

Comhairle Contae Chill Dara
Kildare County Council



Date: 3rd September 2024
Our Ref: ED/1134.

MIRC Properties Ltd.
c/o Alan McBride,
Gravis Planning,
41 Baggot Street Lower,
Dublin 2.
D02 NN67.

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Main Street, Johnstown, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 3rd July 2024 and 14th August 2024 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/1134.

WHEREAS a question has arisen as to whether conversion of the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling at Main Street, Johnstown, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 3rd July 2024 and 16th August 2024

AND WHEREAS MIRC Properties Ltd. 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

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

- a) Sections 2, 3, 4 & 5 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 the conversion of the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling at Main Street, Johnstown, Co. Kildare

IS development and IS EXEMPTED development pursuant to Section 2, 3, 4 & 5 of the Planning and Development Act 2000 (as amended) and Article 6, Article 9 & Article 10 of the Planning and Development Regulations 2001 (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.

3rd September 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/1134	
Name Of Applicant(s):	MIRC Properties Ltd
Address Of Development:	Main Street, Johnstown, Co. Kildare.
Development Description:	Works to convert existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling.

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 convert the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling, is or is not exempted development.

Site Location

The site is 0.17ha and is located on the L2005 local primary road which runs parallel to the N7 in Johnstown, County Kildare. The N7 Junction 9 roundabout is c. 370 meters west along the road and the Johnstown Main Street and environs is immediately east.

Description of Declaration

The proposed development consists of works to convert the existing vacant retail unit to residential use along with minor amendments to the adjoining residential dwelling. The works include;

- the removal of shopfront and security shutter,
- the replacement of the shopfront with a new door and window,
- the replacement of the rear storage room window with patio doors,
- internal reconfigurations to provide a single 1x bedroom dwelling &
- removal of the front porch and rear conservatory of the existing dwelling.



Fig 1: Site Location and context (site denoted with red star)



Fig 2: Aerial view of subject site (GIS)

Planning History

Application **22/632** - Planning permission refused to MIC Properties Limited for the following;

- the demolition of an existing vacant residential dwelling and retail unit and 2 no. associated outbuildings and
- the construction of 15 no. apartments and 2 no. retail units in two blocks (Block A and Block B). Block A is a three-storey apartment building facing onto the Main Street and consisting of 4 no. one bedroom apartments, 2 no. two bedroom apartments, 1 no. three bedroom apartment, 1 no. retail unit and 1 no. retail/café unit. Block A includes balconies at first and second floor level on the southern elevation, as well as an apartment storage area and a retail bin store at ground floor

level. Block B is a three-storey apartment building located to the rear of the site consisting of 6 no. two bedroom apartments and 2 no. three bedroom apartments with balconies at first and second floor level on both the northern and southern elevations, and a bin store at ground floor level. The proposed development includes amendments to an existing outbuilding to provide a residential bin store, 25 no. car parking spaces, 40 no. cycle parking spaces, hard and soft landscaping and all associated site works and services.

The application was refused for multiple reasons including;

1. The scale and form of the development and a lack of compliance with the Village Centre Zoning Objective.
2. The absence or lack of good quality of private amenity space for some of the proposed units resulting in a substandard level of residential amenity.
3. A lack of detail provided in relation to sustainable urban drainage (SuDS) and surface water patterns in the provided Site-Specific Flood Risk Assessment.
4. An inability to demonstrate that the development would not endanger public safety by reason of traffic due to the absence of a road safety audit.

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.

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—....

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, 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,

(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,

Article 10 (1)

Changes of Use.

10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

Commented [i50]: Sub-article 9(3) is inserted by article 3 of S.I. No. 256/2008 Planning and Development (Amendment) Regulations 2008 44

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

S.I. No. 30/2018 - Planning and Development (Amendment) (No. 2) Regulations 2018

Amendment of Article 10 of the Principal Regulations 10(6) b, c & d.

2. Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6)(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 or 6 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 or 6, 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,

“6(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 affect only the interior of the structure and shall 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.”

Assessment

The applicant seeks to convert the existing vacant retail unit to residential use along with minor amendments to the adjoining residential dwelling. The conversion process shall include;

- the removal of shopfront and security shutter,
- the replacement of the shopfront with a new door and window,
- the replacement of the rear storage room window with patio doors,
- internal reconfigurations to provide a single 1x bedroom dwelling &
- removal of the front porch and rear conservatory of the existing dwelling.

Section 3 of the Planning and Development Act 2000 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 2 of the Planning and Development Act 2000 defines ‘works’ as ‘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.’

It is considered that the replacement of the shopfront with a new door and window, the replacement of the rear storage room window with patio doors and the removal of the front porch and rear conservatory of the existing dwelling would involve the carrying out of ‘works’ and therefore constitutes development.

Exempted Development

Having regard to Table 3.4- *Land Use Zoning Objectives* in Volume 2 Part 2- *Villages & Rural Settlements* of the Kildare County Development Plan 2023-2029, the site is included in the area zoned A –Village Centre. The objective for Zone A is stated as

-To provide for the development and improvement of appropriate village centre uses including residential, commercial, office and civic use.

The provision of an additional residential unit in this area is therefore considered acceptable subject to the rational for the change of use.

Demolition

According to Statutory Instrument No. 235/2008 Class 50 of the Planning and Development Regulations for (a) The demolition of a building, or buildings, within the curtilage of— (i) a house,

-The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres,

While the floor areas of the front porch and rear conservatory to be demolished have not been supplied. It is acknowledged that the combined floor area is still well below the 40sqm threshold.

Shop Frontage

The removal of the shopfront and security shutter and subsequent replacement with a new door and window are not considered to be a significant alteration to the external appearance of the building. The new door shall occupy the same position and only the shop front window will be partially filled in. This is in keeping with the appearance of the neighbouring buildings.

Additional Alterations

The internal reconfigurations and external alterations to the rear facade of the dwelling are also considered to be exempted development.

Change of Use

The change of use of the unit from retail to residential is assessed in regard to S.I. No. 30/2018 sub article 6 (B), (C) & (D) of the Planning and Development (Amendment) (No. 2) Regulations 2018;

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 or 6 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 or 6, 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,

It is acknowledged that the structure was completed before the amendment and had previously been used as a retail unit in the past. As per point (iii) above, no evidence has yet been supplied as to show that the unit has been vacant for a minimum of 2 years prior to the submission of this section 5 declaration.

6(d)(i) The development is commenced and completed during the relevant period.

This item has been addressed in the request for further information.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall 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.

The works primarily affect the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the area.

(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 works proposed to the building frontage are consistent with the streetscape.

(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.

There are no conflicts found with any Development Plan Objectives for this to remain in retail use.

(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.

This is not applicable in this case.

(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 proposed dwelling has a floor area of 61sqm and complies with the Design Standards.

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

According to the documents submitted adequate natural lighting is planned for all rooms.

(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.

This is not applicable in this case.

(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.

The proposal does not contravene any conditions.

(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.

This is not applicable in this case.

(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.

These restrictions are not applicable in this case.

(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 proposal shall use an existing mains connection.

Part 2 -Further Information Reply

Further information was requested and a response was received on 16/08/2024.

Further Information Request

The following **further information** was sought, and the response is as follows:

- 1. The length of time the subject commercial unit has been unoccupied.*

Applicant’s Response: The Applicant responded with a letter and a Statutory Declaration of Planning Permission. In the letter it is submitted that the commercial unit was in use from 1977 until 1992 which is a period of 15 years. Since 1992 the commercial unit has been vacant (a period of 32 years). The property has only had a residential use since this date.

Planner’s Appraisal: The Statutory Declaration and letter submitted are useful. The Planning Authority consider that the response has clearly addressed the further information request.

