

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,

AN BORD PLEANÁLA	
LDG-	<u>067771 - 23</u>
ABP-	
23 OCT 2023	
Fee: € <u>220.00</u>	Type: <u>CHG</u>
Time: <u>15:39</u>	By: <u>Handl.</u>

Our Ref. 23067

23 October 2023

RE: SECTION 5 DECLARATION REFERRAL

TO DETERMINE WHETHER THE CHANGE OF USE AT 3A CHURCH LANE, RATHMINES, DUBLIN FROM A STORE / LOCK UP TO A PHOTOGRAPHY BUSINESS IS DEVELOPMENT WHICH IS NOT EXEMPTED DEVELOPMENT AND ALTERATIONS TO THE FAÇADE OF THE BUILDING IS DEVELOPMENT WHICH IS NOT EXEMPTED DEVELOPMENT.

DCC SECTION 5 DECLARATION REF. 0319/23

Dear Sir / Madam,

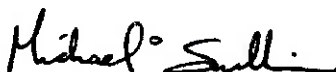
We, Stephen Little & Associates Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2 D02 X361, have been instructed by our Client, Mr. Marcus Hayes, Kingsdeen Limited t/a John Hayes Cars, Nos. 6 – 8 Church Avenue, Rathmines, Dublin 6 to refer this Section 5 Declaration to An Bord Pleanála on foot of a decision reached by Dublin City Council in respect of a Section 5 Declaration under the provisions of the Planning & Development Act, 2000, as amended. A Section 5 Declaration is sought in respect of the development summarised above and detailed in the enclosed Report.

Please find enclosed the following plans and particulars: -

- Statutory Fee of €220.00 (cheque enclosed).
- Dublin City Council Section 5 Declaration Decision Letter, dated 26 September 2023.
- 2no. copies of the Section 5 Declaration Referral Report, prepared by Stephen Little & Associates.
- 2no. copies of the Section 5 Declaration Report (submitted to Dublin City Council), prepared by Stephen Little & Associates.

We trust that the enclosed Section 5 Declaration Referral is in order, and we would ask that all future correspondence in relation to this planning file be directed to this office.

Yours sincerely,



Michael O'Sullivan,
Senior Planner
STEPHEN LITTLE & ASSOCIATES



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

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26-Sep-2023

Stephen Little & Associates
26/27 Upper Pembroke Street
Dublin 2,
D02 X361



Application Number	0319/23
Application Type	Section 5
Registration Date	30-Aug-2023
Decision Date	26-Sep-2023
Decision Order No.	P4507
Location	3A Church Lane, Rathmines, Dublin 6
Proposal	EXPP: Whether the change of use of the property from a store/lock up to a photography business is development which is not exempted development? Whether the works carried out to the facade of the property is development which is not exempted development? Whether the signage erected on the property is development which is not exempted development?
Applicant	Mr. Marcus Hayes, Kingsdeen Ltd t/a John Hayes Cars

- If you have any queries regarding this Decision, please contact the email shown above

Note:

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by A Bord Pleanála within four weeks of the date of the issuing of the declaration.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 26-Sep-2023 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).

Reasons & Considerations:

The development is deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 2 Exempted Development and Schedule 2 Part 4 Change of Use.



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

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26-Sep-2023

Signed on behalf of Dublin City Council


for Administrative Officer

Planning
Report

Section 5
Declaration
Referral to An
Bord Pleanála

At 3A Church Lane,
Rathmines, Dublin 6

For Mr. Marcus Hayes

Dublin City Council
Ref. 0319/23

OCTOBER 2023

Document Control: -

Author	Checked by	Purpose	Date
RMG	MO'S	Draft	19.10.2023
-	MO'S	Final Draft	20.10.2023
-	Michael O'Sullivan	Final	23.10.2023

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1 INTRODUCTION

We, Stephen Little & Associates Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, are instructed by our Client, Marcus Hayes, Kingsdeen Limited t/a John Hayes Cars, Hayes Cars, Nos. 6 – 8 Church Avenue, Rathmines, Dublin 6 to refer this Section 5 Declaration to An Bord Pleanála on foot of a decision reached by Dublin City Council in respect of a Section 5 Declaration under the provisions of the Planning & Development Act, 2000, as amended.

This referral is in response to the Section 5 Declaration issued by Dublin City Council (DCC Reg. Ref. 0319/23) on 26 September 2023 under Section 5(1) of the Planning & Development Act, 2000, as amended, which determined that development at 3A Church Lane, Rathmines is exempted development for the following reason: -

"The development is deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 4 Change of Use)."

The subject Declaration issued by Dublin City Council is dated 26 September 2023 and can be referred to An Bord Pleanála on or before 17:30 on 23 October 2023 (4 weeks from the Declaration date).

The statutory fee for this referral to the Board has been paid by cheque (€220.00), and is enclosed with this referral.

We are of the considered opinion that the decision reached by Dublin County Council is inconsistent with the relevant planning legislation and case law. Rehabilitation Institute v. Dublin Corporation, unreported High Court, 14th January 1988 established that the correct way of analysing a material change of use was to determine whether the use had commenced after October 1964 and that such use was a material change of use from the use that preceded it. The assessment carried out by Dublin County Council which led to their decision is based on the existing recent use and not the established use, which is irrational, resulting in an erroneous decision. Additional detail has been provided as part of this Referral which further supports that the established use is not considered light industrial.

The Board is now asked to consider this case *de novo* and is invited to issue a Declaration confirming that the development at 3A Church Lane is not exempted development and therefore does require planning permission as a result.

It is our opinion, for the reasons, arguments and considerations set out in this Report, that the development is a material change of use and is unauthorised development which is contrary to the provisions set out in the Planning & Development Act, 2000, as amended.

2 SECTION 5 QUERY

For the purposes of this Section 5 Declaration, the following questions are asked of the Board: -

- Whether the change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Whether the works carried out the façade of the property is development which is not exempted development.

3 RELEVANT CASE LAW

We are of the considered opinion that the decision reached by Dublin County Council is inconsistent with the relevant case law (see Section 9 of this Report for further assessment).

Established Use

Rehabilitation Institute v. Dublin Corporation, unreported High Court, 14th January 1988 established that the correct way of analysing a material change of use was to determine whether the use had commenced after October 1964 and that such use was a material change of use from the use that preceded it. The assessment carried out by Dublin County Council which led to their decision is based on the existing recent use and not the established use, which is irrational, resulting in an erroneous decision. Additional detail has been provided as part of this Referral which further supports that the established use is not considered light industrial.

