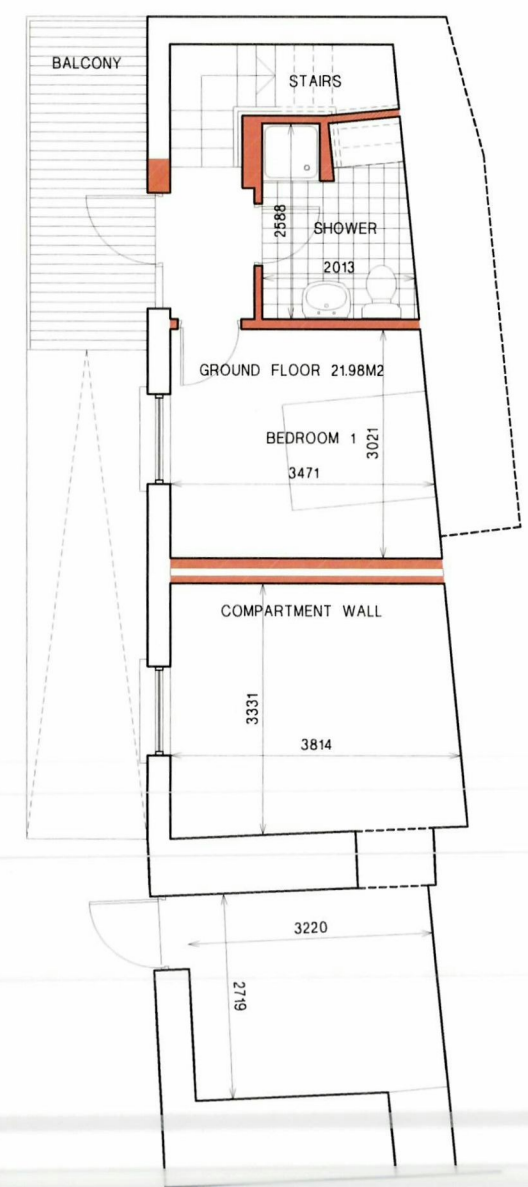


LEFT SIDE ELEVATION

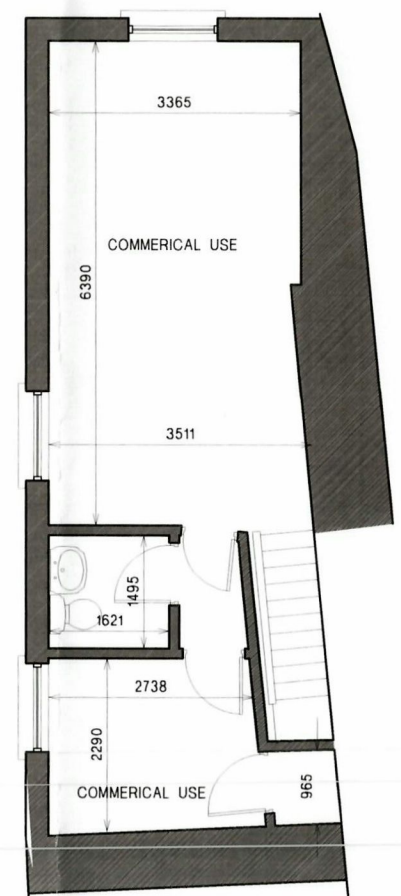
EXISTING GROUND FLOOR 1:100



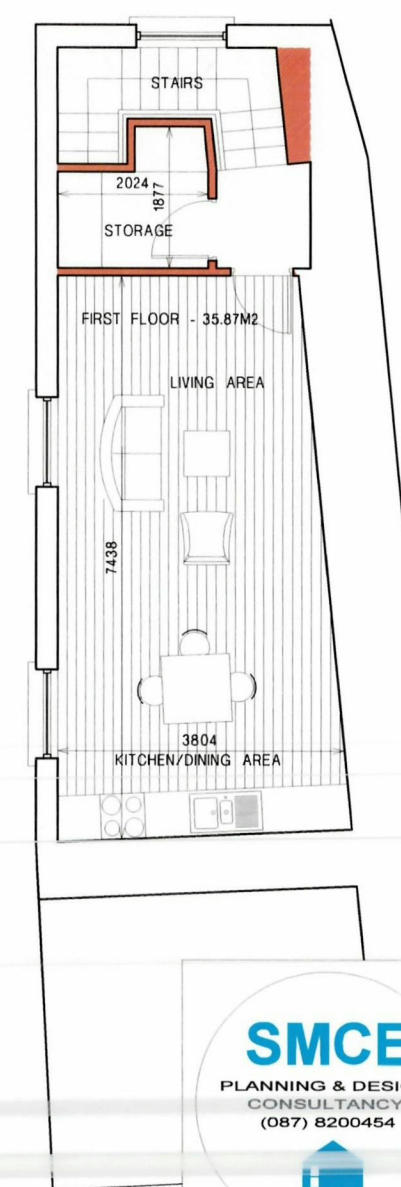
PROPOSED GROUND FLOOR 1:100



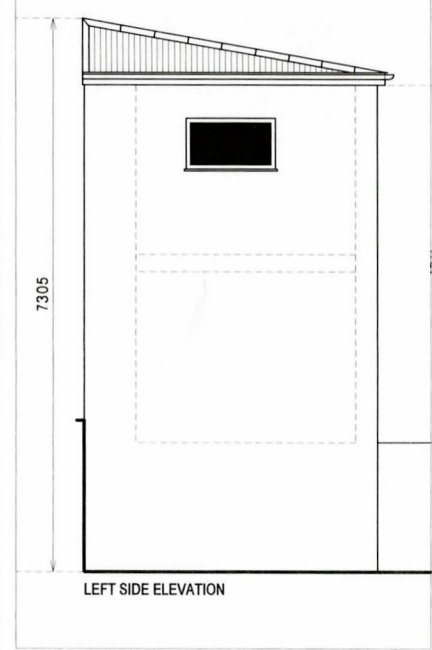
EXISTING FIRST FLOOR 1:100



PROPOSED FIRST FLOOR 1:100



EXISTING LEFT SIDE ELEVATION 1:100



LEFT SIDE ELEVATION

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ARCHITECT TO BE INFORMED IMMEDIATELY OF ANY DISCREPANCY FOUND BEFORE WORK PROCEEDS



CLIENT:	
MIKE ENGLISH	
PROJECT:	
PROPOSED CONVERSION FROM COMMERCIAL TO RESIDENTIAL + ASSOCIATED SITE WORKS	
DEVELOPMENT ADDRESS:	
NO. 48, MAIN STREET, TIPPERARY	
TITLE:	
EXISTING/PROPOSED WORKS	
DATE:	DRAWING No.
FEBRUARY 2024	Dwg. 2024.06.203
SCALES:	REVISIONS:
1:100 / 1:50	

TIPPERARY COUNTY COUNCIL

Application for Declaration under Section 5

Planning & Development Act 2000, as amended
Planning & Development Regulations 2001, as amended

Planning Reference: S5/24/23

Applicant: Michael English

Development Address: No. 48 Main Street, Tipperary Town, Co. Tipperary

Proposed Development: Change of use from disused rear commercial building to use as residential apartment.

1. GENERAL

On the 20th February 2024 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended by Michael English c/o Seamus McEilligott in respect of the following development at rear of 48 no. Main Street, Tipperary Town, Co. Tipperary.

The application is accompanied by the following;

- Application form
- Site Location Map
- Site Layout Plan
- Proposed Floor plan drawing
- Letter from Liam O’Grady Auctioneers

2. STATUTORY PROVISIONS

The following statutory provisions are relevant to this case;

Planning and Development Act 2000, as amended

Section 3 (1) of the Planning and Development Act 2000, as amended, states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

Section 2(1) of the Planning and Development Act, 2000, as amended, defines the following:-

“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 4(1) of the Planning and Development Act, 2000, as amended states:

4.- (1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4 (2) (a) of the Planning and Development Act 2000, as amended, states as follows:-

(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or
- (ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

Section 4 (4) of the Planning and Development Act 2000, as amended, states as follows:-

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

Planning and Development Regulations 2001, as amended

Article 9 of the Planning and Development Regulations 2001, as amended sets out restrictions on exemptions and states:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

(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 of the Planning and Development Regulations 2001, as amended sets out changes of use and states:

The PLANNING AND DEVELOPMENT ACT (EXEMPTED DEVELOPMENT) REGULATIONS 2022 S.I. no 75 of 2022 introduced an exemption that allows for change of use of certain classes of development to residential provided the requirements as set down under the legislation is satisfied.