- 2. The proposed timeframe for proposed development works (please note such works should be completed by 31/12/25 in order to comply with the above exemption).*

Applicant’s Response: In the letter submitted, it is explained that the Applicant has a contractor who shall carry out the works commencing in Autumn 2024 and finishing in 3 or 4 months after that.

Planner’s Appraisal: The response received states that the works shall commence between September and November and shall take 3 to 4 months to complete. This means an estimated completion date of 31/03/2025 at the latest. This date is before the deadline of 31/12/2025 and therefore the Planning Authority consider the second point of further information addressed satisfactorily.

Conclusion

Having regard to:

Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
Articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended); and
The nature, extent and purpose of the works as described in the documentation supplied;

it is considered that the works to convert the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling, **constitute 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).

Recommendation

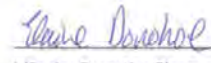
It is recommended that the applicant be advised that the development as described in the application **IS development** and **IS exempted development**.

Signed: 

Planner: Cian Buckley

Date: 29/08/2024

Signed:



A/Senior Executive Planner

03/09/2024



Aoife Brangan

A/SP

03/09/24

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 to convert the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling, is or is not exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 03/07/2024 and further information received on 16/08/2024

AND WHEREAS MIRC Properties Ltd 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 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 -

the works to convert the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling,

IS development and IS EXEMPTED development pursuant to Section 2, 3, 4 & 5 of the Planning and Development Act 2000 as amended and Article 6, Article 9, Article 10 of the Planning and Development Regulations 2001 as amended.

Please 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.

Appendix 1: Appropriate Assessment Screening

	APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION
---	--

(A) Project Details	
Planning File Ref	ED1134
Applicant name	MIRC Properties Ltd
Development Location	Main Street, Johnstown, Co. Kildare
Site size	0.17ha
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	Approx 7km from the Red Bog SAC to the southeast.
Description of the project/proposed development – The works to convert existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling.	

(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. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	<i>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?</i>	NO

2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Cartron Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or heath), or within 1 km of same?</i>	NO
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Cartron Valley, Pollardstown Fen, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	NO
4	Impacts on birds in SPAs <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	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**.

(G) SCREENING CONCLUSION STATEMENT		
<i>Selected relevant category for project assessed by ticking box.</i>		
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 scale and nature of the proposed works, it is not considered that there will be any impact on the nearest SAC.		
Name:	Cian Buckley	
Position:	Graduate Planner	
Date:	12/7/2024	

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: DO54586

Section: Planning

SUBJECT: ED1134.

Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Main Street, Johnstown, Co. Kildare.

SUBMITTED: File Ref. ED1134 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 exempted development.

MADE THIS 3 DAY
OF September YEAR 2024

SIGNED: Alan Dunney
DIRECTOR OF SERVICES [Signature]

Comhairle Contae Chill Dara
Kildare County Council



Date: 15th August 2024.
Our Ref: ED/1134.

MIRC Properties Ltd,
c/o Alan McBride,
Gravis Planning,
41 Baggot Street Lower,
Dublin 2
D02 NN67

RE: Application for a Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) at Main Street, Johnstown, Co. Kildare.

Dear Sir/Madam,

I refer to your application for a Section 5 Declaration received on 3rd July 2024. The following further information is required to properly assess your application.

1. The length of time the subject commercial unit has been unoccupied.
2. The proposed timeframe for proposed development works (please note such works should be completed by 31/12/25 in order to comply with the above exemption).

The time period for the Council's determination shall commence upon receipt of the above information.

Yours sincerely,


Senior Executive Officer
Planning Department

16 August 2024

Planning Department
Kildare County Council
Aras Cill Dhara
Devoy Park
Naas
Co. Kildare
W91 X77F

Dear Sir/Madam,

Re: Response to Request for Further Information related to the Declaration Under Section 5 of the Planning and Development Act 2000 (as amended) Ref. No. ED/1134.

On behalf of our client, MIRC Properties Limited¹ (the Applicant), we are providing a response to the Council's request for further information dated the 15th of August 2024. In setting this out we would like to note that, in accordance with the provisions of the Planning Acts and Regulations, the original submission set out that the commercial element of the property had been vacant for well over two years and that works would be completed well in advance of the 31st of December 2025.

The Council's request for further information consists of two parts, these requests and the responses are set out below:

1. The length of time the subject commercial unit has been unoccupied.

Response: The commercial unit was in use as a shop from 1977 until 1992. This use ceased in 1992 (32 years ago), and the commercial unit has been vacant since this time. A Statutory Declaration of Planning Permission has been included with this response which sets out the details of this.

¹ 1 The Forge, Straffan Village, Straffan, Co. Kildare.

2. The proposed timeframe for proposed development works (please note such works should be completed by 31/12/2025 in order to comply with the above exemption).

Response: The applicant has a contractor in place to carry out the work beginning in Autumn 2024. The contractor has estimated that the works will take approximately three to four months to complete. They have stated that all works would be completed by no later than the summer of 2025, well in advance of the 31st of December 2025.

We trust that the enclosed is in order, however, please do not hesitate to contact the undersigned in the event of any queries, or should additional information be required. We look forward to the determination of this application without further delay.

Yours faithfully,



Alan McBride

Gravis Planning

amcbride@gravisplanning.com

KILDARE COUNTY COUNCIL  PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT	
Section 5 referral & declaration on development & exempted development Planning & Development Act 2000 (as amended)	
Reference No. ED/1134	
Name Of Applicant(s):	MIRC Properties Ltd
Address Of Development:	Main Street, Johnstown, Co. Kildare.
Development Description:	Works to convert existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling.

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 convert the existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling, is or is not exempted development.

Site Location

The site is 0.17ha and is located on the L2005 local primary road which runs parallel to the N7 in Johnstown, County Kildare. The N7 Junction 9 roundabout is c. 370 meters west along the road and the Johnstown Main Street and environs is immediately east.

Description of Proposed Development

The proposed development consists of works to convert the existing vacant retail unit to residential use along with minor amendments to the adjoining residential dwelling. The works include;

- the removal of shopfront and security shutter,
- the replacement of the shopfront with a new door and window,
- the replacement of the rear storage room window with patio doors,
- internal reconfigurations to provide a single 1x bedroom dwelling &
- removal of the front porch and rear conservatory of the existing dwelling.



Fig 1: Site Location and context (site denoted with red star)



Fig 2: Aerial view of subject site (GIS)

Planning History

Application **22/632** - Planning permission refused to MIC Properties Limited for the following;

- the demolition of an existing vacant residential dwelling and retail unit and 2 no. associated outbuildings and
- the construction of 15 no. apartments and 2 no. retail units in two blocks (Block A and Block B). Block A is a three-storey apartment building facing onto the Main Street and consisting of 4 no. one bedroom apartments, 2 no. two bedroom apartments, 1 no. three bedroom apartment, 1 no. retail unit and 1 no. retail/café unit. Block A includes balconies at first and second floor level on the southern elevation, as well as an apartment storage area and a retail bin store at ground floor

level. Block B is a three-storey apartment building located to the rear of the site consisting of 6 no. two bedroom apartments and 2 no. three bedroom apartments with balconies at first and second floor level on both the northern and southern elevations, and a bin store at ground floor level. The proposed development includes amendments to an existing outbuilding to provide a residential bin store, 25 no. car parking spaces, 40 no. cycle parking spaces, hard and soft landscaping and all associated site works and services.