Material Change of Use

Uncontroverted evidence have been provided by our Client that the post 1963 position is that the established use (store / lock-up) was ancillary residential and therefore the Photography Business represents a material change of use. Dublin City Council have failed to have full regard for the evidence provided by our Client. That which amounts to a material change of use is a question of fact as set out in the principles laid down in Roadstone Province Ltd v. An Bord Pleanála [2008] IEHC 210.

Intensification of a Use

The Photography Business and is different in character from that of a store and amounts to a material change of use. It is submitted that there is a material intensification of use of the subject property in accordance with the principles laid down in Galway County Council v. Lackagh Rock Ltd [1985] IR 210 and Molumby v. Kearns, unreported High Court, 19th January 1999.

4 SITE CONTEXT & DESCRIPTION OF DEVELOPMENT

The property address is 3A Church Lane, Rathmines, Dublin 6 ("the property"). The property is c. 118 sq. m in area. Church Lane is a cul-de-sac which serves a number of residential properties. We refer the Board to the Site Location Map with the property outlined in red (Property referred to as No. 2 on the Site Location Map).

The building is part 1 storey onto Church Lane and part 2 storey adjacent the existing car sales business (to the west) operated by our Client, Mr. Marcus Hayes.

Access to the property is via a doorway onto Church Lane. There are 4no. windows on the southern elevation.

The car parking at the end of Church Lane is associated with the residential properties adjacent the property. There is a limited amount of on-street paid parking opposite the property.

The adjoining property to the north is a solicitors office (part 1 / 2 storeys) and the adjoining properties to the south are 3 storey residential with car ports onto Church Lane.

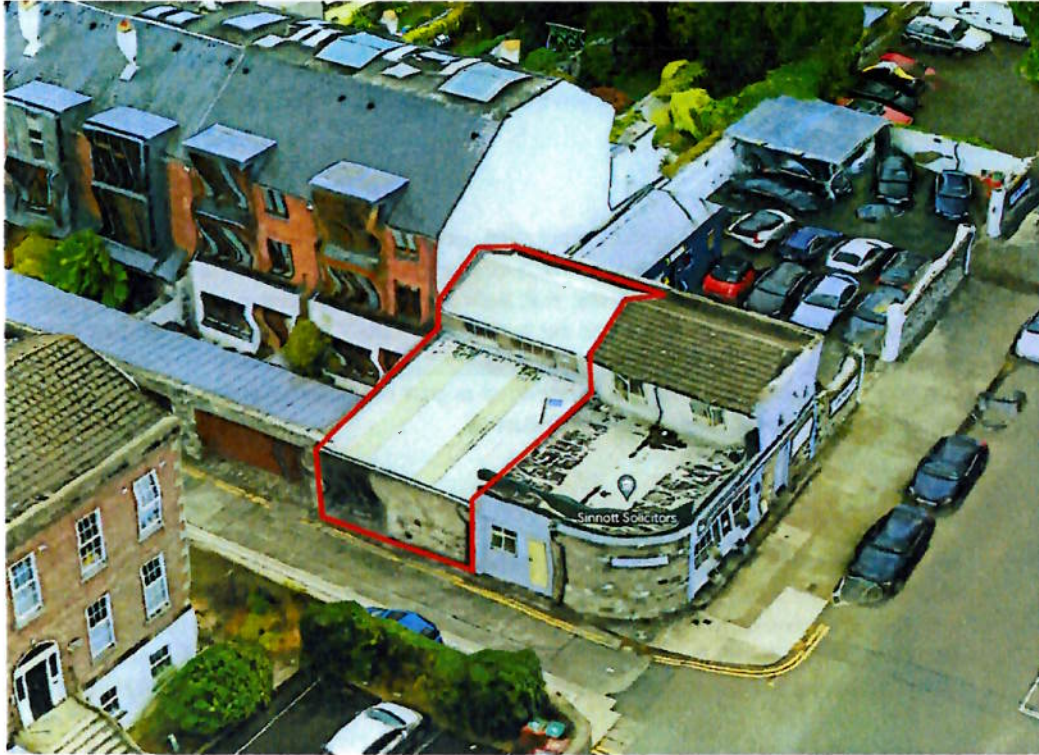


Figure 1: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).

The property is currently being used as a photography business (Thyme Studios). Internally, the property comprises two rooms at the ground floor level serving as photography studios and a storage room at the first-floor level. Externally, the property has a modern glazed double-door entrance with glazed side panels.



Figure 2: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).



Figure 3: View south on Church Lane with the property highlighted in red (Overlay by SLA).



Figure 4: View east on Church Avenue to the rear of the property highlighted in red (Overlay by SLA). The property abuts our Client car sales business.



Figure 5: View south from Church Avenue with the property highlighted in red. Undesignated refuse bins used by the operators of the property circled in red (Overlay by SLA).

5 RELEVANT PLANNING HISTORY

5.1 Subject Site

There is no planning history associated with the property on the DCC online planning portal.

This office has liaised with the DCC Planning Department regarding older planning files (pre-2003) and it can be confirmed that there is no older planning history associated with the property either.

5.2 Adjoining Sites

5.2.1 DCC Reg. Ref. 2527/21

Planning permission was sought by James Meagher on 20 Sep 2021 for development comprising the construction of 3no. residential dwellings (c. 447.3 sqm), consisting of 3no. 3 bed townhouses (two storey plus attic / three storey), all with associated private garden and screened terrace at first floor level to the rear, off-street car parking with access from Church Avenue, landscaping works, site services and associated site development works.

DCC granted planning permission on 11 October 2021 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 2 August 2022.

It should be noted that access to the rear of the property has been maintained by way of a proposed lane.

5.2.2 DCC Reg. Ref. 3602/09

Planning permission was sought by Cathal O'Neill on 31 July 2009 for development comprising a 1st & 2nd floor extension (72 sq. m) and alteration of the existing ground and part 1st floor office premises (99sq.m). This extension comprised of a 3 bed duplex apartment (1st floor & part 2nd floor with roof garden) over ground floor office.

DCC granted planning permission on 22 September 2009 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 22 April 2010.

In this planning application, the property was described as an "existing workshop" in the DCC Planners Report, dated 23 September 2009: -

"Site Description: The site is situated along Church Avenue, a corner site on the junction with Church Lane along the southern side of the Avenue. The site is bounded to the west by an open yard occupied by John Hayes Cars and to the south by an existing workshop and 3 storey dwellings to the rear."

Our Client is of the firm opinion that the property is in use since the 1960's a storage / lock-up (refer to Section 8.1 for further discussion).

5.2.3 DCC Reg. Ref. 2517/08

Permission refused for a 1st and 2nd floor extension (90sq.m) to & alteration of the existing office premises (99 sq. m).

5.2.4 DCC Reg. Ref. 6733/06

Permission refused for a 1st and 2nd floor dormer extension (50sqm) to & alterations of the existing office premises (99sqm).

