



Comhairle Cathrach Chorcaí Cork City Council

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

Purtol Ltd.
c/o Tom Halley – McCutcheon Halley Planning Consultants,
6 Joyce House,
Barrack Square,
Ballincollig,
Cork.

21/09/2023

RE: Section 5 Declaration R793/23 1 Tuckey Street, Cork City

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 13th July 2023, and the further information received 5th September 2023, I wish to advise as follows:

In view of the above and the previous report on file dated 03/08/2023, and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 6 & 9 of the Planning and Development Regulations 2001 (as amended),

The Planning Authority considers that –

The replacement/ reconstruction of the front elevation of 1 Tuckey Street, Cork which was damaged/ structurally comprised **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 30th August 2023.

Is mise le meas,

Áine O' Leary
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R793.23		
Application type	Section 5 Declaration	
Description	Request for a Section 5 Declaration seeking confirmation that the replacement / reconstruction of the front elevation of 1 Tuckey Street, Cork, which was damaged / structurally compromised is exempted under Section 4(1)(h) of the 2000 Planning and Development Act (as amended)	
Location	1 Tuckey Street, Cork City	
Applicant	Putrol Ltd	
Date	19/09/2023	
Recommendation	<i>Is Development and Is Exempted Development.</i>	

This report should be read in conjunction with the previous report on the file dated 10/08/2023.

1. FURTHER INFORMATION REQUESTED

1. Please confirm if the reinstatement of the front façade will consist of or compromise the excavation, alternation, or demolition features of archaeological interest.
2. Please submit scaled drawing for the proposed development.

2. FURTHER INFORMATION PROVIDED AND ASSESSMENT

A response to the further information request was received on 05/09/2023.

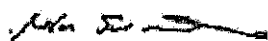
The applicant has submitted confirmation in writing that the reinstatement of the front façade of 1 Tuckey Street will not consist of or compromise the excavation, alterations, or demolition of features of archaeological interest. Subject to correspondence with the Archaeology Department of Cork City Council the reinstatement of the front façade of 1 Tuckey Street is not considered to compromise the excavation, alternation, or demolition features of archaeological interest and can be considered exempted development for the purposes of a Section 5 Declaration.

The applicant submitted scaled drawings for the external façade front (north elevation) and rear (south elevation), and the internal configuration of the structure.

In view of the above and the previous report on file dated 10/08/2023 and having regard to –

- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001 as amended,

It is considered that the replacement / reconstruction of the front elevation of 1 Tuckey Street, Cork, which was damaged / structurally compromised **Is Development and Is Exempted Development.**



Alan Swanwick
Assistant Planner
19/09/2023

The Secretary
Planning Department
Cork City Council
City Hall
Cork



05 September 2023

Re: Further Information in response to Section 5 Declaration – Ref No. R793/23 – at 1 Tuckey Street, Cork City

Dear Sir/Madam,

We act on behalf of our client, Purtol Ltd., and wish to respond to the Council's request for Further Information under Ref No. R793/23 in relation to a Section 5 Declaration at 1 Tuckey Street, Cork City.

The Council's request for Further Information was as follows:

- 1. Please confirm if the reinstatement of the front façade will consist of or compromise the excavation, alteration, or demolition features of archaeological interest.**

Further to the query above, we can confirm that the reinstatement of the front façade will not consist of or compromise the excavation, alteration, or demolition of features of archaeological interest. As noted in the letter attached with the Section 5 Declaration on July 13th, works involved will generally replicate the existing building that existed prior to the collapse of the front elevation. The completed/reconstructed works will not materially affect the external appearance of the structure or render the appearance inconsistent with the character of the structure/neighbouring structures and will not have any impact on features of archaeological interest.

- 2. Please submit scaled drawing for the proposed development.**

Further to the request above, scaled drawings are submitted as prepared by MMOS Consulting Engineers, including the following:

- Floor Plans 1:100 - A3
- Section 1:100 – A3
- Elevation 1:100 - A3
- Site Location Map 1:1000 A4.

Please refer to enclosed for further details.

We trust that the that the enclosed information is to the Council's satisfaction and addresses all of the issues raised in the Council's further information request. Please do not hesitate to contact the undersigned if you have any queries.

Yours sincerely



Ciaran Dineen

McCutcheon Halley

Enclosed

Proposed Floor Plans, Elevations and Section prepared by MMOS Consulting Engineers

Site Location Map prepared by MMOS Consulting Engineers



URX,URY = 5883363,568042



Description: Digital Landscape Model (D)
 Publisher / Source: Ordnance Survey Ireland (OSI)
 Data Source / Reference: PPIHE2
 File Format: Autodesk AutoCAD (DWG_P2013)
 File Name: v_30345298_1.dwg

Click Extent / Area of Interest (AOI)
 LL LLY= 567153.5,571657.0
 LP LPL= 567266.5,571657.0
 UL ULU= 567153.5,571657.0
 UR URU= 567266.5,571657.0
 Projection / Spatial Reference:
 Projection: IRENEF95_Irish_Transverse_Mercator
 Centre Point Coordinates:
 X= 57270.0,571743.0
 Y= 57270.0,571743.0

Experience Index: 64
 Map Series / Map Streets: 1:1,000 | 6382-14
 1:1,000 | 6382-15
 Data Extraction Date: 11-Jul-2023
 Date: 11-Jul-2023
 Source Data Release: OSMLC Release V1.166.116
 Product Version: Version 1.4

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OSI Receipt Details
 Order No - 50345298
 Sales Person - Karen Burke
 Date - 11/07/2023

MMOS
 MURPHY-MATSON-O'SULLIVAN
 CONSULTING CIVIL & STRUCTURAL ENGINEERS
 The Chapel,
 Blackrock House,
 Blackrock Road
 Cork, T12 KRK7
 Tel: 353 21 4317608

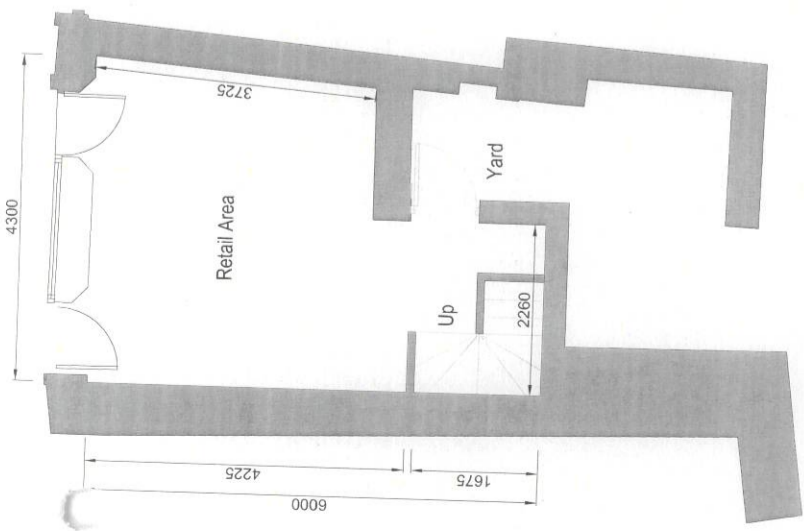
SCALE	PROJECT NUMBER
1:1000 at A4	23100
DOCUMENT REFERENCE	TITLE
23100-MMS-ZZ-ST-MP-C-11000	S2
PROJECT ORIGINATOR/ZONE/LEVEL/TYPE/DRAWING NUMBER	P01