The application was refused for multiple reasons including;

1. The scale and form of the development and a lack of compliance with the Village Centre Zoning Objective.
2. The absence or lack of good quality of private amenity space for some of the proposed units resulting in a substandard level of residential amenity.
3. A lack of detail provided in relation to sustainable urban drainage (SuDS) and surface water patterns in the provided Site-Specific Flood Risk Assessment.
4. An inability to demonstrate that the development would not endanger public safety by reason of traffic due to the absence of a road safety audit.

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.

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—....

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, 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,

(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,

Article 10 (1)

Changes of Use.

10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

Commented [i50]: Sub-article 9(3) is inserted by article 3 of S.I. No. 256/2008 Planning and Development (Amendment) Regulations 2008 44

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

S.I. No. 30/2018 - Planning and Development (Amendment) (No. 2) Regulations 2018

Amendment of Article 10 of the Principal Regulations

2. Article 10 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6)(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 or 6 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 or 6, 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,

Assessment

The applicant seeks to convert the existing vacant retail unit to residential use along with minor amendments to the adjoining residential dwelling. The conversion process shall include;

- the removal of shopfront and security shutter,
- the replacement of the shopfront with a new door and window,
- the replacement of the rear storage room window with patio doors,
- internal reconfigurations to provide a single 1x bedroom dwelling &
- removal of the front porch and rear conservatory of the existing dwelling.

Section 3 of the Planning and Development Act 2000 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 2 of the Planning and Development Act 2000 defines ‘*works*’ as ‘*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.*’

It is considered that the replacement of the shopfront with a new door and window, the replacement of the rear storage room window with patio doors and the removal of the front porch and rear conservatory of the existing dwelling would involve the carrying out of 'works' and therefore constitutes development.

Exempted Development

Having regard to Table 3.4- *Land Use Zoning Objectives* in Volume 2 Part 2- *Villages & Rural Settlements* of the Kildare County Development Plan 2023-2029, the site is included in the area zoned A –Village Centre. The objective for Zone A is stated as

-To provide for the development and improvement of appropriate village centre uses including residential, commercial, office and civic use.

The provision of an additional residential unit in this area is therefore considered acceptable subject to the rational for the change of use.

Demolition

According to Statutory Instrument No. 235/2008 Class 50 of the Planning and Development Regulations for (a) The demolition of a building, or buildings, within the curtilage of— (i) a house,

-The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres,

While the floor areas of the front porch and rear conservatory to be demolished have not been supplied. It is acknowledged that the combined floor area is still well below the 40sqm threshold.

Shop Frontage

The removal of the shopfront and security shutter and subsequent replacement with a new door and window are not considered to be a significant alteration to the external appearance of the building. The new door shall occupy the same position and only the shop front window will be partially filled in. This is in keeping with the appearance of the neighbouring buildings.

Additional Alterations

The internal reconfigurations and external alterations to the rear facade of the dwelling are also considered to be exempted development.

Change of Use

The change of use of the unit from retail to residential shall be assessed in regard to S.I. No. 30/2018 sub article 6 (B) & (C) of the Planning and Development (Amendment) (No. 2) Regulations 2018;

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 or 6 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 or 6, 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,

It is acknowledged that the structure was completed before the amendment and had previously been used as a retail unit in the past. As per point (iii) above, no evidence has yet been supplied as to show that the unit has been vacant for a minimum of 2 years prior to the submission of this section 5 declaration.

Conclusion

Having regard to:

- The Amendment to Article 10 of the Planning and Development Regulations 2001 (as amended) through sub article 6a, the Planning Authority are unable to fully assess the question being asked in the absence of key information relating to the proposed development.

Recommendation

It is recommended that the **Further Information** is requested in relation to the following points in order to fully assess the application:

In order for the subject declaration to be fully assessed in accordance with Article 10(6)(a) - (e) of the Planning and Development Regulations, 2001, as amended, the Applicant is requested to provide the following details:

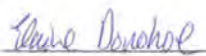
- The length of time the subject commercial unit has been unoccupied.
- The proposed timeframe for proposed development works (please note such works should be completed by 31/12/25 in order to comply with the above exemption).

Signed:

Planner: Cian Buckley


Date: 12/07/2024

Signed:


A/Senior Executive Planner

14/08/2024

Appendix 1: Appropriate Assessment Screening

	APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION
---	--

(A) Project Details	
Planning File Ref	ED1134
Applicant name	MIRC Properties Ltd
Development Location	Main Street, Johnstown, Co. Kildare
Site size	0.17ha
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	Approx 7km from the Red Bog SAC to the southeast.
Description of the project/proposed development – The works to convert existing vacant retail unit to residential use, along with minor amendments to adjoining residential dwelling.	

(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.	<i>Is the development within a Special Area of Conservation whose</i>	NO

	<u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	<i>qualifying interests include freshwater habitats and/or species, or in the catchment (upstream or downstream) of same?</i>	
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or heath), or within 1 km of same?</i>	NO
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	NO
4	Impacts on birds in SPAs <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	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**.

(G) SCREENING CONCLUSION STATEMENT		
<i>Selected relevant category for project assessed by ticking box.</i>		
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 scale and nature of the proposed works, it is not considered that there will be any impact on the nearest SAC.		

Name:	Cian Buckley
Position:	Graduate Planner
Date:	12/7/2024

Kildare County Council

Declaration of Exempt Development under Section 5, of the Planning and Development Act 2000 as amended



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...PROPERTIES LTD..... Forenames...MIRC.....
Phone No...0044 7715177227... Fax No.....
2. Address ...1 THE FORGE, STRAFFAN VILLAGE, STRAFFAN, CO. KILDARE.....
.....

Section 2

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

1. Name of Person/Agent: Surname...MCBRIDE..... Forenames.....ALAN.....
Phone No...012241590..... Fax No.....
2. Address.....GRAVIS PLANNING, 41 BAGGOT STREET LOWER, DUBLIN 2, D02 NN67
.....

Section 3

Company Details (if applicable)

1. Name of CompanyMIRC PROPERTIES LIMITED.....
Phone No...0044 7715177227 Fax No.....
2. Company Reg. No.....695994.....
3. Address.....1 THE FORGE, STRAFFAN VILLAGE, STRAFFAN, CO. KILDARE.....
.....

Section 4

Details of Site

1. Planning History of Site...APP. REF. NO. 22632, REFUSED 21/07/22.
APPEAL REF. NO. ABP-31480-22, Refused 02/01/24.....
2. Location of Proposed Development.....MAIN STREET, JOHNSTOWN, CO. KILDARE.....
.....
3. Ordnance Survey Sheet No.....3509-D.....
4. Please state the Applicants interest in the siteOWNER.....
.....
5. Please state the extent of the proposed development

WORKS TO CONVERT THE EXISTING VACANT RETAIL UNIT TO RESIDENTIAL USE, ALONG WITH MINOR AMENDMENTS TO ADJOINING RESIDENTIAL DWELLING.

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*).....

ART. 10(6) OF THE REGULATIONS

SECTION 4(1)(h) OF THE ACT

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

REMOVAL OF THE SHOPFRONT AND SECURITY SHUTTER. REPLACEMENT OF THE SHOPFRONT WITH A NEW DOOR AND WINDOW. REPLACEMENT OF THE REAR STORAGE ROOM WINDOW WITH PATIO DOORS. INTERNAL RECONFIGURATIONS TO PROVIDE 1 x 1-BEDROOM DWELLING. REMOVAL OF THE FRONT PORCH AND REAR CONSERVATORY OF EXISTING DWELLING.

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	

Section 6	Declaration
------------------	--------------------

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

Signature: 

Date: 02 JULY 2024



Comhairle Contae Chill Dara

Kildare County Council

Data Protection Act 2018

PRIVACY STATEMENT

Who are we?