5.2.5 DCC Reg. Ref. 1684/05

Permission granted for the demolition of existing commercial structures and construction of 2no three storey mews houses with off street parking, first floor terraces to rear and first and second floor balconies to front.

5.3 Planning Enforcement

Following engagement with DCC Enforcement, there is one recorder enforcement case associated with the property.

E0632/18 – 3A Church Lane, Rathmines, Dublin 6

A complaint was made that a change of use of lock-up to retail had occurred with resultant issues regarding car parking.

Case Opened: 19 July 2018

Case Closed: 13 September 2022

DCC Enforcement considered that no unauthorised works had taken place and no material change of use had occurred.

6 PLANNING CONTEXT

6.1 Dublin City Council Development Plan 2022 – 2028

The Dublin City Development Plan 2022 – 2028 (“the Development Plan”) came into effect on 14 December 2022 and is the statutory land-use plan governing the subject site at this time.

6.1.1 Land Use Zoning

The subject site is Zoned ‘Sustainable Residential Neighbourhoods – Zone Z1’, the objective of which is: -

“To protect, provide and improve residential amenities.”

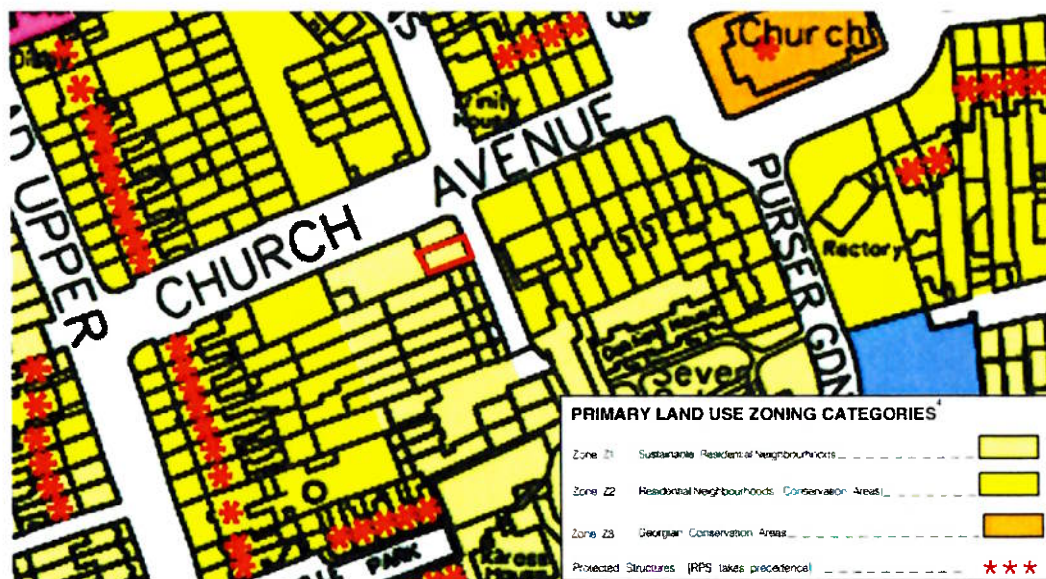


Figure 3: Extract from Map H of the Dublin City Council Development Plan 2022 – 2028, approximate development site boundary shown in red (Overlay by SLA).

The following table sets out the ‘Permissible Uses’ and uses ‘Open for Consideration’ under ‘Zone Z1’.

Permissible Uses
Assisted Living / Retirement Home, Buildings for The Health, Safety and Welfare of the Public, Childcare Facility, Community Facility, Cultural / Recreational Building and Uses, Delicatessen, Education, Embassy Residential, Enterprise Centre, Halting Site, Home-Based Economic Activity, Medical and Related Consultants, Open Space, Place of Public Worship, Public Service Installation, Residential, Shop (Local), Sports Facility and Recreational Uses, Training Centre.
Open For Consideration
Allotments, Beauty / Grooming Services, Bed and Breakfast, Betting Office, Build to Rent Residential, Café / Tearoom, Car Park, Civic And Amenity / Recycling Centre, Garden Centre / Plant Nursery, Guesthouse, Hostel (Tourist), Hotel, Industry (Light) , Laundromat, Live / Work Units, Media-Associated Uses , Mobility Hub, Off-Licence, Off-Licence (Part), Office, Park And Ride Facility, Petrol Station, Pigeon Loft, Postal Hotel / Motel, Primary Health Care Centre, Public House, Residential Institution, Restaurant, Student Accommodation, Veterinary Surgery

[SLA Emphasis in bold]

The property is currently used as a photography business. 'Media Associated Uses' are Open for Consideration on lands zoned 'Zone Z1'.

The Development Plan defines 'Media Associated Uses' as: -

*"Uses include: **photography** / audio visual / cinema / digital art / music production / recording studios / broadcasting studios / publishing that involves the production or creation of digital / audio or visual forms of mass communication."*

[SLA Emphasis in bold]

With regard uses which are 'Open for Consideration' the Development Plan states that: -

*"An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

With regard uses which are considered 'Non-conforming' the Development Plan states that: -

*"Throughout the Dublin City Council area there are uses that do not conform to the zoning objective for their area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Planning and Development Act 2000 (as amended) in respect of the continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, **and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

6.1.2 Protected Structures

The building is not subject to any protected structure designation under the Development Plan Record of Protected Structures.

No. 58 Rathmines Road Upper (RPS No. 7267) is described as a "house, including cast-iron balconies and railings" on the Record of Protected Structures. It would appear that the original property had rear access to Church Lane but this has become severed.

6.1.3 City Economy and Enterprise

Policy CEE4 of the Development Plan states that it is an objective to: -

*"To support the creation of an ecosystem of innovative start-ups, social enterprise, **micro-business** and small business and, where possible, to promote the development of skills and entrepreneurship, sites for high tech and potential start-ups, smart city programmes and collaboration between public bodies, industries and research."*

[SLA Emphasis in bold]

7 RELEVANT PLANNING LEGISLATION

7.1 Planning & Development Act 2000, as Amended

Section 2(1) of the Planning & Development Act 2000, as Amended ("the Act") 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.**"*

'Alteration' "... includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;"

'Use', "in relation to land, does not include the use of the land by the carrying out of any works thereon;"

[SLA Emphasis in bold]

Section 3(1) of the Planning Act defines 'development' as: -

*"(a) 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, or***

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or (b) where land becomes used for any of the following purposes—

*(i) the placing or keeping of any vans, tents or **other objects**, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the **sale of goods**,*

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed."

[SLA Emphasis in bold]

Section 4(1) of the Planning Act states: -

The following shall be exempted developments for the purposes of this Act—

...