(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 1

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

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

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 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 under section 28 of the Act or any subsequent updated or replacement guidelines.*
- (vii) *Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*
- (viii) *No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*
- (ix) *No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*
- (x) *No development shall relate to any structure in any of the following areas:*
- (I) *an area to which a special amenity area order relates*
 - (II) *an area of special planning control*
 - (III) *within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply*
- (xi) *No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (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.

S.I. No. 75 of 2022 extends the provisions of Article 10(6) by amending the 'relevant period' from 31st December 2021 to 31st December 2025. Furthermore, the updated legislation requires that for the purposes of Article 10(6) 50 per cent or more of the existing external fabric of the building must be retained (Article 10(6)(d)(ii)(ii)). In addition, the provisions include change of use development from public house (new Class 12) to residential.

Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities, (DoHPLG, 2020) Updated July 2023.

3. ASSESSMENT

a. Site Location

The site comprises of an existing commercial property at the rear of 48 Main Street Tipperary Town, Co. Tipperary. The property the subject of this declaration is to the rear of 48 Main Street which is operating as a takeaway. The first and second floor of the front of the property is a residential unit. A letter provided from Liam O'Grady Auctioneer states they have managed this property since 2017 and has remained vacant thereafter.

b. Relevant Planning History

09/581823 Permission GRANTED for permission for (1) change of existing shopfront design; (2) demolition and reconstruction of flat roof construction to rear to accommodate additional living space; (3) amendments of existing ground floor plan to accommodate pizzeria area and ancillary site works at American Stars.

Not implemented as per letter on file dated 8th August 2016.

10/581856 Incomplete Application.