Denotes Site Boundary
 Subject of This Application

Site Location Map For 1 Tuckey Street, Cork

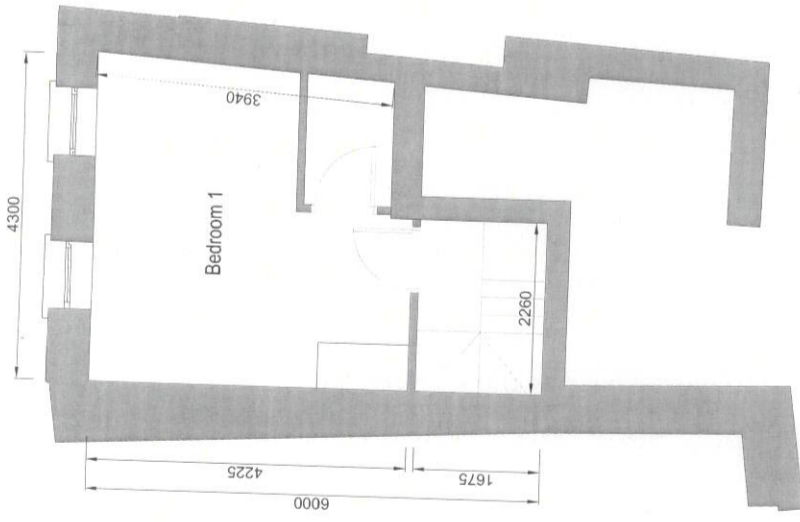
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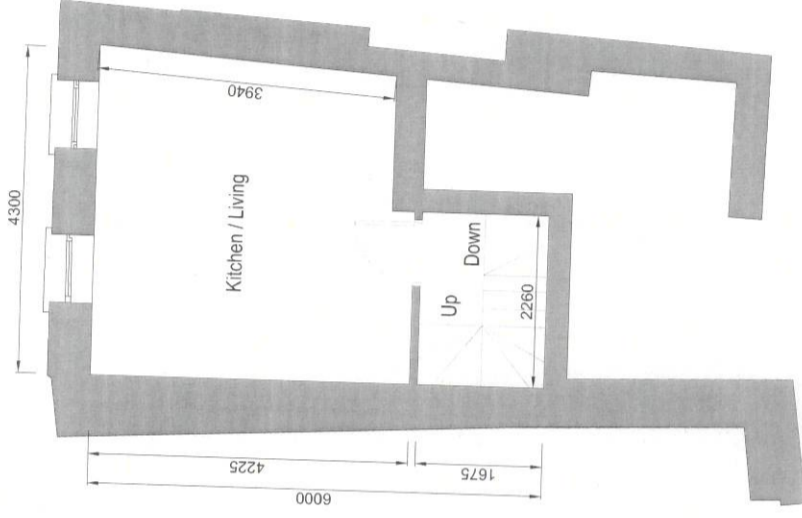
Proposed Ground Floor Plan

Scale 1:100 @ A3



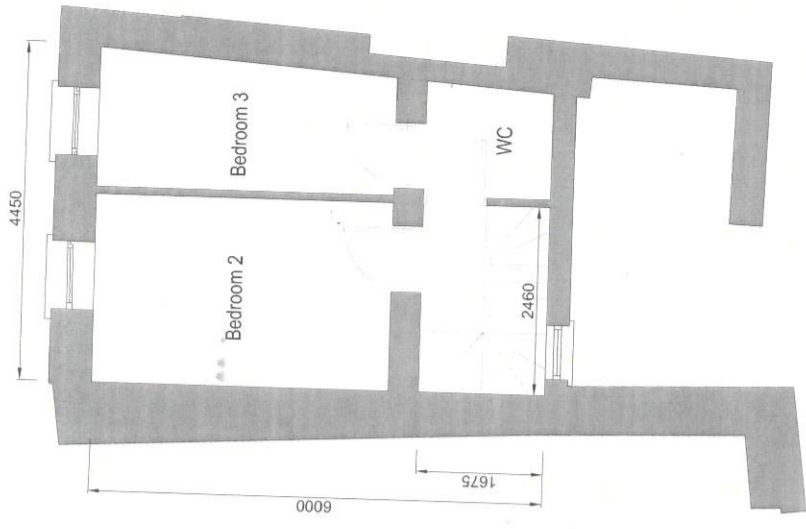
Proposed First Floor Plan

Scale 1:100 @ A3



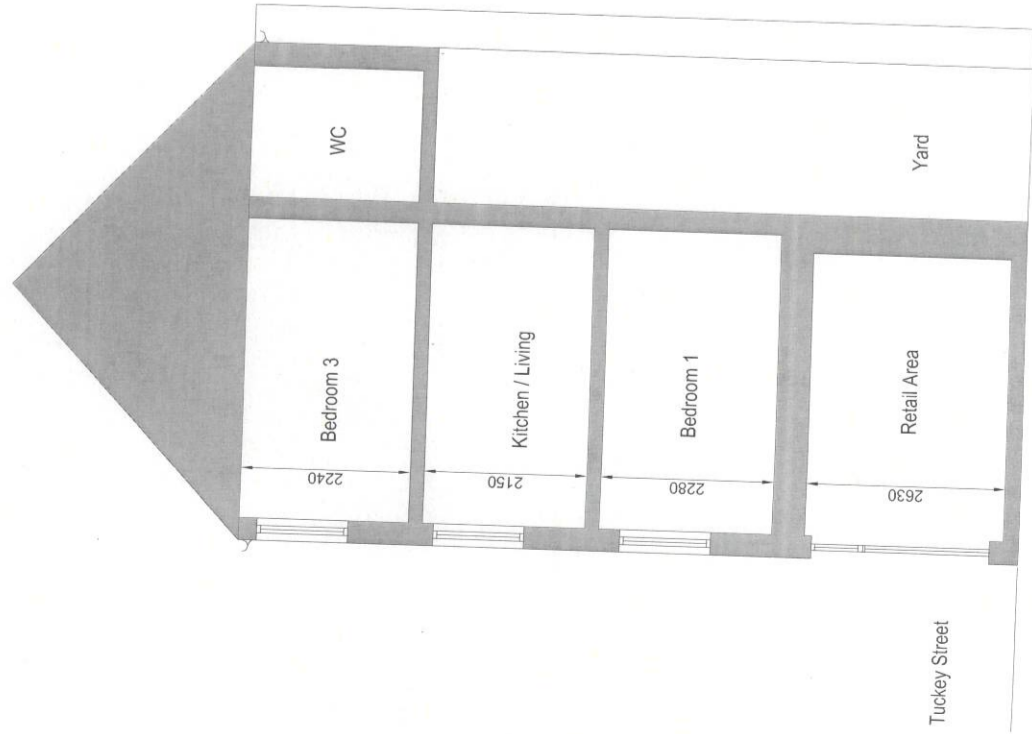
Proposed Second Floor Plan

Scale 1:100 @ A3



Proposed Third Floor Plan

Scale 1:100 @ A3



Typical Section



Rev	Sts	Description	Date
P01	S2	Issued for information	05.07.23

MMOS
The Chapel,
Blackrock House,
Glenageary Road,
Cork, T12 RRK7
02020 7125376 02020 7125376
Tel: 353 21 4317608

PROJECT
Proposed Redevelopment at
No. 1 Tuckey Street, Cork

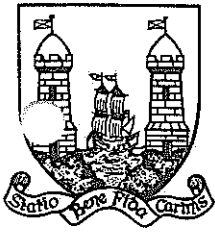
CLIENT
Laughton Construction

TITLE
Proposed Floor Plans, Section
& Elevations

DRAWN BY
DF

CHECKED BY
DM

APPROVED BY
MM



Comhairle Cathrach Chorcaí Cork City Council

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

Purtol Ltd.,
c/o Tom Halley,
McCutcheon Halley Planning Consultants,
6 Joyce House,
Barrack Square,
Ballincollig,
Cork.