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

[SLA Emphasis in bold]

Section 5(1) of the Planning Act states: -

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

7.2 Planning & Development Regulations 2001, as Amended

Article 5(1) of the Planning & Development Regulations 2001, as amended (“the Regulations”) provides that, subject to Article 9: -

A ‘Light Industrial Building’ “... means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area **without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;**”

A Repository “... means a structure (excluding any land occupied therewith) where **storage is the principal use and where no business is transacted** other than business incidental to such storage;”

[SLA Emphasis in bold]

Article 6(1) provides that, subject to Article 9: -

“... development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose 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.”

[SLA Emphasis in bold]

Article 9(1) provides, inter alia, that: -

“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—

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

...

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

[SLA Emphasis in bold]

Article 10 provides that: -

“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**

(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.**”

[SLA Emphasis in bold]

Part 4 of Schedule 2, subject to Article 10, lists the following exempted development classes of use: -

CLASS 1

“Use as a shop.”

CLASS 2

“Use for the provision of —

(a) **financial services,**

(b) **professional services (other than health or medical services),**

(c) ...

where the services are provided principally to visiting members of the public."

CLASS 4

"Use as a light industrial building."

CLASS 5

*"Use as a wholesale warehouse or as a **repository**."*

[SLA Emphasis in bold]

Part 1 of Schedule 2, subject to Article 6, considers the following as exempted development: -

CLASS 22

"Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."

Conditions & Limitations

*"The raw materials, products, packing materials, fuel or waste stored **shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building**."*

[SLA Emphasis in bold]

8 DUBLIN CITY COUNCIL DECISION

The decision reached by Dublin City Council on 26 September 2023 in relation to the development at the property states that: -

"The development is deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 4 Change of Use)."

8.1 Planners Report

The Planners Report generally concludes the development is deemed exempted development. The following extracts from the Planners Report are of note: -

Material Change of Use

*"It is therefore considered that the **current use of the building** to provide food product photography typically for publications is a 'light industrial' use. The current use and prior previous uses of the building fall within Class 4 Use as a light industrial building, Schedule 2 Part 4 Change of Use of the Planning and Development Regulation 2001 (as amended). A change of use has therefore not occurred."*

[SLA Emphasis in bold]

Dublin City Council have failed to have full regard for the evidence provided by our Client which clearly demonstrate that the established use of the Property is a store / lock-up. Additional detail has been provided as part of this Referral which further supports this fact. The emphasis placed on the information provided by the Property owner which merely identified the recent existing use demonstrates that no consideration was not given to the established use (See Section 8 below for further assessment).

Façade Alterations

"... it is considered that the appearance of glazed door would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The works carried out to the façade of the property are therefore considered exempted development under Section 4(1) of the Planning and Development Act, 2000 (as amended)."

Signage

"There is one sign on the property. On the day of the site visit 20th September 2023 the sign was measured as 250mm square and comprises an area of 0.0625 sqm. The sign therefore does not exceed the limitations in Class 5, Part 2 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is considered exempted development."

9 ASSESSMENT

We submit that the decision of the Dublin City Council does not accord with relevant planning legislation and case law. From a review of the Council's Planner Report, it appears they have only considered the change of use based on the recent use of the Property with no emphasis on first identifying an established use of the Property. The Council did not apply the correct test in law and did not examine or apply the pre-1963 position as established in *Rehabilitation Institute v. Dublin Corporation*, unreported High Court, 14th January 1988. As such it is respectfully contended that the manner in which the assessment was carried out by Dublin City Council did not align with the principles set out in *Rehabilitation Institute v. Dublin Corporation* and the decision reached can therefore be considered irrational.

Below is our assessment of the property and how the development taken place at 3A Church Lane should be subject to Planning Permission.

Our Client contends the property is operating without the benefit of planning permission for the current use. Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. It is considered that: -

- The change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Works to the façade of the property is development which is not exempted development.

The proceeding sections of this Report elaborate further on the items outlined above.

9.1 Established Use

The historic mapping shows that the rear of No. 58 Rathmines Road Upper was associated with the house and formed a singular plot. The extract from the historic maps date from between 1830 and 1930. The rear of No. 58 Rathmines Road Upper would have been used as stables or storage associated with the residential use.

This is corroborated by extracts from the Valuation Records in 1935 and 1967 which record the use of the rear of No. 58 Rathmines Road Upper as a stable / store. These documents clearly show the property in continuous use as a store pre-1963. As such, it is respectfully submitted that the post 1963 position is that the established use was ancillary residential (store) and therefore the Photography Business represents a material change of use. Subsequent uses for commercial storage / lock-up would not have been authorised development. There is no planning history pertaining to the Property.

Dublin City Council have failed to have full regard for the evidence provided by our Client which clearly demonstrate that the established use of the Property is a store / lock-up. We refer the Board to Appendix A which includes verifiable, chronological information relating to the use of the Property: -

- Historic Mapping (an additional to the Referral).
 - Dating from 1830 to 1930.
- Extracts from the Valuation Records (included additional records from 1935).
 - Dating from 1935 to 1967.
- Confirmation from the Valuation Office of current rateable valuation.
 - Dating from 2013.
- Agent Property Advertisements.
 - Dating from 2018 & 2020.

Council's Planner Report states that it was not demonstrated that the Property was in continuous use since 1967 prior to the current use as a Photography Business. This view is refuted by our Client and with the additional information provided as part of this Referral it is abundantly clear that the established use pre-1963 is the key determining factor in considering whether a material change of use has occurred. Dublin City Council have clearly relied on the information of the Property owner which points to the recent use (motor repair/paint shop, screen printing, preparation/manufacturing of boards) as opposed the established authorised use (i.e. store / lock up). As set out above the principle established in *Rehabilitation Institute v. Dublin Corporation*, unreported High Court, 14th January 1988 have not been applied and the decision reached can therefore be considered irrational.

Furthermore, uncontroverted evidence have been provided by our Client that the post 1963 position is that the established use (store / lock-up) was ancillary residential and therefore the Photography Business represents a material change of use. Dublin City Council have failed to have full regard for the evidence provided by our Client. That which amounts to a material change of use is a question of fact as set out in the principles laid down in *Roadstone Province Ltd v. An Bord Pleanála* [2008] IEHC 210.

Without prejudice to the above, in the event where the established use is considered commercial storage / lock-up, Article 5(1) of the Regulations a repository is described as a structure “*where storage is the principal use and where no business is transacted other than business incidental to such storage*”.

The property is currently in use as a Photography Business (Thyme Studios) which would fall under the definition of a ‘professional service’ (i.e. a service provided principally to visiting members of the public and is not a health or medical service) under Class 2, Part 4 of Schedule 2 of the Regulations.

Under Article 10 of the Regulations 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.

