Comhairle Contae Chill Dara
Kildare County Council

Date: 8th January 2024.
Our Ref: ED/1067.

Thomas King,
Dukes Lodge,
Athy,
Co. Kildare.

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at 19 Emily Square, Athy, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 15th September 2023 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 (as amended) in this regard.

Yours sincerely,

Senior Executive Officer,
Planning Department.

Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).

ED/001067.

WHEREAS a question has arisen as to whether the refurbishment of a vacant house to bring back into use at 19 Emily Square, Athy, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 15th September 2023

AND WHEREAS Thomas King requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Planning and Development Act 2000 (as amended); and
(b) Planning and Development Regulations 2001 (as amended);

AND WHEREAS Kildare County Council has concluded that the development comprises works to which the provisions of the following applies:

(a) Sections 2, 3, 4, 5, and 82 of the Planning and Development Act 2000 (as amended);
(b) The nature, extent and purpose of the works,

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that -

(a) the replacement of the timber sash windows and door on the front elevation, in the absence of detailed design/materials for the consideration of the Planning Authority, ***IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT***

(b) the refurbishment and bringing back into use a derelict house with the exception of (i) above ***IS DEVELOPMENT and IS EXEMPTED development,***

pursuant to Sections 2, 3, 4, 5, and 82 of the Planning and Development Act as amended and Article 6, Article 9 of the Planning and Development Regulations as amended.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

8th January 2024.

Senior Executive Officer,
Planning Department.

KILDARE COUNTY COUNCIL

PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/1067.

Name Of Applicant(s):	Thomas King.
Address Of Development:	19 Emily Square, Athy, Co. Kildare.
Development Description:	Refurbishment of existing house.
Due date	13/10/2023.

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether under Section 5 of the Act the works to refurbish and bring back into use a derelict house can be considered to be exempted development.

Site Location

19 Emily Square, Athy, Co. Kildare

Description of Proposed Development

The proposed development is located in the centre of Athy town, opposite Athy Heritage Centre on Emily Square. the existing two storey terraced house is vacant and derelict. The house adjoins a commercial premises to the north and a residential building to the south, both of which are protected structures. The subject house is not a protected structure although it is listed on the National Inventory of Architectural Heritage (Reg No: 11505325). The site is located within an Architectural Conservation Area and a zone of archaeological interest.