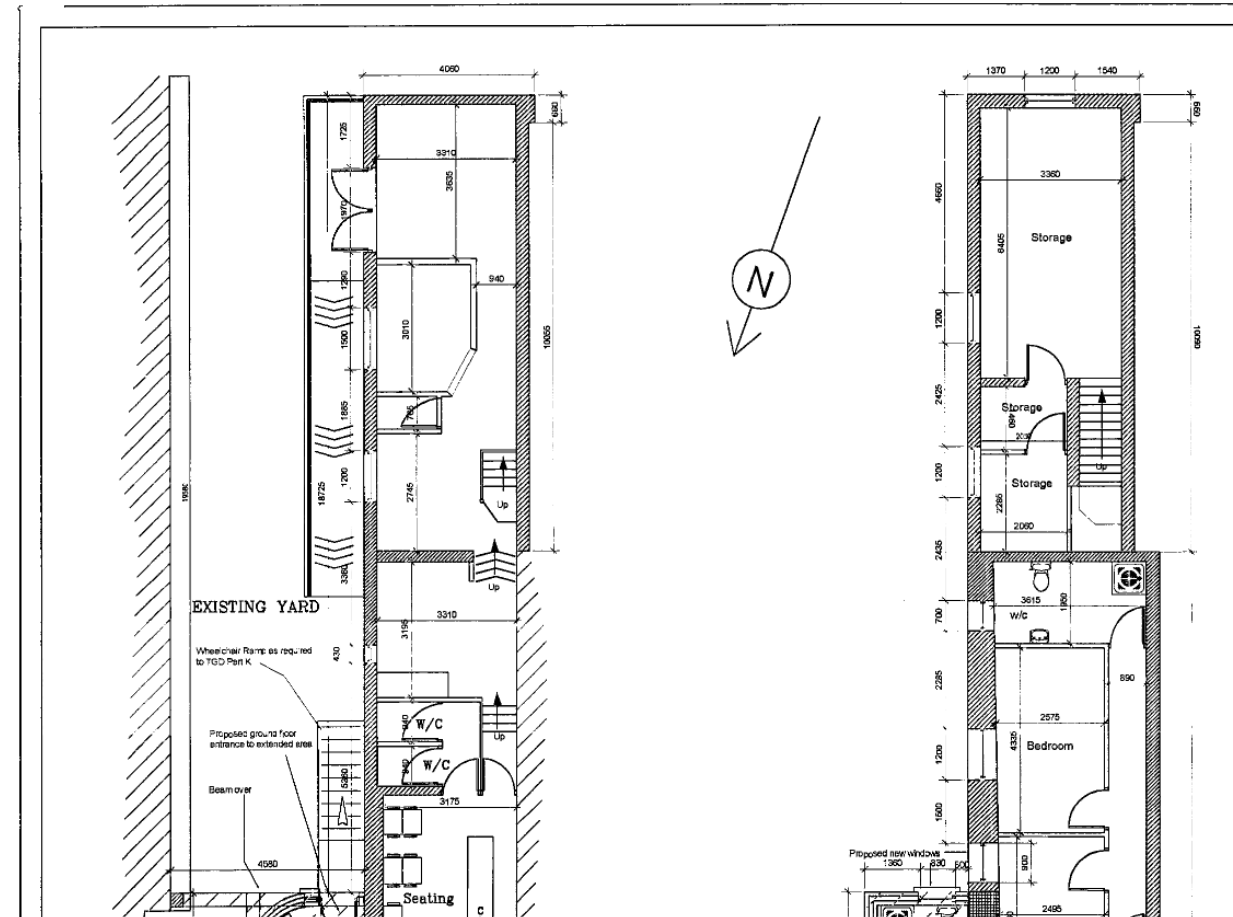


Figure 1 Layout under 09/581823

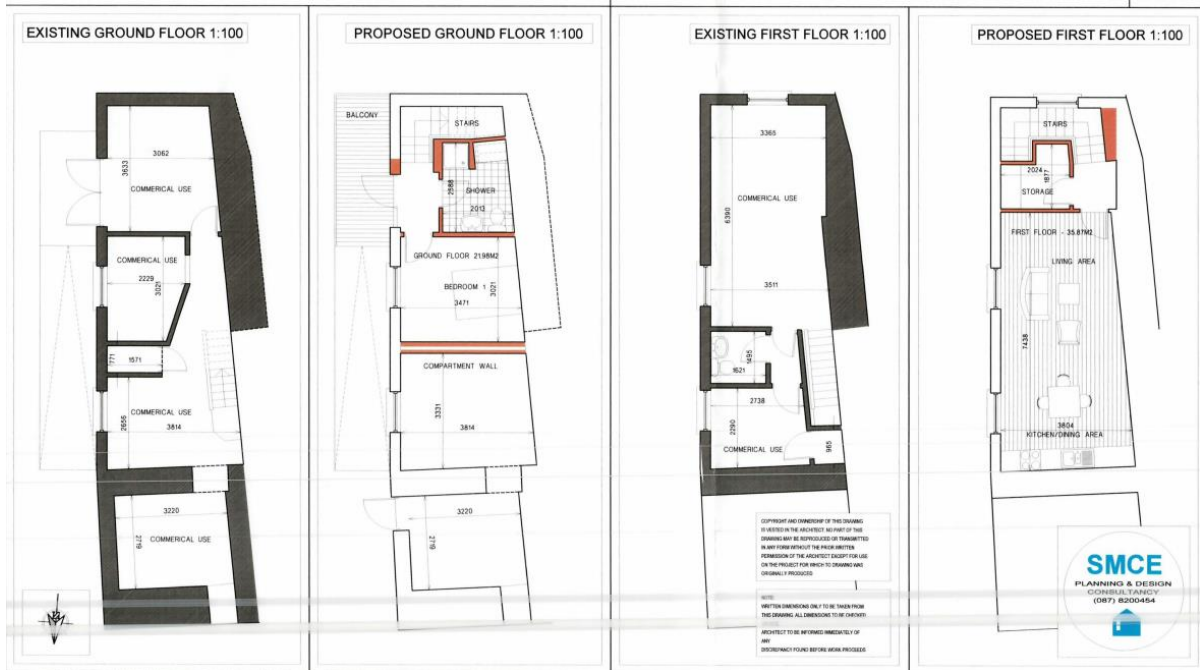


Figure 2 Site Layout Plan

c. Assessment

The question posed under the Section 5 Declaration application is whether the change of use from disused rear commercial building to use as residential apartment is development and is exempted development.