It is our professional planning opinion that a change of use from ancillary residential (store) to a Photography Business represents a material change of use. Furthermore, in the event the established use is considered commercial storage / lock-up (a repository – Class 5) to use for the provision of professional services (Class 2(b)) cannot be considered exempted development. A change of use **between** classes of use specified in Part 4 of Schedule 2 of the Regulations is not exempted development and a material change of use has therefore occurred.

Photography Business

The current use also gives rise to a number of issues which have a material impact on the surrounding area which are set out below. Arguably, a material intensification of use of the Property has occurred in accordance with the principles laid down in *Galway County Council v. Lackagh Rock Ltd.* [1985] IR 210 and *Molmby v. Kearns*, unreported High Court, 19th January 1999.

The photography use falls under the category of ‘Media Associated Uses’ as set out in the Development Plan. This is a use which is ‘Open for Consideration’ on ‘Zone Z1’ lands. With regard uses which are ‘Open for Consideration’ the Development Plan states that: -

*“An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.***

[SLA Emphasis in bold]

It is considered that there are a number of undesired effects arising from the use of the property as a Photography Business that would likely be unacceptable where planning permission is sought: -

- A number of employees now use the property on a daily basis which gives to additional car and bicycle parking requirements as well as the generation of domestic waste.
- Access for deliveries and collections arising from the use of the property as a photography studio give rise to additional traffic which cannot be accommodated on the existing laneway.
- Parking issues arise from member of the public visiting the property (the business website refers to making appointments). The existing car parking on Church Lane is designated to the existing residents. Members of the public visiting the Photography Business use the laneway to park which gives rise to further traffic use given the frequency.
- It is not clear how waste from the property is managed in terms of safe storage or collection for suitable disposal.

The Planning Authority appears to have assessed the recent use over time rather than identifying the authorised or established use of the property.



Figure 6: Image from July 2023 showing note on the refuse bins to be collected – clearly no bin company is collecting waste from the property.

9.2 External Facade

The façade of the property onto Church Lane has been altered. A modern glazed double door entrance with glazed side panel has been installed in front of the original wooden door to the storage / lock-up.

The external doors were installed in c. 2018. Extracts from Google Street View show the original door in place prior to this.

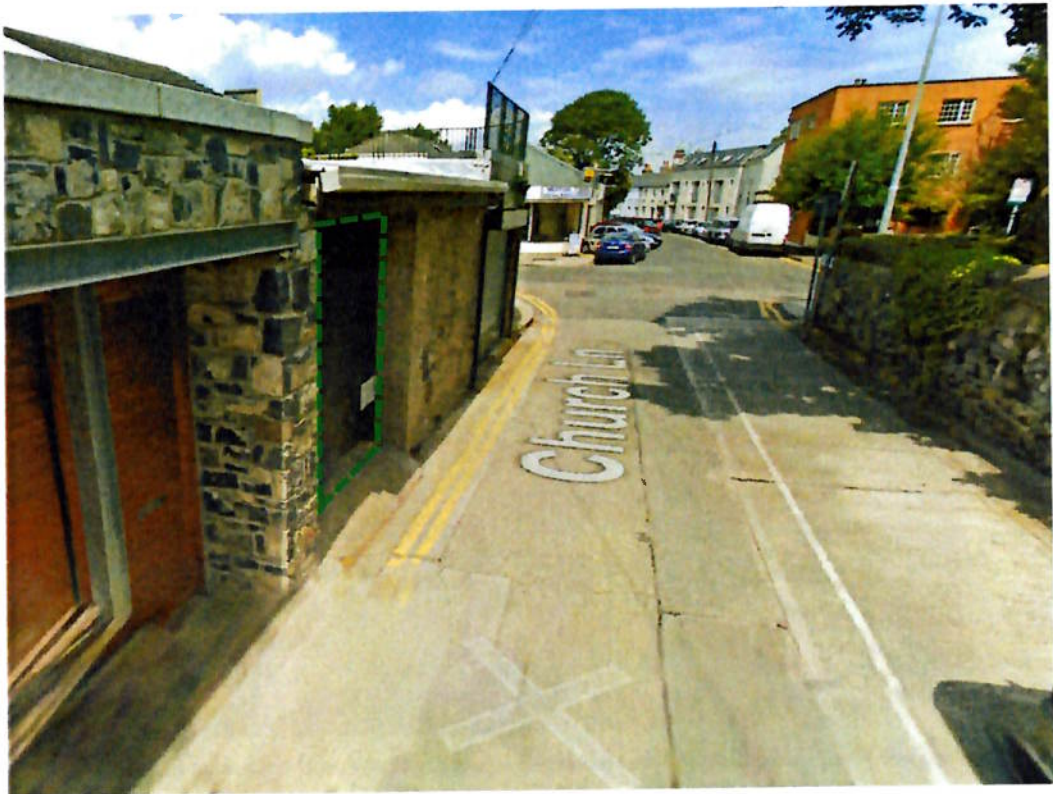


Figure 7: Extract from Google Street View showing original door (green outline) c. June 2009.

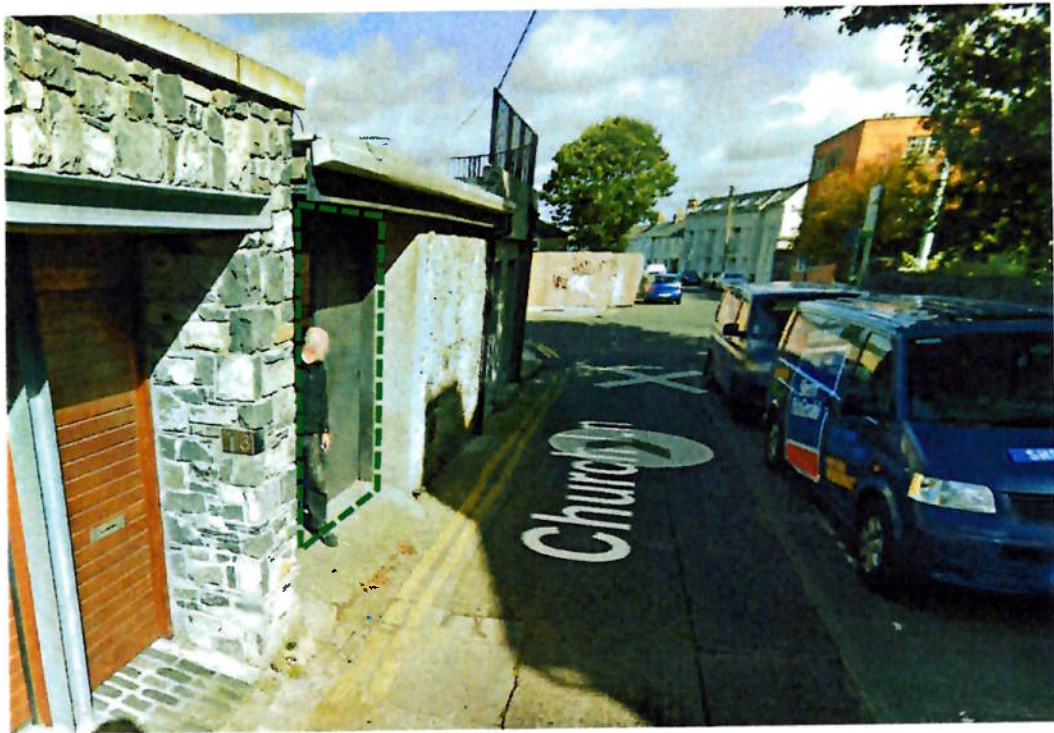


Figure 8: Extract from Google Street View showing original door (green outline) c. August 2014.