11/08/2023

RE: Section 5 Declaration R793/23 1 Tuckey Street, Cork City

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 13th July 2023, I wish to advise under the provisions of section 5(2)(b) of the Planning and Development Act 2000, as amended, that further information is required in order to properly assess this application.

1. Please confirm if the reinstatement of the front façade will consist of or ~~compromise the excavation, alteration, or demolition features of~~ archaeological interest.
2. Please submit scaled drawing for the proposed development.

Is mise le meas,

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



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference:	R793.23
Description:	Request for a Section 5 Declaration seeking confirmation that the replacement / reconstruction of the front elevation of 1 Tuckey Street, Cork, which was damaged / structurally compromised is exempted under Section 4(1)(h) of the 2000 Planning and Development Act (as amended)
Applicant:	Purtol Ltd.
Location:	1 Tuckey Street, Cork City
Site inspection:	08/08/2023

1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

2. Site Location

The subject site is located at 1 Tuckey Street, Cork City. The site area is zoned ZO 05, City Centre and is within an area Zone of Archaeological Potential.

3. The Question before the Planning Authority

Request for a Section 5 Declaration seeking confirmation that the replacement / reconstruction of the front elevation of 1 Tuckey Street, Cork, which was damaged / structurally compromised is exempted under Section 4(1)(h) of the 2000 Planning and Development Act (as amended)

No scaled drawings were submitted with this Section 5 declaration.

4. Planning History

TP 20/39788 – Planning application deemed withdrawn for permission to demolish existing retail premises and all associated site works.

5. Planning Legislation

5.1 Planning and Development Act, 2000 as amended

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.

Article 6(1) Exempted development

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 Restrictions on exemption

This sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (a) if the carrying out of such development would:-

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

6 Development Plan

The development plan is the Cork City Development Plan 2022 - 2028.

The subject site is in an area zoned ZO 5 City Centre with the zoning objective to consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural, and residential growth.

The site is within the medieval historic core of Cork City and is in an area designated as a Zone of Archaeological Potential.

Relevant objectives –

1. Objective 8.1, Strategic Archaeology Objective.
2. Objective 8.2, Protection of the Archaeological Resource.
3. Objective 8.3, The Value of Archaeological Knowledge.
4. Objective 8.4, Protection of the Medieval Historic Core.
5. Objective 8.18 Reuse & Refurbishment of Historic Buildings.

7 Assessment

7.1 Development

The first issue for consideration is whether or not the matter at hand is development, which is defined in the Act as follows:

‘Development’ as defined in the Act comprises two chief components: ‘works’, and ‘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 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’.

The proposal involves replacement / reconstruction of the front elevation of 1 Tuckey Street

It is considered that the proposed development would come within the definition of ‘works’ set out in the Act. Therefore, it is considered that the proposed works constitute ‘development’.

CONCLUSION — is development

7.2 Exempted Development

The next issue for consideration is whether the proposed development is or is not exempted development.

The ‘works’ (i.e. development) to be carried out comprise of the replacement / reconstruction of the front elevation of 1 Tuckey Street which was damaged and structurally compromised. The question before the planning authority, ‘*is the proposed development exempted under Section 4(1)(h) of the 2000 Planning and Development Act*’ (as amended).

The building is located in an area designated as a Zone of Archaeological Potential in the Cork City Development Plan 2022-2028, it cannot be determined from the details accompanying this Section 5 declaration request if the reinstatement of the front façade will consist of or compromise the excavation, alternation, or demolition features of archaeological interest, and if the proposed development is contrary to *Article 9 (vii), of the Planning and Development Act 2000*’ (as amended). To determine this a request for further information is sought on this Section 5 declaration request.

Scaled drawings have not been submitted with this Section 5 declaration request.

Based on the above and the information at hand a request for further information is requested before it can be established if the works described would come under the scope of section 4(1)(h) of the Act and would constitute exempted development.

CONCLUSION — Request further information.

7.3 Environmental Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that environmental impact assessment is not required.

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly, it is considered that appropriate assessment is not required.

8 Recommendation

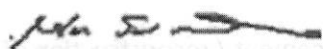
In view of the above and having regard to –

- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001 as amended,

It is recommended that the following further information be sought:

1. Please confirm if the reinstatement of the front façade will consist of or compromise the excavation, alteration, or demolition features of archaeological interest.
2. Please submit scaled drawing for the proposed development.

Signature



Alan Swanwick
Assistant Planner
Community, Culture & Placemaking

10/08/2023.



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

12th July 2023

Re: Request for a Section 5 Declaration seeking confirmation that the replacement/reconstruction of the front elevation of 1 Tuckey Street, Cork, that was damaged/structurally compromised is exempted development under Section 4(1)(h) of the PDA.

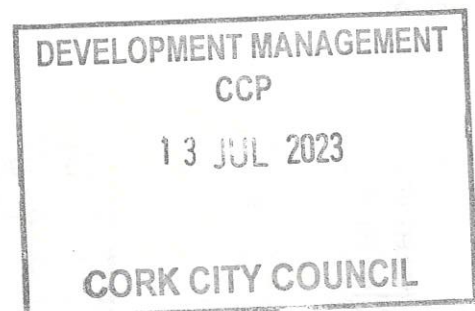
Dear Sir/Madam,

We, McCutcheon Halley Planning Consultants, of 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf of our client, Purtol Ltd., with an address at Sunberry Business Park, Blarney, Cork and who are the owners of 1 Tuckey Street, Cork City.

Our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000 (PDA), seeking confirmation that the replacement/reconstruction of part of the structure (i.e. front elevation) that was subject to collapse/structural failure, is exempted development and does not therefore require planning permission on the basis that the works constitute exempted development under Section 4(1)(h) of the PDA.

The remainder of the declaration request is set out as follows:

1. **Site and Planning Context**
2. **Planning Legislation/Regulations**
3. **Assessment**
4. **Conclusion**



1. Site and Planning Context

The property subject of this declaration is located at 1 Tuckey Street in Cork City centre. The surrounding area is comprised of a mix of uses but given its location in the City Centre, primary uses mostly consist of a mix of commercial at ground/street level and some residential uses on upper floors. Before the front elevation collapsed, the established uses within the building were retail/commercial on the ground floor and residential use on the first, second and third floors.