i) “Is or is not Development”

It is considered that the above listed proposal constitutes “works” as understood by the Planning and Development Act 2000, as amended. The above listed proposal therefore constitutes “development” within the meaning of the Planning and Development Act 2000, as amended.

ii) “Is or is not Exempted Development”

I am satisfied that the development relates to both the change of use and the associated works as both are intrinsically linked.

Noting there is a number of limitations under Article 10(6) I have assessed individually hereunder.

(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.

The exemption declaration was submitted within the relevant period.

(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 1

The existing use of building (to the front) is a restaurant use and the section of the property to the rear and subject to this Section 5 was shown as an existing storage area under the 2009 application which could be considered ancillary to the main use. The restaurant use is not prescribed a commercial use for the purposes of Article 10(6) i.e. same does not fall under Class 1, 2, 3, 6 or 12.

(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,

The structure was completed prior to the making of the Regulations.

(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

The subject structure was historically used as a storage area ancillary to the ground floor use of the restaurant (this was historically a pizzeria under the Planners Report under 09/581823) and has not being used for with Class 1,2,3,6 or 12.

(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,

The unit was vacant for more than 2 no. years. Third party evidence from Liam O'Grady Auctioneers was submitted with the Section 5 application.

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.

The applicant has not confirmed if the development would be commenced and completed within the relevant period however it would be a given that works would have to be carried out and change of use commenced within the 'relevant period' i.e., by the 31st December 2025.

(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.**

I consider the proposed works to the apartment would primarily affect the interior of the structure, retain 50 per cent or more of the existing external fabric of the building, and 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.

The proposal to the ground floor front would be consistent with the fenestration and streetscape of the neighbouring structures. The provisions of Article 10(6)(d)(iii) does not therefore apply.

(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.

As the structure has not been used for retail purposes I consider the provisions of Article 10(6)(d)(iv) does not therefore apply. It is noted that a residential use is permitted in principle within the Land Use zoning matrix under the Tipperary Town & Environs Development Plan 2013, as varied.

(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.

The proposal related to 1 no. unit only. The provisions of Article 10(6)(d)(v) does not therefore apply.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

The floor area is floor unit 57.83sqm and achieve the minimum floor area requirement.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

The unit does appear to have sufficient 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.

The unit is not a Protected Structure. The provisions of Article 10(6)(d)(viii) does not therefore apply.

(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.

This proposal would not be inconsistent with a specified use. The provisions of Article 10(6)(d)(ix) does not therefore apply.

(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

None of the above apply to this property or location. The provisions of Article 10(6)(d)(x) does not therefore apply

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (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.

The property is served by public wastewater. The provisions of Article 10(6)(d)(xii) does not therefore apply.

iii) Restrictions under Article 9

I note no restrictions under Article 9 that would apply.

iv) Requirement for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA)

AA

The proposal has been assessed having regard to the requirements of the EU Habitats Directive. The proposal has been screened as to the requirements for AA and the screening assessment considers that the proposal does not impact on any Natura 2000 site. See also Appropriate Assessment (AA) screening report attached.

EIA

The proposed development has been subject to a preliminary examination to determine the requirement for EIA. EIA is not required in respect of the development. See also for Environmental Impact Assessment (EIA) preliminary examination screening report attached.

4. RECOMMENDATION

WHEREAS a question has arisen as to whether the change of use from disused rear commercial building to use as residential apartment at 48 Main Street, Tipperary Town, Co. Tipperary is “development” and is or is not “exempted development”,

AND WHERE AS Tipperary County Council in considering this referral had regard particularly to -

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022
- (d) Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2020) Updated July 2023
- (e) Tipperary Town & Environs Development Plan 2013, as varied
- (f) The character of the building and the planning history on the site

AND WHEREAS Tipperary County Council has concluded that change of use from disused rear commercial building to use as residential apartment. and site works at 48 Main Street, Tipperary Town Co. Tipperary constitutes “development” within the meaning of the Planning and Development Act 2000, as amended and **IS NOT** “exempted development”.