Figure 9: Extract from Google Street View showing new door (green outline) c. August 2018.



Figure 10: Image from July 2023 showing a modern glazed double door entrance with glazed side panels.

In our professional planning opinion, the change to the external appearance of the building does not fall under Section 4(1) of the Act as the current appearance is clearly inconsistent with the remainder of the laneway. The laneway has a number of carport doors for access to the existing residential properties and existing door is not considered in keeping with the majority of the streetscape. As such, we considered that the works are an 'alteration' as defined in the Act which do not fall under exempted development and as such require the benefit of planning permission.

10 CONCLUSION

For all the reasons and considerations set out in this Report, it is submitted to the Board that the Declaration issued by Dublin City Council that the development at 3A Church Lane is not exempted development is inconsistent with the relevant planning legislation and case law.

The assessment carried out by Dublin County Council which led to their decision is based on the existing use (light industrial) and not the established use (store / lock-up), which is irrational, resulting in an erroneous decision.

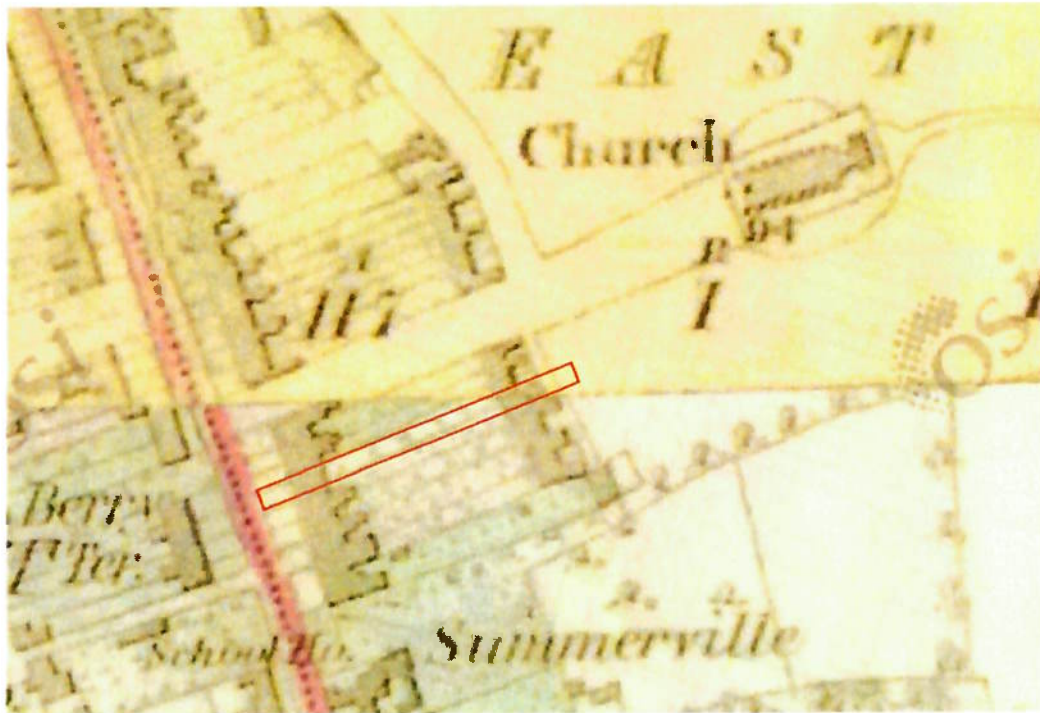
We invite the Board to concur with our opinion that the use of the property as a Photography Business is development which is not exempted development and the changes to the façade is development which is not exempted development.

We would be grateful of acknowledgement of this application and that all future correspondence relating to this file is sent to the office of Stephen Little & Associates.

11 APPENDIX A

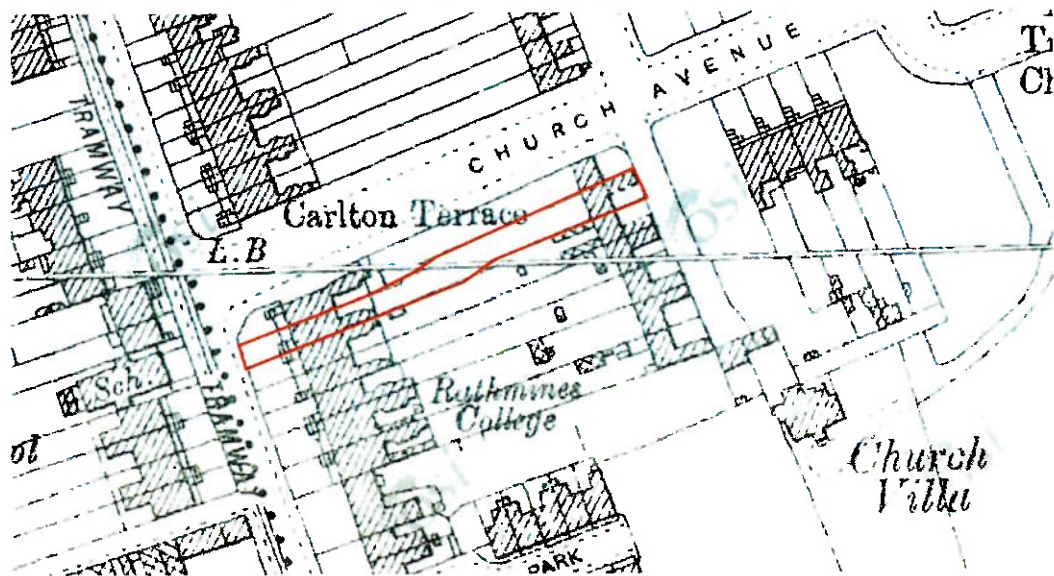
Historic Mapping

6" First Edition Colour (Surveyed between 1829 and 1834 and printed between 1829 and 1941)