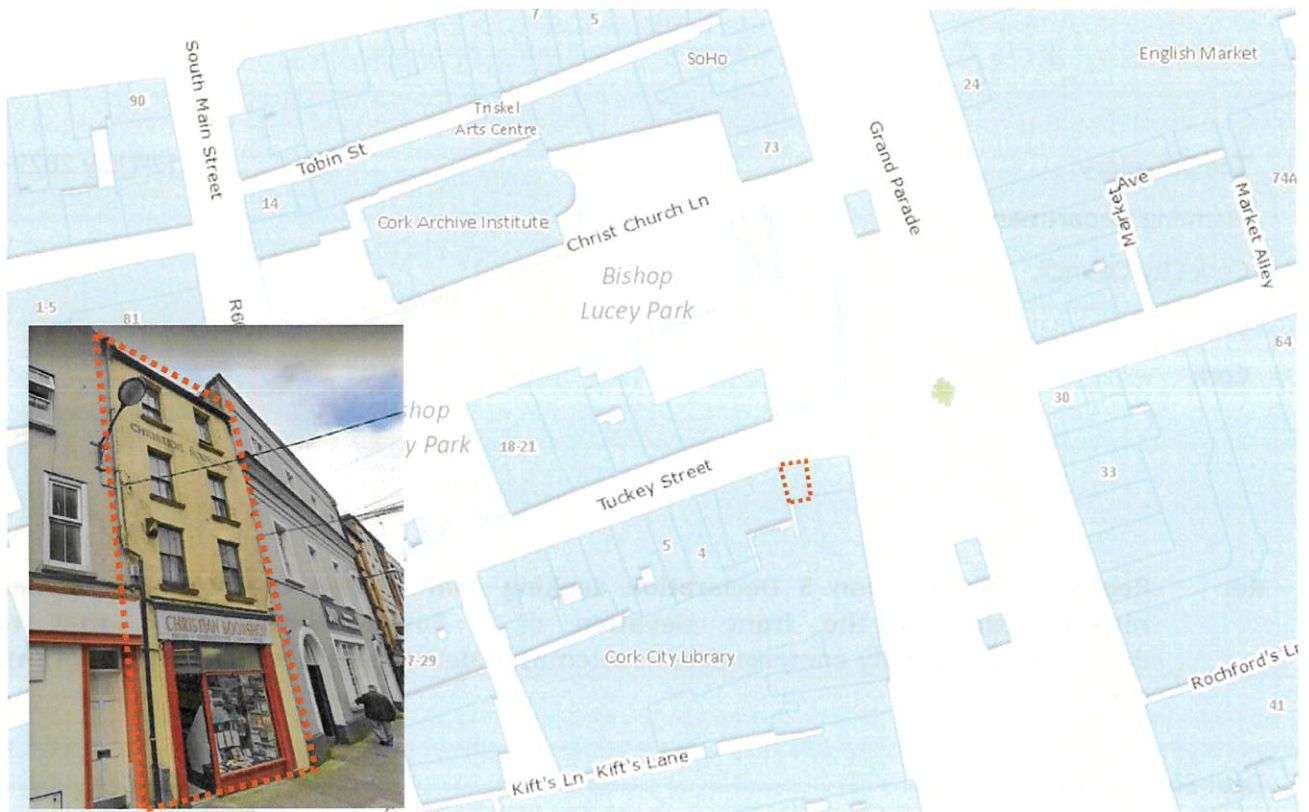


Figure 1 – Property at 1 Tuckey Street outlined in dashed red line (former street elevation shown inset).

The building was subject of a planning application under 20/39788 by the previous owners to demolish existing retail premises and all associated site works. A further information request was not responded to and the application was subsequently deemed withdrawn.

The drawings showing the building as it existed before the collapse of the front elevation are shown below:

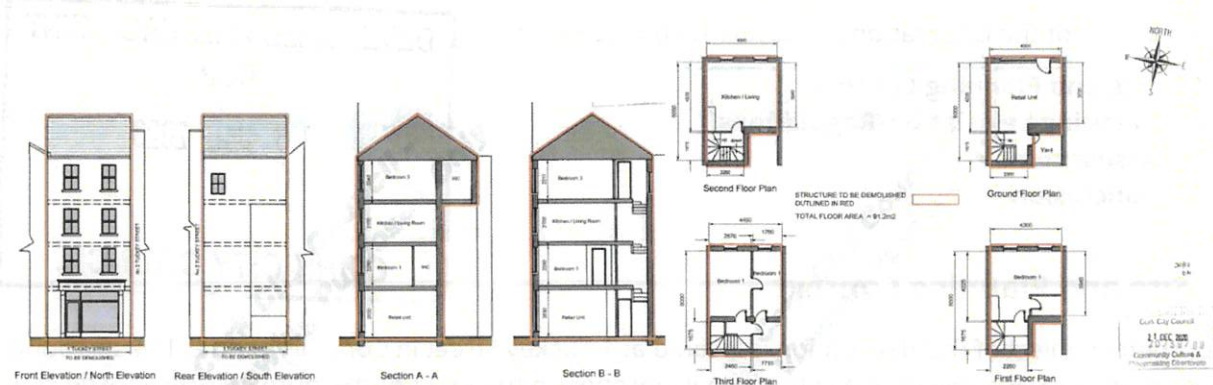


Figure 2 – Property at 1 Tuckey Street as shown under 20/39788.

In terms of the existing planning policy for the area, in the 2022 Cork City Development Plan (CDP) the site is zoned "ZO 5: City Centre" use. Based on objective ZO 5 of the CDP, it is an objective to "consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for

community, economic, civic, cultural and residential growth". Based on Section ZO 5.2 of the CDP, the primary purpose of this zone is to "promote the continued economic, civic, cultural and residential growth of the City Centre, and to create a thriving urban community."

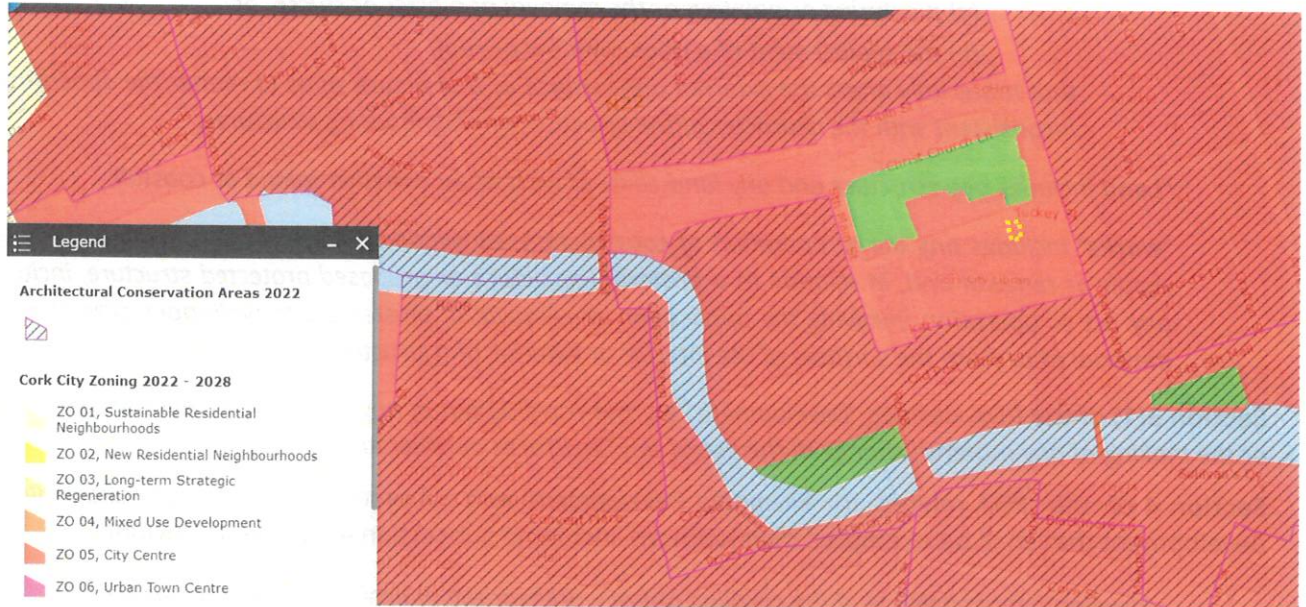


Figure 3 – Property at 1 Tuckey Street with area subject of declaration request outlined in dashed yellow line.