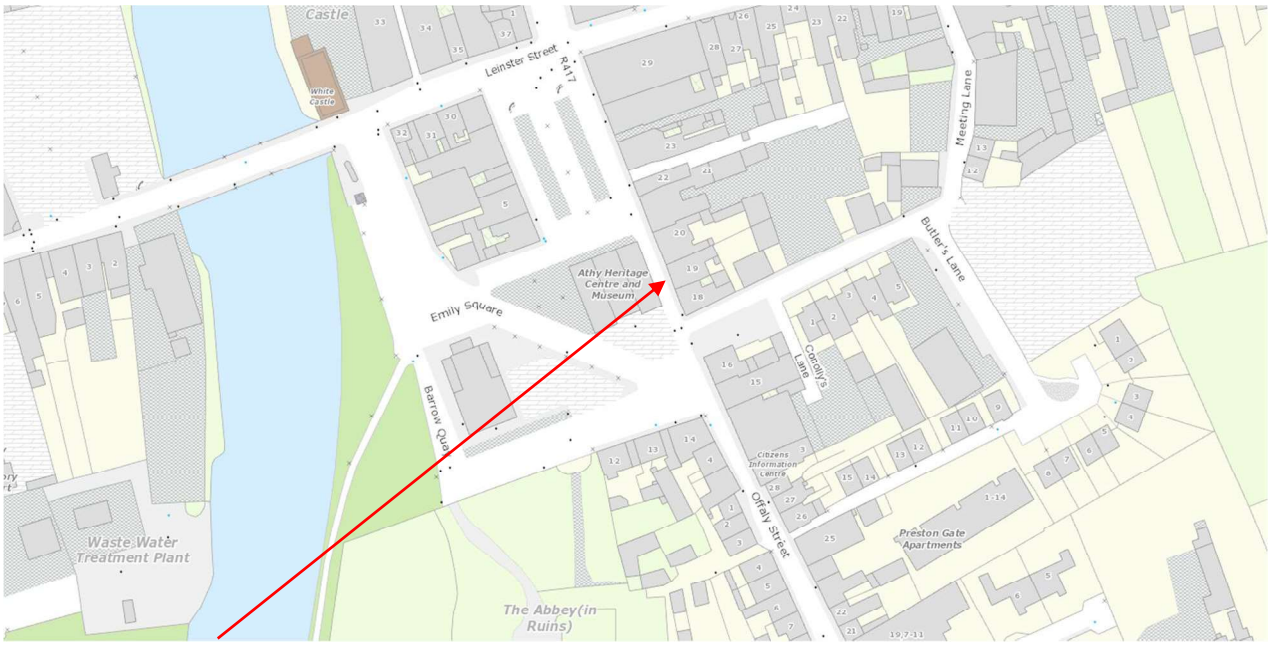


Fig 1: Site Location and context. Site indicated via arrow.

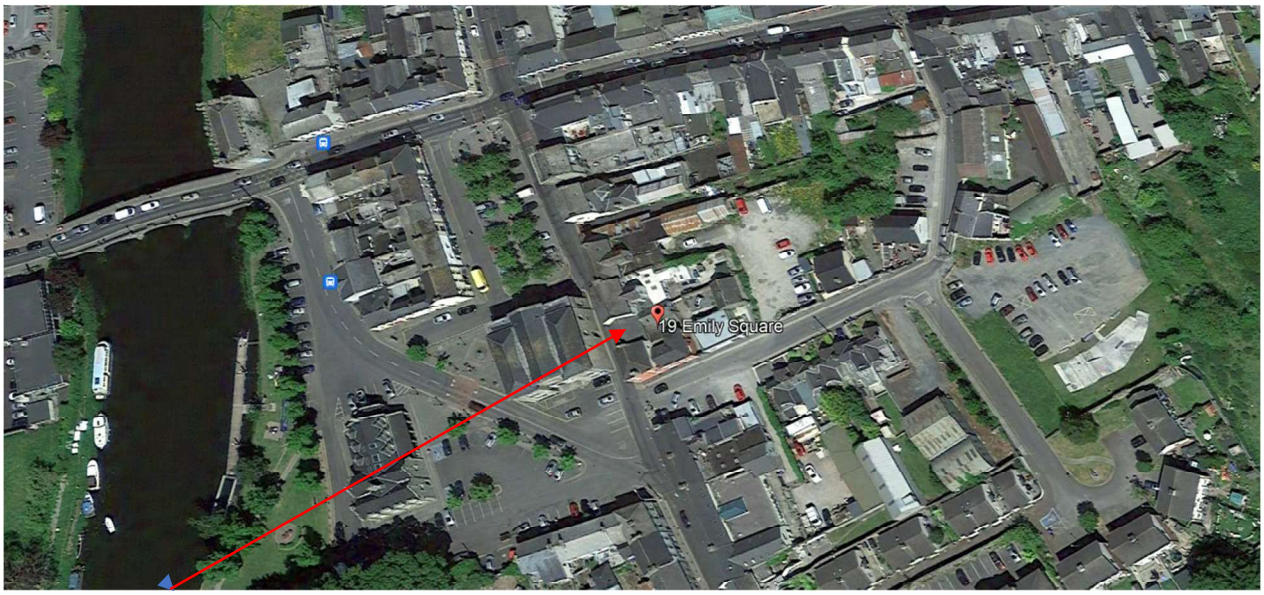


Fig 2: Aerial view of subject site (Google Images)



Fig 3: Subject house (Google Street View)

Planning History

03/300035 - Permission granted to Tom King for 2 retail units, kitchen extension to Chinese Restaurant and 7 apartments to the rear of 19, Emily Square.
This application does not appear to have been enacted.

Relevant Legislative Background

Planning and Development Act 2000 (as amended)

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)

The following shall be exempted development for the purposes of the 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 5(7) EIA Screening
The proposed development is not specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended). In any event, it is considered, having regard to nature, size and location, the proposed development would not be likely to have significant effects on the environment. Therefore, EIA is not required.

Section 82.(1)
[Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

Planning and Development Regulations 2001 (as amended)

Article 6(1)
Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1)(a)(i)

Restrictions on exemption.