Kildare County Council (the Council) is the democratically elected unit of Local Government in County Kildare and is responsible for providing a range of services to meet the economic, social and cultural needs of the people of our County. In order to provide the most effective and targeted services to meet the needs of the citizens, communities and businesses of County Kildare we will be required to collect, process and use certain types of information about people and organisations. Depending on the service being offered, information sought may include 'personal data' as defined by the Data Protection Acts and the General Data Protection Regulation (GDPR) and may relate to current, past and future service users; past; current and prospective employees; suppliers; and members of the public who may engage in communications with our staff. In addition, staff may be required, from time to time, to collect process and use certain types of personal data to comply with regulatory or legislative requirements or to carry out functions in the public interest.

Why do we have a Privacy Statement?

This privacy statement has been created to demonstrate the Council's commitment that personal data you may be required to supply to us, to enable us to provide services, is;

- Obtained lawfully, fairly and in a transparent manner
- Obtained for only specified, identified and legitimate purposes
- Processed for purposes which we have identified or purposes compatible with the purposes that we have identified.
- Adequate, relevant and limited to what is necessary for purpose for which it was obtained
- Personal data collected and processed must be accurate and (where necessary) kept up to-date.
- Kept only for as long as is necessary for the purposes for which it was obtained.
- Processed in a manner that ensures the appropriate security of the personal data including protection against unauthorised or unlawful processing.

More detail is available in our Data Protection Policy at

<http://kildare.ie/CountyCouncil/DataProtection/> or you can request a hard copy at 045 980 200.

What is the activity referred to in this Privacy Statement?

Kildare County Council performs the role of Planning Authority for the County. The planning application process is a statutory requirement which allows for the relevant parties and public to participate in the proper development of the lands in the County.



Comhairle Contae Chill Dara Kildare County Council

What is the basis for making the processing of this personal data lawful?

Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in Kildare County Council in accordance with Article 6(1)(e) of the General Data Protection Regulation, 2016. Specifically the lawful basis for this process is the Planning & Development Acts 2000- 2017 and the Planning and Development Regulations 2001 - 2017. In addition there are also certain delegated functions under the local Government Reform Act 2014.

We require contact details

In order to communicate with you, you will be asked for contact details. You do not have to provide all contact details but providing more, such as email, phone, address, makes it easier to communicate. Please note that to help protect your privacy, we take steps to verify your identity before granting access to personal data. These contact details may also be used to verify your identity.

What other types of personal data do we need to undertake this activity?

(a) Data subject - Name, address, contact number, copy of payment receipt, local needs information & supporting documentation which may include documents such as birth certificate, baptismal certificate, credit union details, copy of driving licence, copy of passport, school documentation etc.

(b) Third parties related to the land - name, address, land ownership

(c) Third parties - information related to submissions made to the Planning Authority (Elected Representatives)

Medical records and potentially other sensitive data can be processed under the rural housing local need aspect of this activity. This information is not requested; however it may be voluntarily submitted as part of the application.

What will happen if the personal data is not provided?

All information requested as part of the application process, (excluding the **rural housing** local need information) is mandatory as part of the application process and is required for the application to be considered valid. Any application deemed invalid will not proceed. If the local need information is not submitted, the planner may refuse or request further information on the file in order to satisfy the Planning Authority that the applicant is compliant with the Rural Housing policy of the Kildare County Development Plan 2017-2023

Am I the only source of this personal data?

In some instances to assist with the delivery of the activity or to comply with regulatory or legislative requirements personal data is sourced from a third party. This **may apply** to this activity.



Comhairle Contae Chill Dara

Kildare County Council

Data may be sourced during the planning application process from public sources such as the Property Registration Authority and other publically available information that Kildare County Council may hold.

Is personal data submitted as part of this activity shared with other organisations?

The Council may, to fulfil statutory or regulatory obligations or in the public interest, from time to time, have to share personal data with other organisations or entities (in Ireland or abroad). Where this is required the Council shall have regard to your rights, to the security and integrity of the data and will minimise the data shared.

Sharing **APPLIES** to this activity.

As part of this process, the planning application data which is publicly available may be forwarded to external agencies/consultees such as ESB, Irish Rail, etc. to review and make a submission if they wish. If an application is to be appealed Kildare County Council are required under the Planning and Development Acts to give all details submitted as part of the planning application to An Bord Pleanála, who then become the joint data controller for the information they hold.

Data **IS NOT** transferred to another country.

Data is transferred to (if there are no countries listed, it is not intended to transfer the personal data abroad)

How long is my data kept for?

The Council has a detailed record retention policy which outlines time periods for which your personal data will be retained and what will happen to it after the required retention period has expired. A copy of Record Retention Policy can be accessed via the following link:

http://www.lgma.ie/sites/default/files/2002_national_retention_policy_for_local_authority_records_2.pdf

Do you need to update your records?

Kildare County Council must take reasonable steps to ensure that personal data we have about our customers is correct and up to date.

In addition, if the data held by us is found to be inaccurate you have the right to rectify/correct this.

If you find that personal data we have about you is inaccurate or needs to be updated (for instance, you may have changed your name, address, contact details etc.) then please contact us so that we can correct it. You can do this by:



Comhairle Contae Chill Dara

Kildare County Council

Writing to us at: Kildare County Council, Áras Chill Dara, Devoy Park, Naas, Co Kildare. W91 X77F

Emailing us at customercare@kildarecoco.ie

When making a request to update your record please provide evidence to support this - for example a copy of a document containing your new address – utility (Gas, Electricity, Phone) bill etc.

Your rights:

You have the right to obtain confirmation as to whether data concerning you exists, to request access to personal data held about you, to be informed of the content and source of data and check its accuracy.

If the data held by us is found to be inaccurate you have the right to rectify/correct this – see above on how to update your records.

You also, subject to certain conditions being met, have the right to object to or seek restriction of the processing of personal data and to request the erasure of personal data held by the Council.

Please note that to help protect your privacy, we take steps to verify your identity before granting access to personal data.

To exercise these rights logon to <http://kildare.ie/CountyCouncil/DataProtection/> , use one of the forms at our Counter or contact us.

Kildare County Council - Access to Information Officer

Phone	045 982 200
E-mail	dataprotection@kildarecoco.ie or customercare@kildarecoco.ie
Postal Address	Áras Chill Dara, Devoy Park, Naas, Co Kildare. W91 X77F.

Right of Complaint to the Data Protection Commissioner

If you are not satisfied with the outcome of the response received by the Council you are entitled to make a complaint to the Data Protection Commissioner who may investigate the matter for you. The Data Protection Commissioner's website is www.dataprotection.ie or you can contact their Office at:



Comhairle Contae Chill Dara

Kildare County Council

Lo Call Number	1890 252 231
E-mail	info@dataprotection.ie
Postal Address	Data Protection Commissioner Canal House Station Road Portarlinton, Co. Laois. R32 AP23.

Changes to Privacy Statement

We may make changes to this Statement. If we make any changes they will be posted on this page and we will change the “Last Updated” date below.

Last Updated 25 May 2018.

02 July 2024

Planning Department
Kildare County Council
Aras Cill Dhara
Devoy Park
Naas
Co. Kildare
W91 X77F

Dear Sir/Madam,

Re: Request for a Declaration Under Section 5 of the Planning and Development Act 2000 (as amended).

On behalf of our client, MIRC Properties Limited¹ (the Applicant), we hereby submit a Request for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended). The following documents are enclosed:

- Application Form
- Planning Statement
- Site Location Map (Dwg. No. 100-01 Rev. B)
- Site Layout Plan (Dwg. No. VV07)
- Existing Floor Plan (Dwg. No. VV01)
- Existing Floor Plan and Elevations (Dwg. No. VV04)
- Proposed Floor Plan (Dwg. No. VV03)
- Proposed Floor Plan and Elevations (Dwg. No. VV05)

We trust that the enclosed is in order, however please do not hesitate to contact the undersigned in the event of any queries, or should additional information be required.