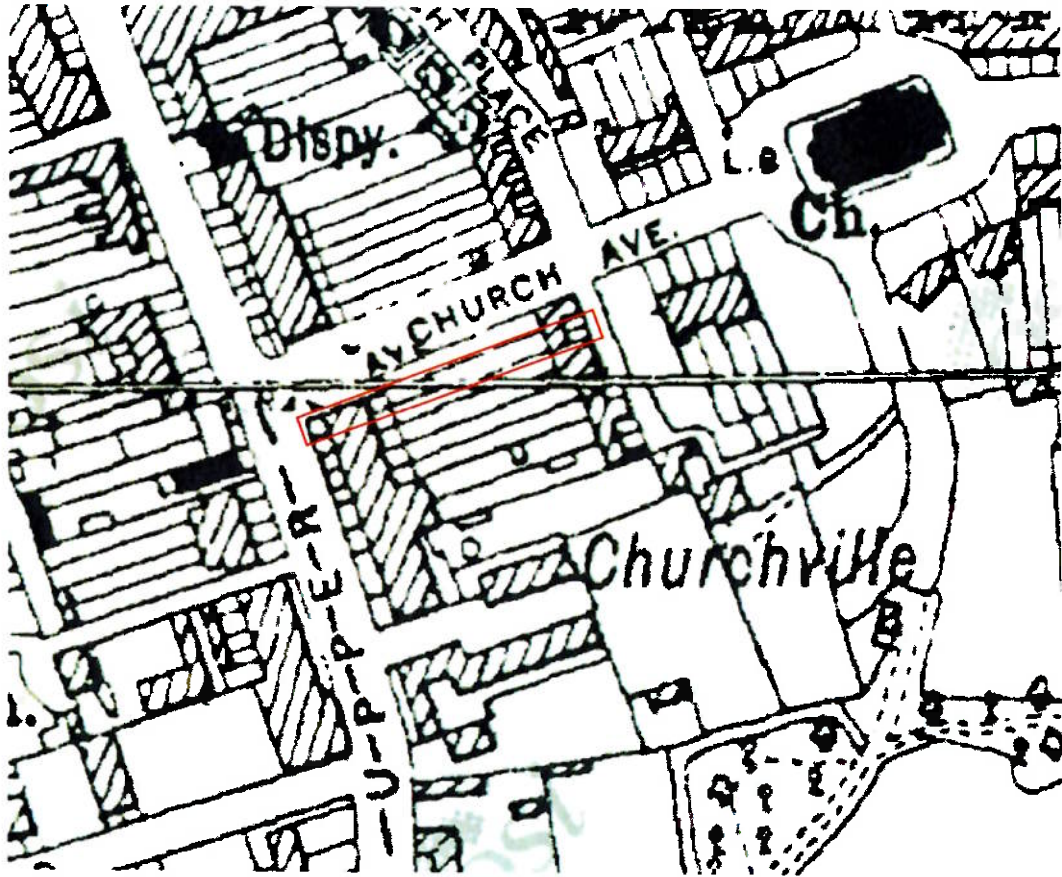
Note: No. 58 Rathmines Road Upper with stables / store to the rear (Outlined in red).

Historic 25" Mapping (Surveyed between 1863 and 1924)



Note: No. 58 Rathmines Road Upper which stables / store to the rear (Outlined in red). Clearly within the overall site / plot of No. 58 Rathmines Road Upper.

6" Last Edition Black & White (Surveyed between 1830's and 1930's)



Note: No. 58 Rathmines Road Upper which stables / store to the rear (Outlined in red). Clearly within the overall site / plot of No. 58 Rathmines Road Upper.

Sources

Map extracts:

<https://heritagedata.maps.arcgis.com/apps/webappviewer/index.html?id=0c9eb9575b544081b0d296436d8f60f8>

Map dates:

<https://www.tailte.ie/surveying/products/professional-mapping/historical-maps-and-data/>

Extracts from the Valuation Records – 1935

Note: The property described as a stable (highlighted text). The property is shown here No. 58A Rathmines Road Upper which is the rear of No. 58 Rathmines Road Upper (i.e. now referred to as No. 3A Church Lane).

County Borough of Dublin				Electoral Division of Ward Rathfarnham No. 12				1907			
NAMES				Description of Tenement				Rate			
TAXPAYER				No. of Tenements				No. of Tenements			
No. of Tenements				No. of Tenements				No. of Tenements			
56				57				58			
59				60				61			
62				63				64			
65				66				67			
68				69				70			
71				72				73			
74				75				76			
77				78				79			
80				81				82			
83				84				85			
86				87				88			
89				90				91			
92				93				94			
95				96				97			
98				99				100			
101				102				103			
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113				114				115			
116				117				118			
119				120				121			
122				123				124			
125				126				127			
128				129				130			
131				132				133			
134				135				136			

STEPHEN LITTLE & ASSOCIATES

Confirmation from Valuation Office of Current Rateable Valuation (2013)

Valuation Report – Property No : 811809

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	STORE	137.97	55.00	7,588.35

Additional Items (€)	None
----------------------	------

	Total (€):	7,588.35
	Rateable Valuation (€):	7,580.00

NAV = Net Annual Value (Section 48 of the Valuation Act 2001)

Date Published : 31/12/2013

Valuation Date : 07/04/2011

Rating Authority DUBLIN CITY COUNCIL
Property No 811809
Local No/Map Ref Rear 58A
Valuation(€) 7580
Category INDUSTRIAL USES
Uses STORE,-

Agent Property Advertisements (2018 & 2020)

UNIT 3A CHURCH LANE, RATHMINES, DUBLIN 6

LOCATION

The property is located on Church Lane, Rathmines, Dublin 6. Church Lane runs parallel to Rathmines Road Upper and is accessed via Church Avenue close to its junction with the aforementioned Rathmines Road Upper. The property is situated to the rear of John Hayes Carr and Sinnott Solicitors.

It is strategically situated approx. 2.0 kms from the city centre and is immediately accessible to the south city suburbs of Rathmines, Ranelagh and Rathgar. The immediate area is residential in character whilst Rathmines village is situated approx. 1.0 km from the property.

DESCRIPTION

- The property comprises a lock-up storage unit extending to approx. 119 sq. m (1,278 sq. ft.).
- The building is of traditional masonry block wall construction with concrete block infill walls and finished externally with a rendered block façade.
- The entire is covered with a metal deck roof incorporating perspex roof panels.
- Clear internal eaves height of approx. 2.9 metres.

LEASE

Flexible terms available.

RENT

On application.