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—…..(15 items)

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area 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 and the development would materially affect the character of the area

Assessment
A detailed list of the proposed works has been included with the application. The works consist of the comprehensive renovation of the existing house, including; new plumbing and electrics, insulation, window and door replacement, and roof and plaster repair.

It is proposed to retain the existing connections to water and waste water, and it is stated that the existing sash windows will be replaced with new sash windows. It is further stated that no site preparation works, demolition, or other groundwork will be carried out.

The replacement of existing asbestos roof to the rear and the repair of damaged back wall are considered to constitute ‘works’ as defined by Section 2 and ‘development’ as defined by Section 3 of the Planning and Development Act 2000 (as amended).

The works are required for the improvement and habitation of the structure, which affect the exterior of the structure. Having regard to the appearance of the structure and the proposed works which merely seek to repair and maintain the existing structure, it is considered that these works 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. It is further considered that the proposed works would not materially affect the character of the area. These works are therefore considered to be exempted development in accordance with Section 4(1)(h) of the Planning and Development Act 2000 (as amended), with the exception of the front windows and doors which would be dependent on the detailed design of same.

Conclusion

Having regard to:

- Sections 2, 3, 4, 5, and 82 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the works;

it is considered that the proposed works **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), with the exception of the front windows and doors.

Recommendation

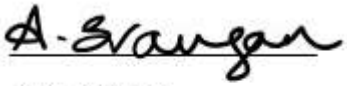
It is recommended that the applicant be advised that the development as described in the application is development and is exempted development, with the exception of the front windows and door which would be dependent on design and materials which have not been specified sufficiently to be deemed exempt.



Neil Butler
Assistant Planner
10.10.23



Béibhinn O'Shea
Senior Executive Planner
24/10/2023



Aoife Brangan

A/SP

25/10/23

Declaration of Development & Exempted Development under

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the refurbishment and bringing back into use a derelict house can be considered to be exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 15.09.23.

AND WHEREAS Thomas King requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Planning and Development Act 2000 (as amended); and
(b) Planning and Development Regulations 2001 (as amended);

AND WHEREAS Kildare County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

(a) Sections 2, 3, 4, 5, and 82 of the Planning and Development Act 2000 (as amended);
(b) The nature, extent and purpose of the works,

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that -

(i) *the replacement of the timber sash windows and door on the front elevation, in the absence of detailed design/materials for the consideration of the Planning Authority,* ***IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT***

(ii) *the refurbishment and bringing back into use a derelict house with the exception of (i) above* ***IS DEVELOPMENT and IS EXEMPTED development,***

pursuant to Sections 2, 3, 4, 5, and 82 of the Planning and Development Act as amended and Article 6, Article 9 of the Planning and Development Regulations as amended.

Note that any person issued with a declaration under Section 5 of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed: _____

Appendix 1: Appropriate Assessment Screening

APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION

(A) Project Details	
Planning File Ref	ED1067
Applicant name	Thomas King
Development Location	19 Emily Square, Athy
Site size	
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	90m
Description of the project/proposed development – Refurbishment and bringing back into use of a derelict house	

(B) Identification of Natura 2000 sites which may be impacted by the proposed development			
			Yes/No If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	**Impacts on sites designated for freshwater habitats or species.** Sites to consider: River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	*Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats and/or species, or in the catchment (upstream or downstream) of same?*	**No**
2	**Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath.** Sites to consider: River Barrow and Nore, Rye	*Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or*	**Yes**

	Water/Carton Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	*heath), or within 1 km of same?*	
3	**Impacts on designated terrestrial habitats.** Sites to consider: River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh Lake	*Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?*	**Yes**
4	**Impacts on birds in SPAs** Sites to consider: Poulaphouca Resevoir	*Is the development within a Special Protection Area, or within 5 km of same?*	**No**

Conclusion:
If the answer to all of the above is **No**, significant impacts can be ruled out for habitats and bird species.
No further assessment in relation to habitats or birds is required.
If the answer is **Yes** refer to the relevant sections of **C.**