Please call us directly on 01-224-1590 for the required payment of €80.

¹ 1 The Forge, Straffan Village, Straffan, Co. Kildare.

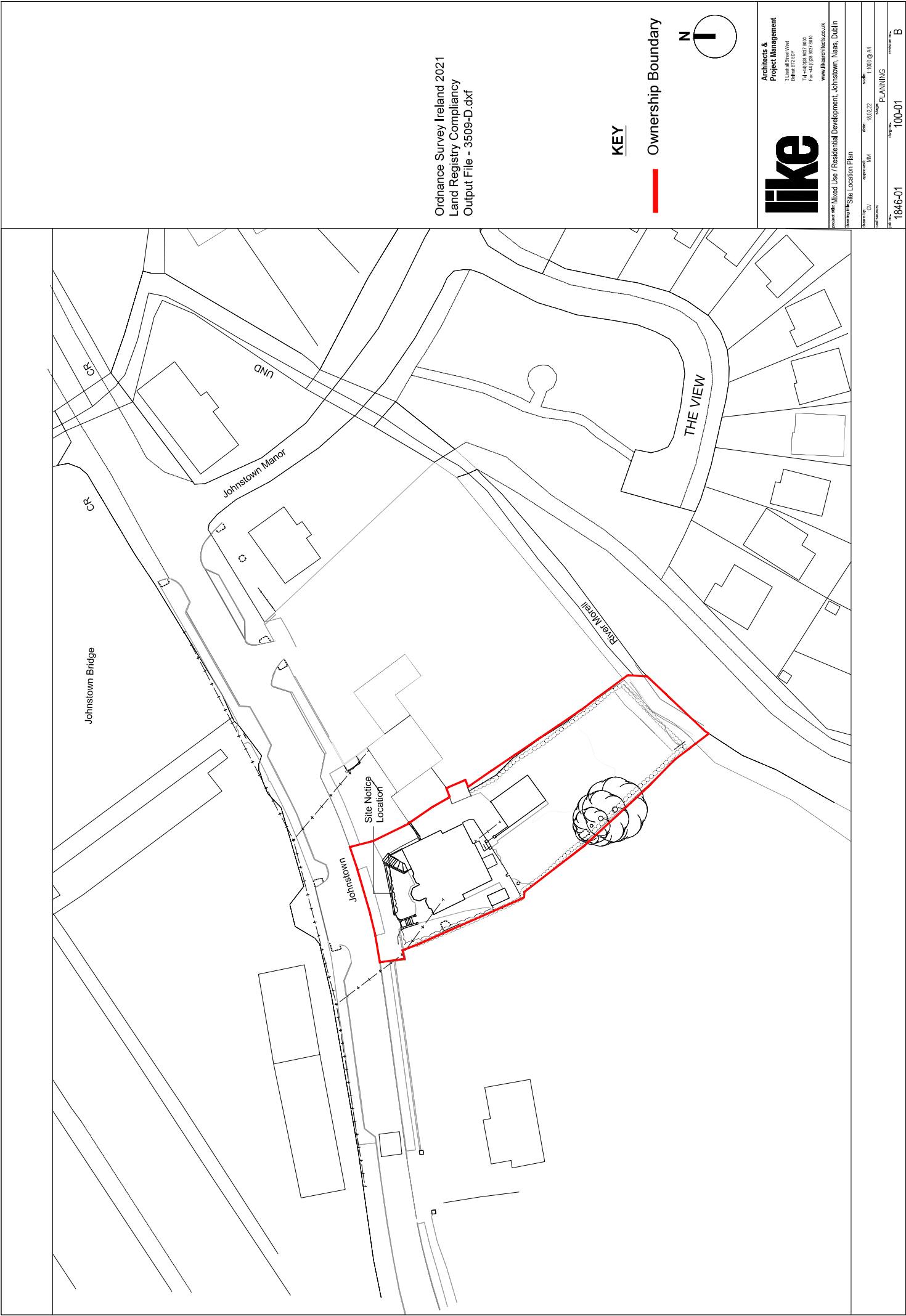
Yours faithfully,

A handwritten signature in dark ink, appearing to read "Alan McBride". The signature is fluid and cursive, with the first name "Alan" and last name "McBride" clearly distinguishable.

Alan McBride

Gravis Planning

amcbride@gravisplanning.com



Ordnance Survey Ireland 2021
Land Registry Compliance
Output File - 3509-D.dxf

KEY

Ownership Boundary



Architects &
Project Management
31 Leinster Street West
Belfast BT2 8DT
Tel: +44 (0)28 9027 8800
Fax: +44 (0)28 9027 8810
www.likearchitects.co.uk

Project Name: Mixed Use / Residential Development, Johnstown, Naas, Dublin

Project Title: Site Location Plan

Drawn by: C/D

Check by: TMM

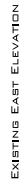
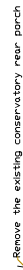
Date: 18.02.22

Scale: 1:1000 @ A1

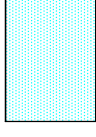
Stage: PLANNING

Sheet No: 1846-01

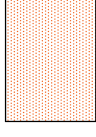
Revision No: B

[illegible]

L E G E N D



Existing Retail
61.09 Sqm



Existing Dwelling
145.39 Sqm



NORTH POINT - TIME CLOCK

■ NORTH SUNLIGHT
■ SOUTH SUNLIGHT



EXISTING GROUND FLOOR PLAN

Extent of Dwelling House

Extent of Retail Unit

REVISIONS:

JOB:
VILLAGE VIEW

TITLE:
GROUND FLOOR PLAN

DATE: 15-06-24

SCALE: 1/75

CLIENT:

MIRC PROPERTIES LTD

100 KILGORE

CO KILGORE

KEHOE

ARCHITECTURAL DESIGN

DESIGNED BY: KEHOE

100 KILGORE

CO KILGORE

100 KILGORE

100 KILGORE

CHECKED: DK

DWG NO. VVO1

daa plc

**Request for a Declaration Under Section 5 of
the Planning and Development Act**

**Works to Convert Existing Vacant Retail Unit
to Residential Use
&
Minor Amendments to Adjoining Residential
Dwelling**

July 2024

Prepared By:

Gravis Planning
41 Baggot Street Lower,
Dublin 2,
Ireland
D02 NN67

T: 01 2241590

www.gravisplanning.com



Contents

1.0	Introduction	3
2.0	Description of Proposed Development	5
3.0	Planning History	7
4.0	Compliance with Legislative Provisions	9
	- Legislative Context	
	- Assessment	
5.0	Conclusion	17

Appendices

- A. Article 9 Restrictions on Exemption

1.0 Introduction

- 1.1 This report is submitted to Kildare County Council by Gravis Planning¹ in support of a Request for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended), made on behalf of MIRC Properties Limited², regarding alterations that are proposed to an existing property at Main Street, Johnstown, Co. Kildare (Refer to enclosed Site Location Map).
- 1.2 The property comprises a dwelling house and an adjoining retail unit. Both have been vacant for a period in excess of 2 years.
- 1.3 The alterations will comprise of both internal and external works. They will result in the conversion of the vacant retail unit to residential use (1no. one bed unit), along with minor amendments to the adjoining dwelling house to include removal of the front porch and rear conservatory, and a re-configured internal layout.