NOW THEREFORE Tipperary County Council, in exercise of the powers conferred on it by Section 5 (3) (a) of the 2000 Act, as amended hereby decides change of use from disused rear commercial building to use as residential apartment at 48 Main Street, Tipperary Town, Co. Tipperary is development and **IS NOT** exempted development.

The development has been screened as to the requirement for Appropriate Assessment and Environmental Impact Assessment and it has been determined that same are not required.

Reason: The existing use of the building (ancillary storage area to a restaurant) does not come within Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 1 of the Planning and Development Regulations 2001, as amended, and cannot therefore avail of an exemption under Article 10(6)(a) of the regulations.

District Planner:

L. Butler-Lynn

Date:13/03/2024

Senior Executive Planner:

C. Conway

Date: 13.03.2024

Original

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/24/23** **Delegated Employee's Order No:** _____

SUBJECT: Section 5 Declaration

I, Sharon Kennedy, Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 37256 dated 4th March, 2024, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Michael English, C/o Seamus McElligott, Lombardstown, Caherconlish, Co. Limerick re: Change of use from disused rear commercial building to use as residential apartment at No. 48 Main Street, Tipperary Town, Co. Tipperary is development and is exempted development.

AND WHEREAS Tipperary County Council in considering this referral had regard particularly to -

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022
- (d) Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2020) Updated July 2023
- (e) Tipperary Town & Environs Development Plan 2013, as varied
- (f) The character of the building and the planning history on the site

AND WHEREAS Tipperary County Council has concluded that change of use from disused rear commercial building to use as residential apartment. and site works at 48 Main Street, Tipperary Town Co. Tipperary constitutes "development" within the meaning of the Planning and Development Act 2000, as amended and **IS NOT "exempted development"**.

NOW THEREFORE Tipperary County Council, in exercise of the powers conferred on it by Section 5 (3) (a) of the 2000 Act, as amended hereby decides change of use from disused rear commercial building to use as residential apartment at 48 Main Street, Tipperary Town, Co. Tipperary is development and **IS NOT exempted development.**

Reason: The existing use of the building (ancillary storage area to a restaurant) does not come within Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 1 of the Planning and Development Regulations 2001, as amended, and cannot therefore avail of an exemption under Article 10(6)(a) of the regulations.

Signed: 

Date: 14/03/2024

Sharon Kennedy
Director of Services
Planning and Development (including Town Centre First),
Emergency Services and Emergency Planning and
Tipperary/Cahir/Cashel Municipal District



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigí Cathartha,
Cluain Meala,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

E91 N512

Comhairle Contae
Thiobraid Árann,
Oifigí Cathartha,
An tAonach,
Co. Thiobraid Árann

Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

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Date: 14 March 2024

Our Ref: S5/24/23

Civic Offices, Nenagh

Michael English
C/o Seamus McElligott
Lombardstown
Caherconlish
Co. Limerick

Re: Declaration under Section 5 of the Planning and Development Act 2000

Dear Mr McElligott,

I refer to your application for a Section 5 Declaration received on 20th February 2024, in relation to the following proposed works:

Change of use from disused rear commercial building to use as residential apartment at No. 48 Main Street, Tipperary Town, Co. Tipperary

WHEREAS a question has arisen as to whether the proposed development is or is not exempted development:

AND WHEREAS Tipperary County Council in considering this referral had regard particularly to -

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022
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- (f) The character of the building and the planning history on the site

AND WHEREAS Tipperary County Council has concluded that change of use from disused rear commercial building to use as residential apartment. and site works at 48 Main Street, Tipperary Town Co. Tipperary constitutes "development" within the meaning of the Planning and Development Act 2000, as amended and **IS NOT "exempted development"**.

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Reason: The existing use of the building (ancillary storage area to a restaurant) does not come within Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 1 of the Planning and Development Regulations 2001, as amended, and cannot therefore avail of an exemption under Article 10(6)(a) of the regulations.

NOTE: Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely



for **Director of Services**