(C) Identification of Potential Impacts on Habitats and Birds.		
2	**Impacts on designated wetlands - bogs, fens, marshes and heath.** ***Answer the following if the answer to question 2 in table B was YES*** *Does the development involve any of the following:*	
2.1	Works within the boundary of a Special Area of Conservation excluding small extensions/alterations to existing buildings.	**No**
2.2	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a Natura 2000 site	**No**
2.3	Development of a large scale within 1km of bog, marsh, fen or heath habitat within a Natura 2000 site which involves the production of an EIS	**No**
3	**Impacts on other designated terrestrial habitats (woodland, grasslands)** ***Please answer the following if the answer to question 3 in table B YES*** *Does the development involve any of the following:*	

3.1	Works within the boundary of a Special Area of Conservation.	**No**
3.2	Development within 200m of Natura 2000 site with woodland, grassland or coastal habitats.	**No**
3.3	Development of a large scale within 1km of Natura 2000 site with woodland, grassland or coastal habitats which involves the production of an EIS.	**No**

Conclusion:
If the answer to all of the above is **No**, significant impacts on habitats within Natura 2000 sites can be ruled out. No further assessment is required in relation to habitats. If the answer is **Yes**, you will require further information, which should be provided in the form of a Natura Impact Statement which should address the particular issues of concern as identified through the above.

(G) SCREENING CONCLUSION STATEMENT *Selected relevant category for project assessed by ticking box.*		
1	AA is not required because the project is directly connected with/necessary to the conservation management of the site	
2	No potential significant affects/AA is not required	**X**
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement Reject proposal. (Reject if potentially damaging/inappropriate)	
Justify why it falls into relevant category above (based on information in above tables)		
Having regard to the proximity of the nearest SAC site, and the relatively small-scale nature and extent of the proposal, it is not considered a potential exists for significant effects on the Natura 2000 network.		
Name:	Neil Butler	
Position:	Assistant Planner	
Date:	10.10.23	

COMHAIRLE CONTAE CHILL DARA

KILDARE COUNTY COUNCIL

Director of Services Order

I, Alan Dunney, Director of Services, am duly authorised and delegated by Chief Executive's Order number: CE48043 to make the following Order in accordance with Section 154 of the Local Government Act, 2001, as amended.

ORDER NO: DO50556 **Section:** Planning

SUBJECT: ED/1067.
Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at 19 Emily Square, Athy, Co. Kildare.

SUBMITTED: File Ref. ED/1067 with recommendation from the A/Senior Planner and reports from the Council's Technical Officers.

ORDER: **I hereby order the following** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended) hereby decides that the proposed development is development and is partially exempt and not exempted development.

MADE THIS 9th DAY

OF January YEAR 2024

SIGNED: Alan Dunney

DIRECTOR OF SERVICES

Kildare County Council

Declaration of Exempt Development under Section 5,

of the Planning and Development Act 2000 as amended RD1067

Incomplete application forms will be deemed invalid and returned	All responses must be in block letters

Section 1	Details of Applicants

1. Name of Applicant(s) A. Surname... KING ..... Forenames... THOMAS .....
Phone No [redacted] No.....
2. Address ..DUKES LODGE, ATHY CO. KILDARE .....
.....

Section 2	Person/Agent acting on behalf of applicant (if applicable)

1. Name of Person/Agent: Surname..... Forenames.....
Phone No..... Fax No.....
2. Address.....
.....

Section 3	Company Details (if applicable)

1. Name of Company .....
Phone No..... Fax No.....
2. Company Reg. No.....
3. Address.....
.....

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Section 4	Details of Site

1. Planning History of Site.... Ref 03/300035 + 10/300003 .....
2. Location of Proposed Development.... 19 EMILY SQUARE,
..... ATHY, CO. KILDARE R14 .....
3. Ordnance Survey Sheet No... map included .....
4. Please state the Applicants interest in the site .... OWNER .....
.....
5. Please state the extent of the proposed development.... REFURBISHMENT OF HOUSE
HOUSE VACANT + DERELICT,
REFURBISHMENT BRING BACK INTO USE

6. Under what Section of the Planning and Development 2000 as amended and/or what provision of the Planning and Development Regulations 2001 as amended is exemption sought *(specific details required)*

PLANNING AND DEVELOPMENT ACT 2000 as amended,
EXEMPTED DEVELOPMENT : SECTION 4.1 (h)
(h) MAINTENANCE, IMPROVEMENT ... OF INTERNOR - NOT MATERIALLY AFFECT The EXTERIOR