Internal Works

- 1.4 It is proposed that the existing retail unit³ will be reconfigured to provide a self-contained one-bedroom dwelling. The layout will be altered to provide an entrance hall, a double bedroom, study, bathroom and kitchen/diner/living room.
- 1.5 The internal alterations to the existing dwelling will see its established use as a four-bedroom dwelling continue, albeit with a larger, open-plan kitchen/living area to the rear and additional bathroom space (including 1 en-suite bathroom) provided in the centre of the property.

External Works

- 1.6 Minor changes to the front elevation of the property are proposed, to include the removal of the front porch of the dwelling house and the removal of the shop front and security shutter of the retail unit. The shop front and security shutter will be replaced with a new door and window.
- 1.7 Minor changes to the rear elevation will include the removal of the existing conservatory of the dwelling house. The existing window in the rear elevation of the back of house/storage room of the retail unit will be replaced with sliding patio doors, providing access to a new private garden area.

¹ 41 Baggot Street Lower, Dublin 2.

² 1 The Forge, Straffan Village, Straffan, co. Kildare.

³ i.e. a Class 1 use ('Use as a shop') under Part 4 to Schedule 2 of the Planning and Development Regulations (as amended)

The Question on which a declaration is sought

- 1.8 It is considered that the works which are the subject of this request constitute 'development' as defined under Section 3 (1) of the Planning and Development Act 2000 (as amended).
- 1.9 The question on which a declaration is sought is whether the proposed development (as specified in the submitted material) is, or is not, exempt development.

Our Opinion

- 1.10 In our opinion, the proposed development constitutes exempt development under Article 10(6) of the Planning and Development Regulations (as amended) and Section 4(1)(h) of the Planning and Development Act (as amended).

Structure

- 1.11 Our assessment against the relevant legislative provisions is set out in Section 4 of this Statement. Further detail of the proposed development is set out in Section 2, with relevant planning history set out in Section 3.
- 1.12 This Statement is structured as follows:
- Introduction
 - Proposed Development
 - Planning History
 - Compliance with Legislative Provisions
 - Conclusion

Documents Enclosed

- 1.13 This Statement should be read in conjunction with the full set of submitted documents, as set out below:
- Application Form for Declaration
 - Site Location Map
 - Existing Floor Plan
 - Existing Floor Plan and Elevations
 - Proposed Floor Plan
 - Proposed Floor Plan and Elevations
 - Site Layout Plan

2.0 Proposed Development

Change of Use from Retail to Residential

- 2.1 The existing vacant retail unit on the site will be converted from retail to residential use.
- 2.2 The existing unit has been vacant for well in excess of 2 years and is understood to have last been in use as a convenience store (prior to its acquisition by the Applicant). It comprises a customer-facing area to the front of the building and a back of house/storage area to the rear.
- 2.3 It is proposed that the vacant retail unit is reconfigured to provide a self-contained 1 bed residential unit (61.09 sq. m.), with private garden space to the rear.
- 2.4 The adjoining dwelling house will remain in residential use, albeit reconfigured to provide enhanced living space.

Internal and External Works

- 2.5 Both internal and external works are proposed.
- 2.6 The external works are not significant, and the building's appearance will remain consistent with its existing character and that of neighbouring structures.
- 2.7 They will include the removal of the front porch of the dwelling house, the conservatory to the rear of the dwelling house and the shop front and security shutter of the retail unit.
- 2.8 The existing shop front and security shutter will be replaced with a new front door and window. The new door and window will be in keeping with the appearance of the existing residential door and windows on the front elevation.
- 2.9 The existing brick columns on the front elevation will be retained.
- 2.10 The rear conservatory structure that is attached to the dwelling house will be removed, reinstating the original rear elevation.
- 2.11 An existing window in the rear elevation of the retail back of house/storage area will be replaced with sliding patio doors, providing access for the new one-bedroom unit to a private garden area.
- 2.12 Internal works will comprise structural reconfiguration to create a self-contained one-bed residential unit within the vacant retail space (entrance hall, double bedroom, study, bathroom and kitchen/diner/living room) and a revised layout for the existing dwelling house (4 bedrooms - one en-suite, main bathroom, utility room, kitchen/living area).

July 2024

2.13 Please refer to the submitted drawings from full detail.

3.0 Planning History

- 3.1 The below table sets out the registered planning history of the subject property (as recorded on Kildare County Council's online planning register), which comprises an application submitted to Kildare County Council for a comprehensive redevelopment of the wider site and the subsequent appeal, following refusal, to An Bord Pleanála.

Planning Ref. No.	Address	Authority	Description	Decision
22632	Main Street, Johnstown, Co. Kildare.	Kildare County Council	The demolition of an existing vacant residential dwelling and retail unit, and 2 no. associated outbuildings, and the construction of 15 no. apartments and 2 no. retail units in two blocks (Block A and Block B). Block A is a three-storey apartment building facing onto the Main Street and consisting of 4 no. one bedroom apartments, 2 no. two bedroom apartments, 1 no. three bedroom apartment, 1 no. retail unit and 1 no. retail/café unit. Block A includes balconies at first and second floor level on the southern elevation, as well as an apartment storage area and a retail bin store at ground floor level. Block B is a three-storey apartment building located to the rear of the site consisting of 6 no. two bedroom apartments and 2 no. three bedroom apartments with balconies at first and second floor level on both the northern and southern elevations, and a bin store at ground floor level. The proposed development includes amendments to an existing outbuilding to provide a residential bin store, 25 no. car parking spaces, 40 no. cycle parking spaces, hard and soft	Refused 21/07/2022

			landscaping and all associated site works and services	
314380	Main Street, Johnstown, Co. Kildare.	An Bord Pleanála	Demolition of existing structures and the construction of 15 apartments and 2 retail units.	Refused 02/01/2024

4.0 Compliance with Legislative Provisions

Legislative Context

Relevant Definitions

- 4.1 'Development' is defined under Section 3(1) of the Planning and Development Act 2000 (as amended) as follows:

"development" means, except where the context otherwise requires, the carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land."

- 4.2 'Works' is defined under Section 2(1) of the Act as follows:

"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."

- 4.3 'Structure' is defined under Section 2 of the Act as follows:

"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, where the context so admits, includes the land on, in or under which the structure is situate."

Provisions of the Planning Acts and Regulations

- 4.4 To qualify as 'exempted', a development must fall within one of the categories listed under Section 4 of the Act, Schedule 2 of the Planning and Development Regulations 2001 (as amended) [hereafter referred to as 'the Regulations'], or Part 2 of the Regulations.

- 4.5 The proposed development does not fall within one of the categories listed under Schedule 2 of the Regulations, however it may be said to fall within the scope of both Part 2 [Article 10(6)] of the Regulations and Section 4 (1) (h) of the Act

- 4.6 Part 2 of the Regulations, with respect to changes of use, states - at Article 10(6) - that between the period from 08 February 2018 until 31 December 2025 a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2 shall be exempt development, provided that:

- (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*

4.7 This provision is subject to a number of conditions and limitations, as set out below (Art. 10(6)(d) of the Regulations):

- (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 sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

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

4.8 Section 4(1)(h) of the Act states that the following qualifies as exempt development:

“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”

4.9 Section 4 (4) of the Act states that development that falls within the scope of Section 4 *“shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required”*.

Assessment of the Proposed Development in Legislative Context

4.10 The proposed change of use satisfies the primary criteria of Article 10(6) of the Regulations:

- The structure concerned clearly pre-dates the making of the Planning and Development (Amendment) (No. 2) Regulations 2018.
- It was previously used as a convenience store (i.e. a ‘Class 1’ use).
- It has been vacant for a period in excess of 2 years.