The building is not located within an ACA, and is not a protected structure, but notwithstanding this, our client is not proposing any material changes to the external finishes/appearance to the building, other than some very minor changes to comply with building regulations.

2. Planning Legislation/Regulations

In order to assess this declaration request, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended).

2.1 Planning and Development Act, 2000 (As Amended)

Section 2 of the 2000 Planning and Development Act, as amended (PDA), includes the following definitions which are of relevance to this assessment

"Structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

"Alteration" includes

- (a) plastering or painting or the removal of plaster or stucco, or
 - (b) the replacement of a door, window or roof,
- that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

"Land" includes any structure and any land covered with water (whether inland or coastal);

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) of the PDA defines "Development" as, 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'.

Section 4 of the PDA relates to 'Exempted Development' and subsection (1) sets out categories of development that shall be exempted development, including subsection 4(1)(h) which includes:

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

Section 4(2)(a) states that the Minister may by regulations provide for any class of development to be exempted development where he or she is of the opinion that the carrying out of such development by virtue of its size, nature or limited effect on its surroundings, would not offend against the principles of proper planning and sustainable development. **Section 4(2)(b)** of the Act states that regulations under paragraph (a) may be made subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

2.2 Planning and Development Regulations, 2001 (As Amended)

The extent to which the classes of development specified in Part 1 of the Second Schedule are exempted is governed by Article 9(1)(a) and that article is itself subject to the restrictions on exemption which includes the following:

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users;

(iv) ... comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a

development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed

(viiB) ... development that would be likely to have a significant effect on the integrity of a European site...

(viiC) ... development that would be likely to have an adverse impact on a natural heritage area...

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(xi) obstruct any public right of way,

(xii) consist of or comprise the carrying out of works to the exterior of a structure within an architectural conservation area...

Each of the above conditions/restrictions are considered further in relation to our clients proposed development in the section below.

3. Precedent Case Law and Section 5 Declarations/Referrals

3.1 Relevant Case Law

There are a number of precedent cases which have been determined by the Courts which deal with similar issues to those raised in this instance, including the following:

McCabe v CIE

McCabe v CIE (2006) IEHC 356 concerned the 'renewal and reconstruction of a railway bridge', which involved a brick/stone arch bridge structure being replaced with a flat span pre-cast concrete deck structure. The new bridge deck was placed at a higher level than the original arch bridge (in order to allow the safe passing of high sided vehicles underneath) and pre-cast concrete elements (replacing the previous brick/stone) were used to enable fast reconstruction of the bridge. The stability of the railway embankments was also enhanced by extending the parapet walls on each side of the bridge. It was accepted by all parties involved in the case that

the works carried out were not only to the interior of the structure but that they had also affected its external appearance.

In his judgement, Mr Justice Herbert stated, inter alia, that the extent of renewal/reconstruction would be an important part of his assessment:

*"In my judgement the renewal or reconstruction of a part or of parts of the bridge would be covered by the provisions of s.4(1)(h) of the Act of 2000, provided that the extent of that renewal or reconstruction **was not such as to amount to the total or substantial replacement or rebuilding of the original structure**. The question is one of fact and degree whether in the instant case the original railway under-bridge has been so changed by the works that one could not reasonably conclude that it remains the same bridge even though with some alterations, improvements or indications of maintenance work (emphasis added)"¹*

Mr Justice Herbert also stated that any alterations to a structure has to be considered objectively and taking in to consideration the structure as a whole:

"... the court must assess the character of this structure by looking objectively at the entity as a whole, taking all of the matters identified by Finlay C.J. [see below], into account. From a purely subjective point of view, one observer might consider that the character of the bridge lay in its environmental context and overall dimensions, its locus, height, width, length and the dimensions of the road opening; another might see its character in the type, cut, colour, size and placement of its structural materials and ornamental work; while yet another might see the semi-circular voussoir arches and spandrels as entirely determining its character. I find that it is all these features taken together and other features to which I have adverted and their interaction with each other which gives a structure such as this its character ... I find for the reasons I have stated that there is no objective basis for considering that one particular type of opening rather than another should be regarded in itself as establishing the character of this sort of bridge. I find that the works carried out by the Respondent to this bridge do not render its present appearance inconsistent with the character of the bridge. In these circumstances, I find that the development carried out by the Respondent in the instant case was "exempted development"."

In comparison to the proportion of alteration/reconstruction to 1 Tuckey Street, the extent of reconstruction involved in McCabe v CIE (which involved the replacement of the brick/stone arch bridge structure with a higher-level flat span pre-cast concrete deck with extended parapet walls on each side of the bridge) not only comprised a substantial replacement of the existing structure, the replacement structure also took a significantly different form to that of the original structure.

Westmeath County Council v Moriarty

The issue of reinstating a fire damaged property was dealt with in *Westmeath County Council v Moriarty* (July 1991, unreported) which involved the reconstruction of a property extensively damaged by fire² and where Blayney, J. held that the reconstruction of a public house (which was destroyed by fire) constituted exempted development.

¹ McCabe v CIE (2006) IEHC 356, p..

² O'Sullivan and Shephard, Irish Planning Law and Practice, pg. 2/49, para. 163.

Despite the extent of damage, it was considered that the building and the established residential use could be re-instated, as it previously existed, as exempted development under Section 4(1)(h) of the Act without recourse to the planning application process.

Cairnduff v. O'Connell

In the Supreme Court decision in *Cairnduff v. O'Connell* [1986] I.R. 73, Judge Finlay C.J., made reference to section 4(1)(g) of the Local Government (Planning and Development) Act, 1963, (which also included similar wording to Section 4(1)(h) of the 2000-2019 PDA i.e. "*which do not materially affect the external appearance of the structure so as to render such appearance inconsistent the character of the structure*"), that the insertion of a window in a side wall of a three storey terrace house, the replacement of a window by a door and, the construction of a balcony and staircase for the purpose of converting it into a residence with two flats, had not so materially affected the external appearance of the structure, as to render it inconsistent with the character of the house itself or of adjoining houses. In the course of his judgment, Finlay C.J. stated that:

"... I am satisfied that the character of the structure provided for in the sub-section must relate, having regard to the provisions of the Act in general, to the shape, colour, design, ornamental features and lay-out of the structure concerned. I do not consider that the character of the structure within the meaning of this sub-section will depend on its particular use at any time..."³

The features outlined in the above judgement which relate to the character of the structure (i.e. shape, colour, design, ornamental features and layout) are those referenced by Mr Justice Herbert in *McCabe v CIE*.

Molloy & Others – v – The Minister for Justice

In *Molloy & Others v The Minister for Justice* (2004), it was found that a valid planning permission cannot be lost or abandoned. So, for example, in a situation where a planning permission was granted for a development (e.g. shopping centre) but that use ceased for a period, the permitted use(s) can be reawakened.

The Molloy case is relevant in this instance as the works to be undertaken under Section 4(1)(h) will not result in any material structural alteration to the structure once completed. Therefore, the commercial/retail uses and the upper floor residential uses, which have been temporarily suspended pending completion of repair works, will not have been lost or abandoned and can be resumed on completion of the repair/reconstruction works.

The relevance and significance of the above cases are dealt with further in Section 4 of this report.

³ Cairnduff v. O'Connell [1986] I.R. 73, where Finlay C.J., p.77.