7. Please give a detailed description of the Proposed Development *(Use separate page if necessary)*

THE HOUSE IS DERELICT, AND NEEDS REFURBISHMENT TO REPAIR IT TO BRING IT BACK INTO USE.
* SEE ATTACHED SHEET FOR DETAILS OF
* WORKS PROPOSED

KILDARE CO.C.O VACANT HOME DEPT REQUIRE A CERTIFICATE OF EXEMPTION FROM PLANNING IN ORDER THAT WE MAY PROCEED WITH THE WORK. PLEASE ISSUE THE CERTIFICATE
MANY THANKS KIND REGARDS T. King

Section 5	The following must be submitted for a valid application

(Please Tick)

1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	✓
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	✓
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	✓
4.	All drawings to differentiate between the original building, all extensions and proposed development	✓
5.	Fee of 80 Euro	

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15 SEP 2023
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Section 6	Declaration

I, THOMAS KING certify that all of the above information is correct and I have submitted all the required documents as outlined at Section 6 above.

Signature: Thomas King. Date: 14-9-2023.

Q7 Detailed description of Proposed works

Damp course and insulation on the floor

Repair any missing plaster

Renew the electrical system in the house

Renew the plumbing system

Replace stolen water cylinder in the house

Replace missing slates on the roof replacing like for like, matching dark colour blue/black or slate grey as appropriate using slates.

Safely remove asbestos roof to rear of building, removal to be carried out by approved contractor according to relevant health and safety standards.

Replace existing skylights in aforementioned asbestos roof with new skylights

Replace falling down ceilings

Fitting internal insulation to external walls

Upgrade insulation in the house

Repair damaged back wall of single story extension to rear of house

Renew windows and doors, replacing sash windows with sash windows.

All external wall finishes will be painted smooth render finish, neutral in colour and texture

The external windows of all bathrooms shall be in obscure glazing

The refurbishment of the house shall not impair existing land or road drainage

All foul water and waste water and sewerage from the house shall be disposed of via the current house connection to the public foul sewer

No muck, dirt, debris or other materials shall be deposited on the public road, footpath or verge by machinery or tradesmen/women during the refurbishment, and the works area will be kept clean during the refurbishment.

The house has a connection to mains water and this is to be maintained during and after the refurbishment.

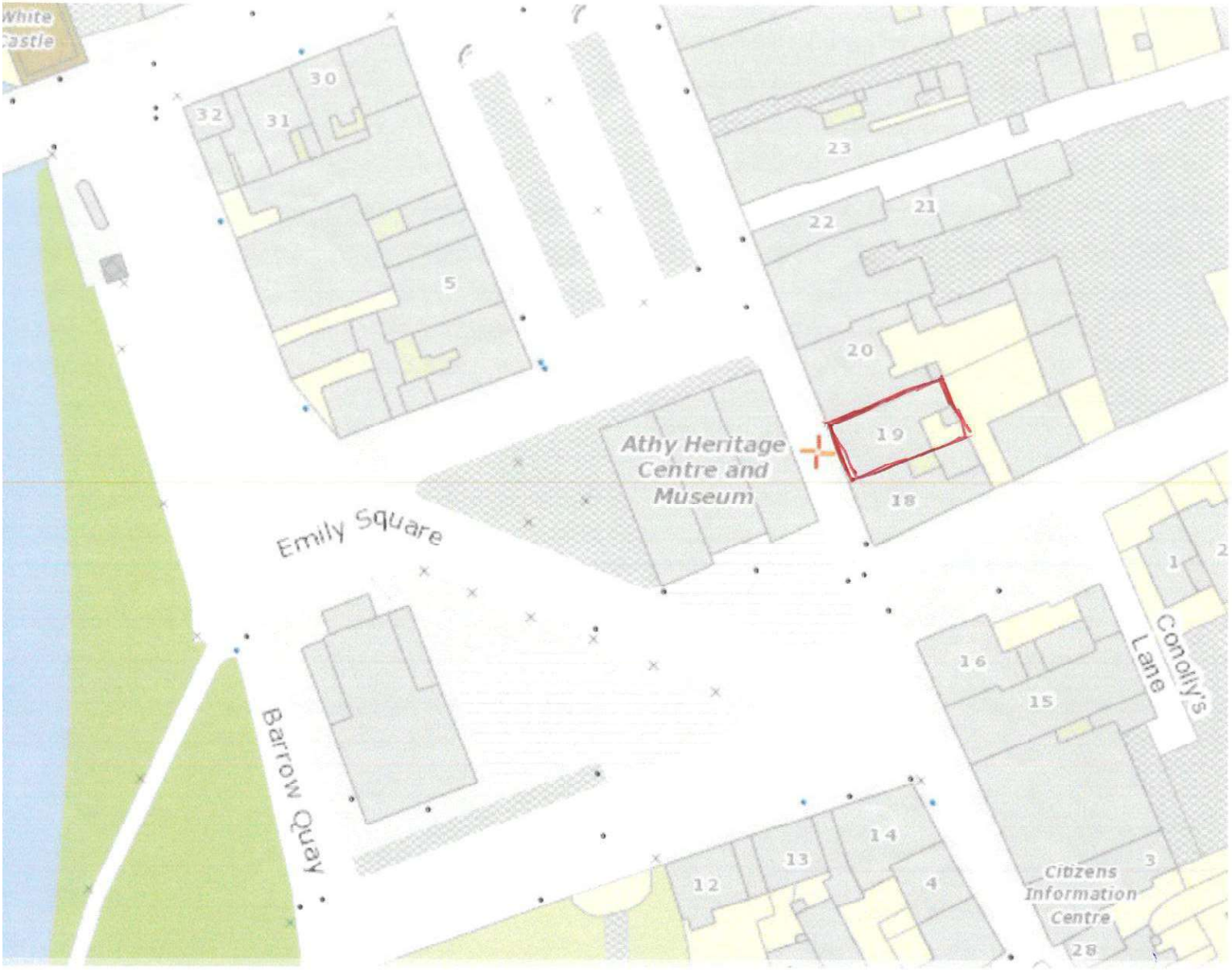
As it is a refurbishment, no site preparation works, demolition or other groundwork to be carried out.