4.11 Furthermore, the proposed development satisfies the various conditions and limitations set out under 10(6)(d), as detailed in the table below:

	Requirement	Compliance
(i)	<i>The development is commenced and completed during the relevant period</i>	Subject to confirmation from the planning authority of compliance with Art. 10(6), the works will commence on site this summer to enable completion well in advance of 31/12/2025.
(ii)	<i>Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –</i>	(l) The required works primarily affect the

	<p><i>(I) primarily affect the interior of the structure,</i></p> <p><i>(II) retain 50 per cent or more of the existing external fabric of the building, and</i></p> <p><i>(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></p>	<p>interior of the structure</p> <p>(II) Over 50% of the existing fabric of the building will be retained</p> <p>(III) The proposed works will not materially affect the appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures</p> <p>Refer to the submitted drawings for detail.</p>
(iii)	<p><i>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.</i></p>	<p>The new door and window that will replace the existing shop front will be consistent in character and appearance to the adjoining dwelling house.</p> <p>Refer to Proposed Elevations for detail.</p>
(iv)	<p><i>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.</i></p>	<p>The proposed works do not conflict with any Development Plan objective for this structure to remain in retail use.</p>
(v)	<p><i>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.</i></p>	<p>The works will result in the creation of a single additional residential unit adjoining the existing dwelling.</p>
(vi)	<p><i>Dwelling floor areas and storage spaces shall comply with the minimum floor area</i></p>	<p>The proposed drawings have been reviewed against the space</p>

	<i>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.</i>	requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” and are confirmed to comply.
(vii)	<i>Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.</i>	All habitable rooms will have adequate natural lighting.
(viii)	<i>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.</i>	The building is not protected.
(ix)	<i>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.</i>	The proposed development does not contravene any planning condition.
(x)	<i>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.</i>	None of the listed designations apply.
(xi)	<i>No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply</i>	None of the listed Article 9 restrictions on exemption apply – refer to items in bold in Appendix A.

(xii)	<i>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.</i>	No onsite WWTP is required. The building benefits from an existing mains connection.
-------	---	--

4.12 It is clear from the review set out above that the proposed change of use qualifies as exempt development under the terms of Article 10(6) of the Regulations.

4.13 It is also considered that the proposed works qualify as exempt development under Section 4 (1) (h) of the Act.

4.14 Section 4 (1) (h) states that the following shall be exempt:

“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”

4.15 The key tests for considering the proposal’s consistency with Section 4 (1) (h) of the Act are:

- Will the external appearance of the building be materially affected?
- and
- If so, will the external appearance of the building be rendered inconsistent with its existing character or that of neighbouring structures?

4.16 It is a ‘two stage’ test. As David Keane, BL, has noted in ‘Building and the Law (2003)’ when explaining the test, *“the external appearance of the building may be altered materially, provided that the alteration does not result in the new appearance of the building being inconsistent with the original character of the building, or.....with the character of neighbouring buildings”*⁴.

⁴ Building and the Law (2003), p.43

- 4.17 In this case, the overall footprint of the building will be reduced through the removal of the front porch and rear conservatory. The original brick columns, currently hidden by the porch, will be retained. The main aspect of the alteration is the replacement of the shop front and security shutter with a new front door and window. The materials and finishes will ensure that the visual impact of this change is minimised. It is not considered that the minor alteration that is proposed will constitute a *material* change in the appearance of the structure.
- 4.18 Even if this alteration *was* considered to have a material effect on the appearance of the building, it must be considered whether that will render its appearance inconsistent with the established character of the structure, or that of neighbouring structures.
- 4.19 The question of ‘character’ is not defined under planning legislation, however case law has found that, in considering whether a development is consistent with the character of a building, its character must be assessed *“by looking objectively at the entity as a whole. All the features of the structure taken together and their interaction with each other, give a structure its character, although there may be exceptional cases in which a single feature is so outstandingly remarkable or so important from an aesthetic, architectural or engineering perspective”*⁵.
- 4.20 The character of the building in this case is derived principally from its scale and form. There is no *single feature* which defines the character of the structure, which must be assessed by looking at the building *as a whole*. In identifying its key features however, the bay windows and roof profile do stand out. These features will not be impacted by the proposed works.
- 4.21 In summary, having reviewed the proposal against Section 4 (1) (h) of the Act, we do not consider that the works will *“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”*.

Article 9 Restrictions on Exemption do not Apply

- 4.22 Article 9 of the Planning and Development Regulations (as amended) sets out a series of restrictions on exemption. These restrictions on exemption apply to development of a class specified in Parts 1 to 3 of Schedule 2 of the Regulations, however a selection are also relevant in the context of Article 10(6) of the Regulations. None of the relevant restrictions apply in this case (Refer to Appendix A).

⁵ McCabe V Coras Iompair Eireann [2007] 2 I.R. 392

Appropriate Assessment/Environmental Impact Assessment are not Required

- 4.23 Section 4 (4) of the Act states that development that falls within the scope of Section 4 *“shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required”*.
- 4.24 The development comprises minor works to an existing building. Having regard to the nature, scale and location of the proposed development it is not considered that a requirement for Appropriate Assessment or Environmental Impact Assessment can arise.

5.0 Conclusion

- 5.1 It is our considered opinion that the proposed change of use and works of alteration to the front and rear elevations of the property constitute exempt development in accordance with Article 10(6) of the Regulations and Section 4 (1) (h) of the Act.
- 5.2 We look forward to a confirmatory declaration from the Council in due course.

Appendix A – Article 9 Restrictions on Exemption

Article 9(1)(a)	Restriction	Assessment
(i)	<i>"contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"</i>	N/A
(ii)	<i>"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"</i>	N/A
(iii)	<i>"endanger public safety by reason of traffic hazard or obstruction of road users"</i>	N/A
(iv)	<i>"except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, 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"</i>	N/A

(v)	<i>"consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies"</i>	N/A
(vi)	<i>"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 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"</i>	N/A

(vii)	<i>“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”</i>	N/A
(viiA)	<i>“consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this”</i>	N/A
(viiB)	<i>“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”</i>	N/A

(viiC)	<i>“consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000”</i>	N/A
(viii)	<i>“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”</i>	N/A
(ix)	<i>“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”</i>	N/A
(x)	<i>“consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility”</i>	N/A
(xi)	<i>“obstruct any public right of way”</i>	N/A

(xii)	<i>“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”</i>	N/A
-------	--	-----

9 (1) (c)

	<i>If it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive</i>	N/A
--	---	-----

9 (1) (d)

	<i>If it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.</i>	N/A
--	--	-----

STATUTORY DECLARATION RE PLANNING PERMISSION

REFERENCE NUMBER 89/000623 and 1/032/73

We Pauline O'Flaherty, Seamus (otherwise James) Leavy, Mary Heavey and Ita Sheehan are the registered owners of Village View, Johnstown, Naas, County Kildare aged eighteen years and upwards **SOLEMNLY AND SINCERELY DECLARE** as follows: -

1. This Statutory Declaration relates to the property known as Village View, Johnstown, Naas, County Kildare being all the property outlined in red on the map attached hereto (hereinafter "the Property").
 2. The Property was our family home since our late parents acquired an interest in same in 1965.
 3. Under Planning Permission Reference 1/032/73 our late father was granted permission to erect a porch at property. This was erected prior to 1975 and no Opinion on Compliance was required or obtained subsequently.
 4. Our late parents in 1977 made an extension to the Property. The extension related to the Shop and Kitchen. Our late parents were advised at the time when works were carried out by their Engineer that these works were exempt from Planning Permission. However, in circa 1988, our late Father realised that he was required to make an application for Retention Planning Permission to Kildare County Council for the shop and kitchen, which he duly did. We beg to refer to a copy of the said Grant for Retention of Shop and Kitchen appended hereto which was granted in 1989.
-
5. We are advised that the Shop and Kitchen works would in any case be exempt from building regulations on the basis that these works were carried out in 1977 and a subsequent Retention Planning Permission was granted in 1989 under planning permission reference 89/000632.
 6. Our late father continued operating the family business until circa 1992 when he ceased trading. The Shop has not been used for any commercial purpose since it ceased trading in 1992. The entire property had only a residential use since 1992 when it was entirely occupied as the principal private residence by our late parents until their death.
 7. We make this solemn declaration conscientiously believing it to be true for the satisfaction of **Stackbridge Limited** and by virtue of the Statutory Declarations Act 1938.