3.2 Relevant Section 5 Declarations/Referrals

There are a number of Section 5 Declarations and Referrals to An Bord Pleanála, which have been made under Section 5 of the PDA which deal with similar planning issues to this case, including cases which deal with remedial works and the reconstruction of fire damaged properties, including the following:

An Bord Pleanála Ref. 27.RL.2592: In this referral, the Board concluded that works of repair and renewal to a dwelling which was extensively damaged by fire, at Brockagh, Glendalough, Co. Wicklow, were exempted development on the basis that:

- (a) the works of repair and renewal to the building were of a nature and scale consistent with the purposes of maintenance, improvement or other alteration to a structure and did not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and
- (b) the works came within the exempted development provisions of section 4(1)(h) of the Planning and Development Act.

In this case the Board was satisfied that the works were exempted development under 4(1)(h) despite the fact that the Inspector considered the works to be extensive and more in line with the "replacement" of the structure as opposed to the maintenance, improvement or alteration of the structure.

In making its decision however, the Board had particular regard to sections 2, 3 and 4(1)(h) of the PDA; articles 6 and 9 of the Planning and Development Regulations, 2001; Classes 1 and 50(a)(i) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and the nature and extent of the works carried out; and concluded that the that repair/renewal works were exempted development under Section 4(1)(h) of the PDA.

Cork City Council Ref. R545/19: In this declaration, the Council concluded that the replacement/reconstruction of part of Douglas Village Shopping Centre that was damaged/compromised by fire was exempted development having regard to Sections 2, 3, and 4(1)(h) of the Planning and Development Act 2000 as amended, and on the basis that

- the proposal comes within the scope of the definition of 'development' as defined in section 3 of the Planning and Development Act, 2000 as amended,
- the proposal involves works for the maintenance or improvement of the shopping centre,
- the proposal involves development which affects only the interior of the structure or which does 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 above declarations/referrals are very relevant to the declaration sought under this submission as they establish that:

- Extensive repair and reconstruction works for the purposes of maintenance, improvement or other alteration to a structure fall within Section 4(1)(h) of the PDA provided that (on completion) the works do not materially affect the external appearance

of the structure so as to render the appearance inconsistent with the character of the structure;

- Extensive repair/renewal works (i.e. works more in line with a “replacement” structure) involving extensive internal and external works, have been considered exempted development by the Courts and An Bord Pleanála under Section 4(1)(h) of the PDA.
- the replacement/ reconstruction of part of a structure that was damaged/compromised is exempted development having regard to Sections 2, 3, and 4(1)(h) of the Planning and Development Act 2000 as amended.



4. Assessment

In considering whether the repair/reconstruction works to 1 Tuckey Street following the collapse of part of the front elevation is exempted development or not, the following provisions and considerations are particularly relevant:

- **Sections 2, 3 and 4 of the PDA and in particular Section 4(1)(h);**
- **Case law and precedent referrals/section 5 declarations.**

The key consideration in this instance is whether the replacement/reconstruction of part of 1 Tuckey Street (i.e. the front elevation) is exempted development under Section 4(1)(h) of the PDA. To establish if this is the case, it is necessary to determine:

- 1) The structure and scope of works involved;
- 2) Whether the development consists of the carrying out of works for the maintenance, improvement or other alteration of the structure;
- 3) Whether the works materially affect the external appearance of the structure;
- 4) Whether the works render the appearance inconsistent with the character of the structure or of neighbouring structures;
- 5) Other considerations (e.g. Compliance with Planning Regulations)

We will deal with each of the above items as follows:

The structure and scope of works

In the first instance, it is important to establish the 'structure' for the purpose of Section 4(1)(h). In terms of the definition of structure in this instance and having particular regard to the precedents established under Cork City Council ref. R545/19, it is reasonable to conclude that the 'structure' comprises 1 Tuckey Street in its entirety.

The scope of works comprises the replacement of the front elevation and any associated structural and internal works to make the building safe.

Whether the works comprise 'maintenance, improvement or other alteration of the centre

In terms of the nature of the repair/reconstruction works involved in re-instating/replacing the front elevation, it is reasonable to conclude that these repair/reconstruction works fall in to one if not all of the categories (i.e. maintenance, improvement or other alteration) included in Section 4(1)(h).

As outlined in *McCabe v CIE* the extent of maintenance/improvement/alteration of the original structure is a key consideration under Section 4(1)(h). The standard applied by Mr Justice Herbert in *McCabe v CIE* was based on anything that did not "**amount to the total or substantial replacement or rebuilding of the original structure**". If this standard can be achieved, then any works for the maintenance, improvement or other alteration to a structure can be considered eligible for the exemption under Section 4(1)(h) of the PDA.

The front elevation comprises a small percentage i.e. less than 25% of the total fabric of the building to be replaced (in order to make the structure safe and suitable for re-occupation by tenants/customers).

By comparison to the quantum of new/replacement structure involved in the *McCabe v CIE* (where all of the arch and parapet of the rail bridge was replaced) and the 27.RL.2592 referral (where 100% of the floorspace was replaced), the extent of the structure to be replaced/reconstructed amounts to less than 25% of the existing fabric of the building. This is substantially less than the standard applied by Mr Justice Herbert in *McCabe v CIE* (i.e. anything less than the "**total or substantial replacement or rebuilding of the original structure**") and can be considered eligible for the exemption provided under Section 4(1)(h) of the PDA.

Whether the works materially affect the external appearance of the structure

As already outlined in this submission, the works will affect the interior and exterior of the structure, however the works will only involve the replacement/reconstruction of the existing fabric that was damaged (i.e. mainly the front elevation).

As the replacement/reconstruction will generally replicate the existing building that existed prior to the collapse of the front elevation, the completed/reconstructed works will not materially affect the external appearance of the structure or render the appearance inconsistent with the character of the structure/neighbouring structures and is therefore consistent with Section 4(1)(h) of the PDA.

5 Conclusion

Having regard to the provisions of the Planning and Development Acts 2000-2019; the Planning and Development Regulations 2001-2019; and precedent case law and section 5 declarations/referrals cited above, it is submitted that:

- The 'structure' in this instance comprises the entire 1 Tuckey Street;
- The repair/reconstruction works fall under Section 4(1)(h) of the Planning and Development Acts 2000-2019 i.e. maintenance, improvement or other alteration works;
- As outlined in *McCabe v CIE* the extent of maintenance/improvement/alteration of the original structure is a key consideration under Section 4(1)(h). The standard applied by Mr Justice Herbert in *McCabe v CIE* was based on anything that did not "amount to the total or substantial replacement or rebuilding of the original structure";
- The scope of repair/remedial works comprises the replacement/reconstruction of c.25% of the fabric of the building. This is substantially less than the precedent established in the *McCabe v CIE* case;
- The replacement/reconstruction will replicate the structure that existed prior to the collapse of the front elevation and will not therefore materially affect the external appearance of the structure (i.e. shopping centre) or render the appearance of the shopping centre inconsistent with the character of neighbouring structures.

It is submitted therefore that the replacement/reconstruction of the front elevation of 1 Tuckey Street that was damaged/structurally compromised is exempted development under Section 4(1)(h) of the PDA.

Having regard to the provisions of the Planning and Development Act, 2000 and the precedent referrals cited in this submission, it is submitted that that the replacement/reconstruction of the front elevation of 1 Tuckey Street that was damaged/structurally compromised is exempted development under Section 4(1)(h) of the PDA and does not therefore require planning permission.