Smoke alarms and heat alarms to be installed

Existing kitchen units and bathroom ware to be upgraded

Internal painting tiling and decorating to finish as required.

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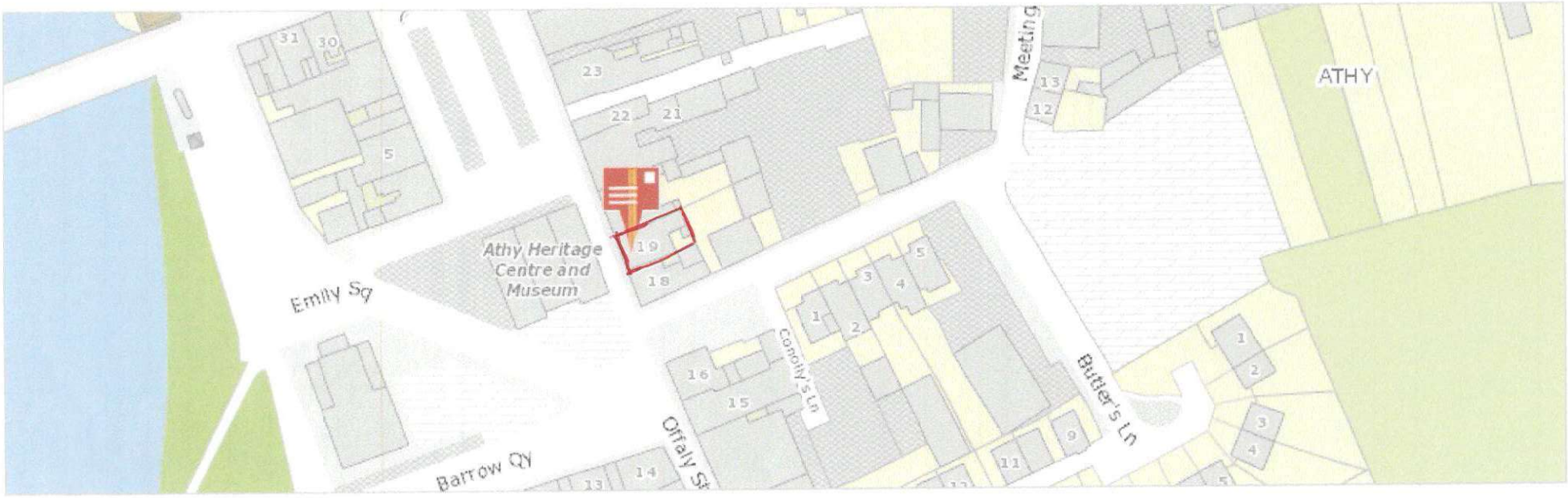
English | Gaeilge