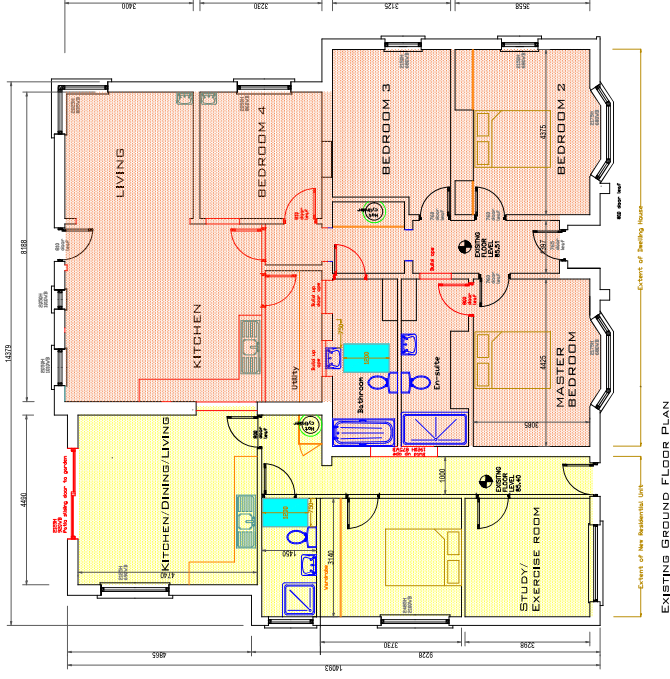
LEGEND

Proposed Residential
UNIT 6109 Sgn

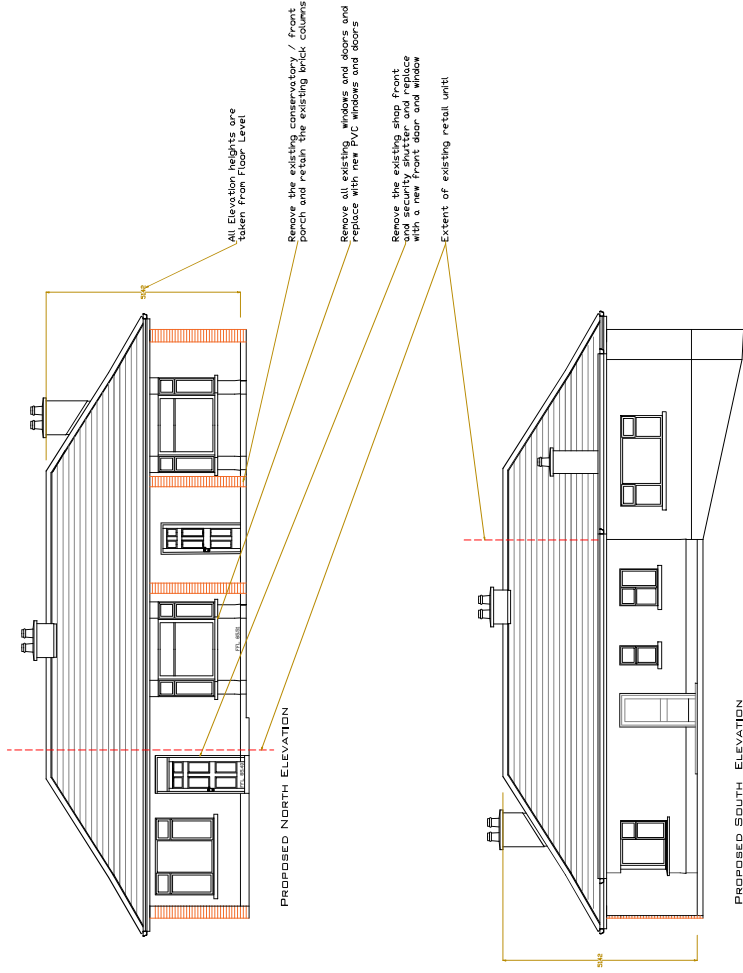
Existing Dwelling
12925 Sgn



EXISTING FLOOR CLOSE
TO THE PROPOSED UNIT
EXISTING DWELLING

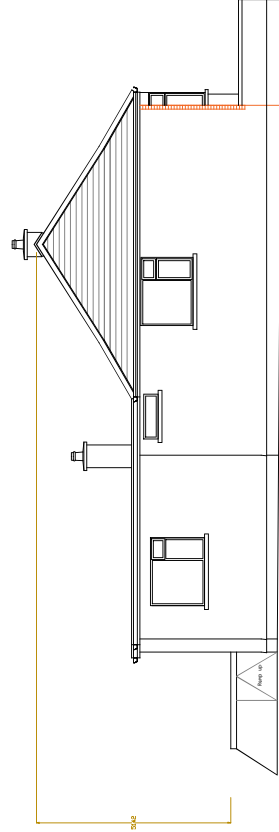


EXISTING GROUND FLOOR PLAN

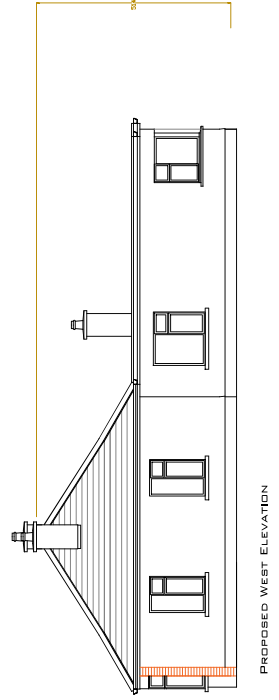


PROPOSED NORTH ELEVATION

PROPOSED SOUTH ELEVATION



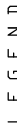
PROPOSED EAST ELEVATION



PROPOSED WEST ELEVATION

REVISIONS:	
NO.	DESCRIPTION
1	VILLAGE VIEW
TITLE:	PROPOSED PLAN AND ELEVATION
DATE:	15/08/24
SCALE:	1:100
CLIENT:	NHIC PROPERTIES LTD
DESIGNER:	KEHDE ARCHITECTURAL DESIGN
CHECKED:	DN
DRAWN:	DN
DATE:	15/08/24
PROJECT:	12925 SGN
LOCATION:	12925 SGN
ADDRESS:	12925 SGN
CITY:	12925 SGN
COUNTRY:	12925 SGN
POSTCODE:	12925 SGN
PHONE:	12925 SGN
EMAIL:	12925 SGN
WEBSITE:	12925 SGN
ADDRESS:	12925 SGN
CITY:	12925 SGN
COUNTRY:	12925 SGN
POSTCODE:	12925 SGN
PHONE:	12925 SGN
EMAIL:	12925 SGN
WEBSITE:	12925 SGN

Extent of Dwelling House

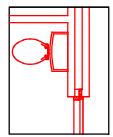


Proposed Residential Dwelling 61.09 Sqm

Existing Dwelling
129.25 Sqm



NORTH POINT - TIME CLOCK
 WINTER SUNLIGHT
 SUMMER SUNLIGHT



PROPOSED NEW REFURB
WORKS SHOWN IN RED

[illegible]