In accordance with the Council's requirements for Section 5 declarations please find enclosed:

1. This cover letter and application form which includes the applicant's name and address; and the location of development;
2. The correspondence address which is: McCutcheon Halley, Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork;
3. Location Map by McCutcheon Halley (Appendix 1);
4. Drawings by MMOS Consulting Engineers (Appendix 2);
5. The appropriate referral fee of €80.00.

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

Yours sincerely,



Tom Halley
McCutcheon Halley



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
Líonra/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

Purtol Ltd.

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

1 Tuckey Street, Cork City

3. QUESTION/ DECLARATION DETAILS

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

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

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

Request for a Section 5 Declaration seeking confirmation that the replacement/reconstruction of the front elevation of 1 Tuckey Street, Cork, that was damaged/structurally compromised is exempted development under Section 4(1)(h) of the 2000 Planning and Development Act (as amended).

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:*(Use additional sheets if required).*

See attached cover letter.

4. Are you aware of any enforcement proceedings connected to this site?

*If so please supply details:*NO

5. Is this a Protected Structure or within the curtilage of a Protected Structure?
-

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

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

*If so please supply details:*20/39788**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	91sqm
(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:	
<u>Existing</u> previous use (please circle) Retail (Ground Floor Level) and Residential on upper floors	<u>Proposed</u> existing use (please circle) No change of use proposed

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

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

Signature:



Date: 12/07/22

URX,URY = 588363,568042



Description:
 Digital Landscape Model (DLM)
 Publisher / Source:
 Ordnance Survey Ireland (OSI)
 Data Source / Reference:
 RM12Z
 File Format:
 Autodesk AutoCAD (DWG, DWT)
 File Name:
 _L3094296_1.dwg
 Clip Extent / Area of Interest (AOI):
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 URX,URY= 588363.5,568042.0
 ULL,ULY= 597153.5,571657.0
 URR,URY= 587363.5,567042.0
 Projection / Spatial Reference:
 Projection: IRENETV3 Irish Transverse Mercator
 Centre Point Coordinates:
 X= 582700.0, Y= 571743.0
 Reference Index:
 Grid Easting: 582700
 Grid Northing: 571743
 Sheet: 14
 1:1,000 | 6382-14
 1:1,000 | 6382-15
 Data Extraction Date:
 Date: 11-Jul-2023
 Source Data Release:
 Date: 11-Jul-2023
 Product Version:
 Version: 1.4
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OSI Receipt Details
 Order No - 50345288
 Sales Person - Karen Burke
 Date - 11/07/2023

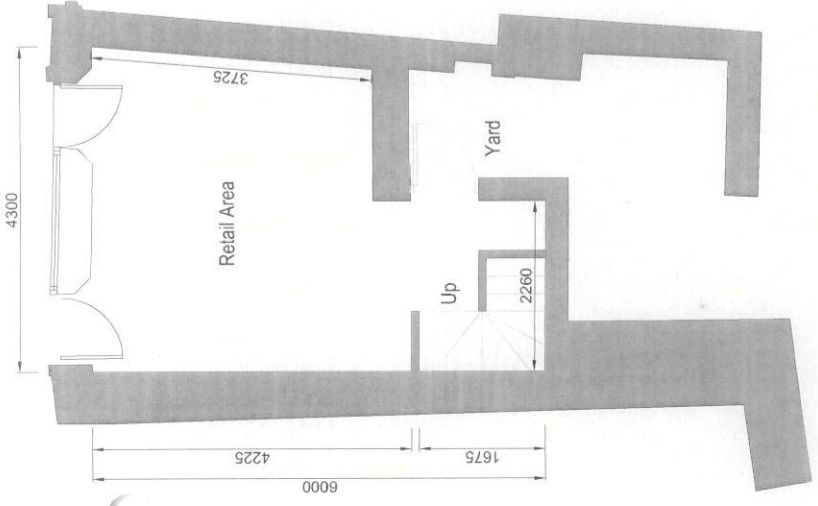
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PROJECT ORIGINATOR/ZONE LEVEL TYPE/DOCUMENT NUMBER	REV
	P01



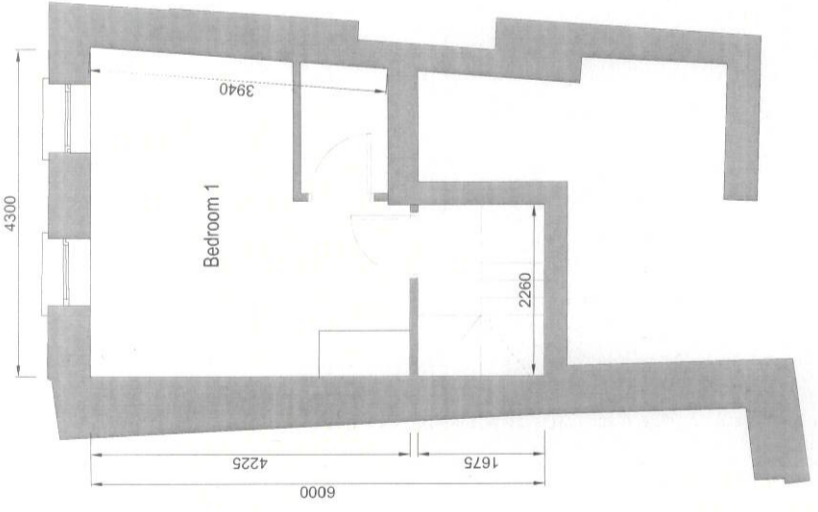
Denotes Site Boundary
 Subject of This Application

LLX,LLY= 567153.5,571657.0

Site Location Map For 1 Tuckey Street, Cork



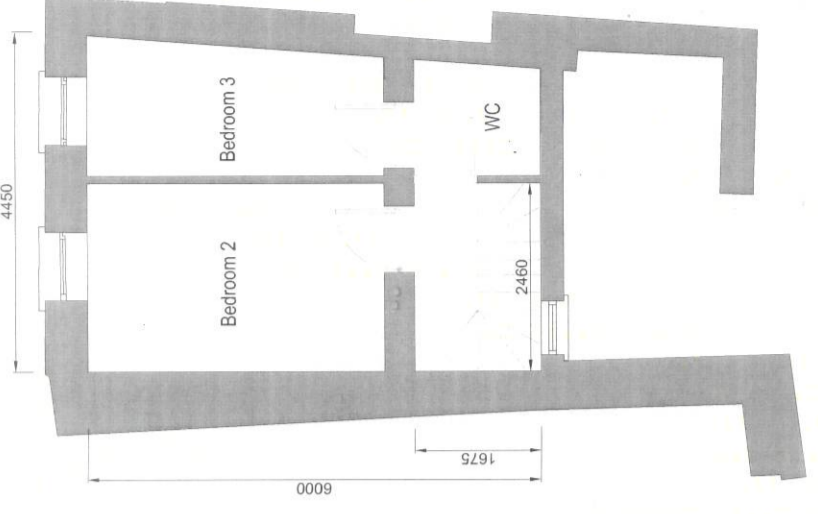
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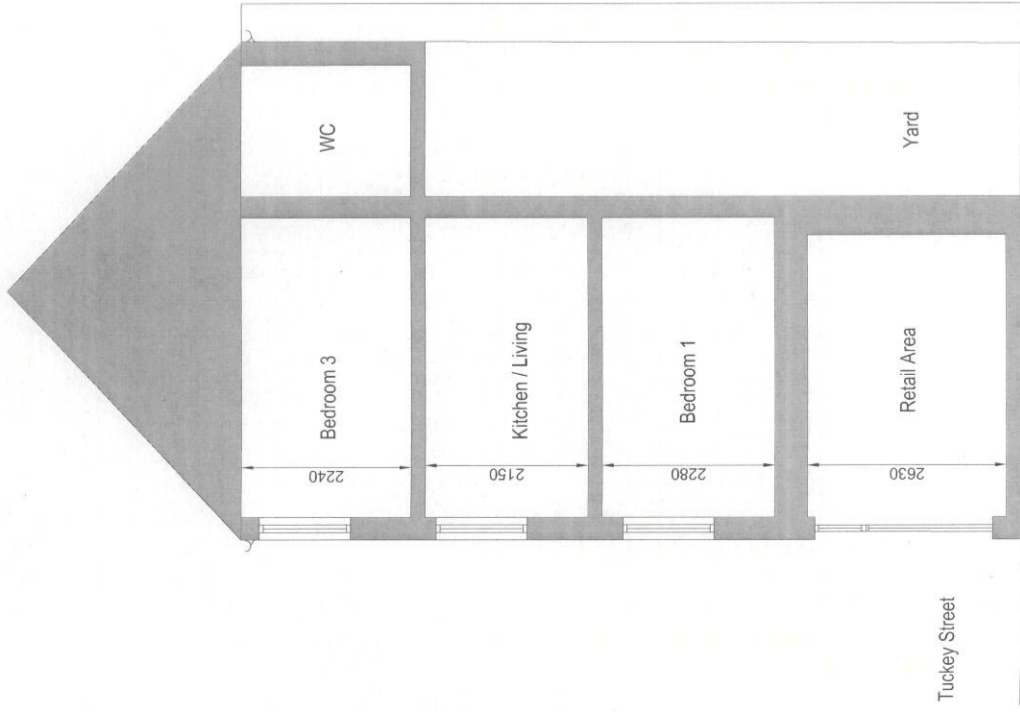
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Scale 1:100 @ A3