19 EMILY SQUARE

ATHY

CO. KILDARE

R14 NY33



EIRCODE

FINANCE CASH OFFICE
Kildare County Council
Áras Chill Dara
Devoy Park
Naas
Co. Kildare
15/09/2023 14:13:48

Receipt No. : FIN1/0/491285
***** REPRINT *****

ED1067 Thomas King

PLANNING EXEMPT DEVELOP FEES		80.00
GOODS	80.00	
VAT Exempt/Non-vatable		

Total : 80.00 EUR

Tendered :
Cash 80.00

Change : 0.00

Issued By : Sally Pallister Finance Section
From : Financial Lodgement Area
Vat reg No.0440571C



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Planning Department
15 SEP 2023
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EMILY SQUARE

EXISTING FIRST FLOOR PLAN

19 EMILY SQUARE – SCALE 1:50

DEVELOPMENT IS CARRIED TO THE BOUNDARY OF THE PROPOSED SITE & THEREFORE DISTANCES TO THE BOUNDARIES ARE NOT SHOWN



EXISTING CHINESE RESTAURANT

GENERAL.

THE CONTRACTOR SHALL EXAMINE ALL CONTRACT DOCUMENTS THOROUGHLY AND BE FULLY SATISFIED AS TO THEIR TRUE MEANING AND INTENT AND SHALL BE AWARE OF THE FULL EXTENT OF THE WORKS.

ANY ERROR, OMISSION OR AMBIGUITY IN THE DOCUMENTS SHALL BE BROUGHT TO THE ATTENTION OF THE CLIENT OR THE CLIENT'S AGENT PRIOR TO SIGNING THE CONTRACT OR COMMENCING THE WORKS, OTHERWISE THE CONTRACTOR SHALL BE DEEMED TO HAVE ACCEPTED ALL DOCUMENTS AS BEING CORRECT. ALL WORKMANSHIP & MATERIALS SHALL BE TO THE HIGHEST STANDARDS & THE WORKS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE FOLLOWING.

1.) THE BUILDING REGULATIONS, 1997, 1999 & 2000.

2.) THE SAFETY, HEALTH & WELFARE AT WORK (CONSTRUCTION) REGULATIONS, 1995.

3.) THE REQUIREMENTS OF THE LOCAL AUTHORITY.

4.) THE REQUIREMENTS & REGULATIONS OF ALL OTHER STATUTORY BODIES & PUBLIC UTILITIES.

5.) THE LATEST I.S. & B.S. SPECIFICATION.

6.) ALL CODES OF GOOD BUILDING PRACTICE.