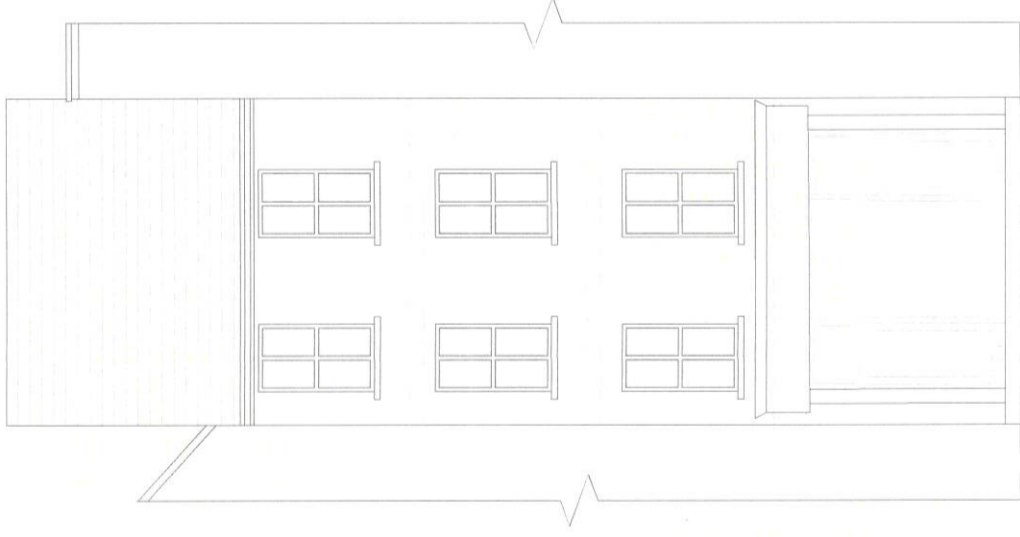
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Scale 1:100 @ A3



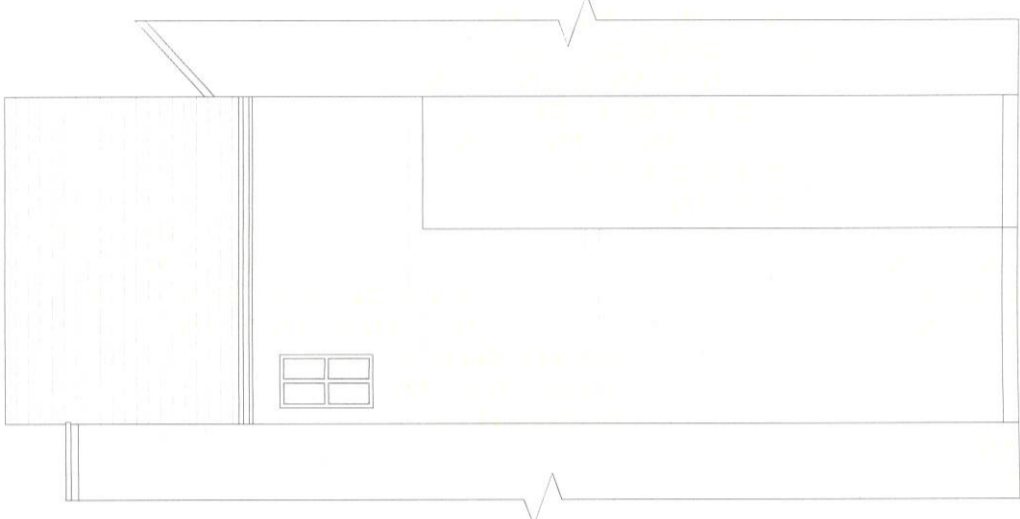
Proposed Third Floor Plan
Scale 1:100 @ A3



Typical Section
Scale 1:100 @ A3



Front / North Elevation
Scale 1:100 @ A3



Rear / South Elevation
Scale 1:100 @ A3

Rev	S/S	Description	Date
P01	S2	Issued for information	05.07.23

MMOS
The Chapel,
Blackrock House,
Blackrock Road
MURPHY-MATSON-O'SULLIVAN
Cork, T12 KRK7
Tel: 353 21 4317698

PROJECT
**Proposed Redevelopment at
No.1 Tuckey Street, Cork**

CLIENT
Laughton Construction

TITLE
**Proposed Floor Plans, Section
& Elevations**

DRAWN BY
DB

CHECKED BY
PM

APPROVED BY
PM

PROJECT NUMBER
23100

SCALE
As Shown

DOCUMENT REFERENCE
23100-MMS-ZZ-ZZ-DR-A-2000

STATUS
S2

REV
P01

PROJECT ORIGINATOR, ZONE, LEVEL, TYPE, DCP, LINE NUMBER



CORK CITY COUNCIL
CITY HALL
CORK

19/07/2023 15:07:16

Receipt No. : PLAN3/0/7825377
***** REPRINT *****

1 Tuckey Street
McCutcheon Halley

EXEMPTION CERTS - FEES 58800	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
McCutcheon Halley	

Total : 80.00 EUR

Tendered :
Cheque 80.00
500020

Change : 0.00

Issued By : Eoghan Fahy
From : Planning Dept. 3
Vat reg No.0005426M



CORK CITY COUNCIL
CITY HALL
CORK

19/07/2023 15:07:16

Receipt No. : PLAN3/0/7825377
***** REPRINT *****

1 Tuckey Street
McCutcheon Halley

EXEMPTION CERTS - FEES 58800	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
McCutcheon Halley	

Total : 80.00 EUR

Tendered :
Cheque 80.00
500020

Change : 0.00

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From : Planning Dept. 3
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