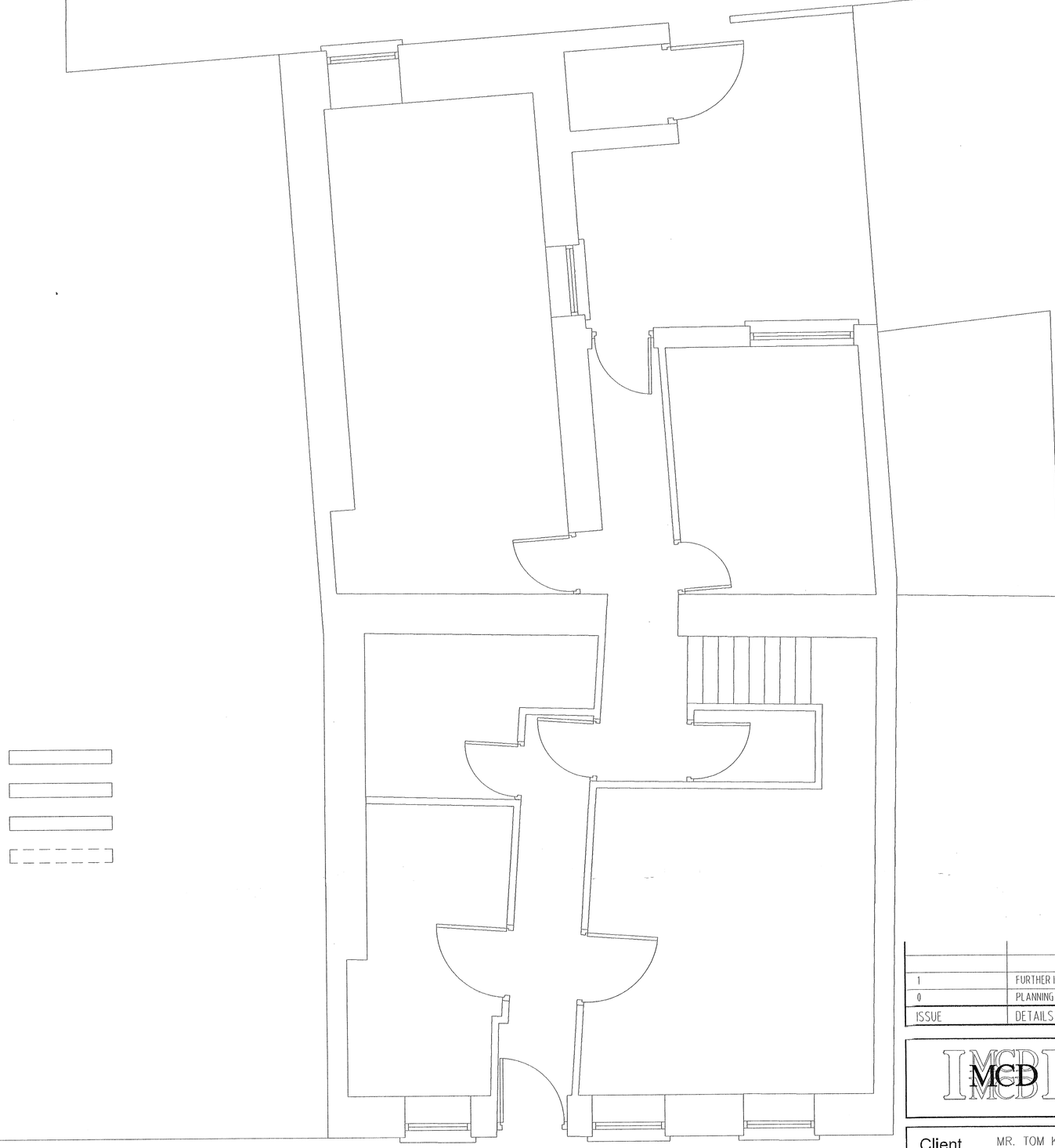
LEGEND

EXISTING WALLS SHOWN

PROPOSED CONCRETE WALLS SHOWN

PROPOSED STUD PARTITIONS SHOWN

WALLS TO BE DEMOLISHED SHOWN



EMILY SQUARE

EMILY SQUARE

CONNECT PROPOSED FOUL SEWER TO EXISTING LOCAL AUTHORITY FOUL DRAINAGE NETWORK IN ACCORDANCE WITH LA REQUIREMENTS

CONNECT PROPOSED SURFACE WATER DRAIN TO EXISTING LOCAL AUTHORITY SURFACE WATER DRAINAGE NETWORK IN ACCORDANCE WITH LA REQUIREMENTS

CONNECT TO EXISTING LOCAL AUTHORITY WATERMAIN IN ACCORDANCE WITH LA REQUIREMENTS

EXISTING PRIVATE RESIDENCE & APARTMENTS

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Planning Department
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ISSUE	DETAILS	DRAWN BY	DATE
1	FURTHER INFORMATION	CORMAC DOOLEY	10/02/04
0	PLANNING APPLICATION	CORMAC DOOLEY	28/06/03

MCD CIVIL ENGINEERING CONSULTANTS LTD
3 Emily Row, Athy, Co. Kildare
Phone: (0507) 40013

Client: MR. TOM KING,
DUKES LODGE,
CARLOW ROAD, ATHY,
CO. KILDARE

Job: PROPOSED MIXED USE DEVELOPMENT
AT MEETING LANE AND 19 EMILY SQ., ATHY

Title: GROUND FLOOR PLAN

Date: FEBRUARY 2003

Scale: 1:50

PROJECT NO: 03/030

DRAWING NO: 003A