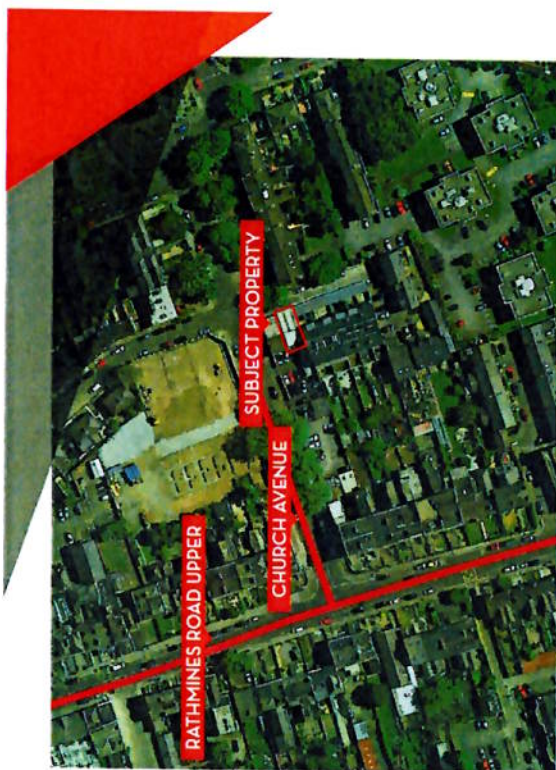


ACCOMMODATION

DESCRIPTION	SIZE (SQ. M.)	SIZE (SQ. FT.)
Ground Floor	84.63	911
First Floor	34.11	367
Total	118.74	1,278

N.B. Please note that we have measured the subject property on a Gross External Area Basis (GEA) in accordance with the Measuring Practice Guidance Notes prepared by the RICS/SCSI.

LOADING ACCESS:

- Loading access is via a standard grade access door to the front elevation.
- Artificial lighting via roof hung fluorescent lighting.

CONTACT:

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Thomas.King@ie.knightfrank.com

Evan Loneragan
Evan.Loneragan@ie.knightfrank.com

Knight Frank

+353 01 634 2466

20-21 Upper Pembroke Street,
 Dublin 2

Declaration: I hereby declare that the information contained in this advertisement is true and correct to the best of my knowledge and belief, and that I am not aware of any facts or circumstances which might render the same misleading or inaccurate. I am a duly qualified and licensed estate agent in Ireland. I am not aware of any facts or circumstances which might render the same misleading or inaccurate. I am a duly qualified and licensed estate agent in Ireland.

Note: The property described as a lock-up / storage unit (highlighted text).

Stephen Little & Associates are committed
to progressing and achieving sustainable
development goals.

**Chartered Town
Planners and
Development
Consultants**

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Dublin 2, D02 X361

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Planning
Report

Section 5
Declaration
Referral to An
Bord Pleanála

At 3A Church Lane,
Rathmines, Dublin 6

For Mr. Marcus Hayes

Dublin City Council
Ref. 0319/23

OCTOBER 2023

Document Control: -

Author	Checked by	Purpose	Date
RMG	MO'S	Draft	19.10.2023
-	MO'S	Final Draft	20.10.2023
-	Michael Sull.	Final	23.10.2023

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1 INTRODUCTION

We, Stephen Little & Associates Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, are instructed by our Client, Marcus Hayes, Kingsdeen Limited t/a John Hayes Cars, Hayes Cars, Nos. 6 – 8 Church Avenue, Rathmines, Dublin 6 to refer this Section 5 Declaration to An Bord Pleanála on foot of a decision reached by Dublin City Council in respect of a Section 5 Declaration under the provisions of the Planning & Development Act, 2000, as amended.

This referral is in response to the Section 5 Declaration issued by Dublin City Council (DCC Reg. Ref. 0319/23) on 26 September 2023 under Section 5(1) of the Planning & Development Act, 2000, as amended, which determined that development at 3A Church Lane, Rathmines is exempted development for the following reason: -

"The development is deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 4 Change of Use."

The subject Declaration issued by Dublin City Council is dated 26 September 2023 and can be referred to An Bord Pleanála on or before 17:30 on 23 October 2023 (4 weeks from the Declaration date).

The statutory fee for this referral to the Board has been paid by cheque (€220.00), and is enclosed with this referral.

We are of the considered opinion that the decision reached by Dublin County Council is inconsistent with the relevant planning legislation and case law. Rehabilitation Institute v. Dublin Corporation, unreported High Court, 14th January 1988 established that the correct way of analysing a material change of use was to determine whether the use had commenced after October 1964 and that such use was a material change of use from the use that preceded it. The assessment carried out by Dublin County Council which led to their decision is based on the existing recent use and not the established use, which is irrational, resulting in an erroneous decision. Additional detail has been provided as part of this Referral which further supports that the established use is not considered light industrial.

The Board is now asked to consider this case *de novo* and is invited to issue a Declaration confirming that the development at 3A Church Lane is not exempted development and therefore does require planning permission as a result.

It is our opinion, for the reasons, arguments and considerations set out in this Report, that the development is a material change of use and is unauthorised development which is contrary to the provisions set out in the Planning & Development Act, 2000, as amended.

2 SECTION 5 QUERY

For the purposes of this Section 5 Declaration, the following questions are asked of the Board: -

- Whether the change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Whether the works carried out the façade of the property is development which is not exempted development.

3 RELEVANT CASE LAW

We are of the considered opinion that the decision reached by Dublin County Council is inconsistent with the relevant case law (see Section 9 of this Report for further assessment).

Established Use

Rehabilitation Institute v. Dublin Corporation, unreported High Court, 14th January 1988 established that the correct way of analysing a material change of use was to determine whether the use had commenced after October 1964 and that such use was a material change of use from the use that preceded it. The assessment carried out by Dublin County Council which led to their decision is based on the existing recent use and not the established use, which is irrational, resulting in an erroneous decision. Additional detail has been provided as part of this Referral which further supports that the established use is not considered light industrial.

Material Change of Use

Uncontroverted evidence have been provided by our Client that the post 1963 position is that the established use (store / lock-up) was ancillary residential and therefore the Photography Business represents a material change of use. Dublin City Council have failed to have full regard for the evidence provided by our Client. That which amounts to a material change of use is a question of fact as set out in the principles laid down in Roadstone Province Ltd v. An Bord Pleanála [2008] IEHC 210.

Intensification of a Use

The Photography Business and is different in character from that of a store and amounts to a material change of use. It is submitted that there is a material intensification of use of the subject property in accordance with the principles laid down in Galway County Council v. Lackagh Rock Ltd [1985] IR 210 and Molumby v. Kearns, unreported High Court, 19th January 1999.

4 SITE CONTEXT & DESCRIPTION OF DEVELOPMENT

The property address is 3A Church Lane, Rathmines, Dublin 6 ("the property"). The property is c. 118 sq. m in area. Church Lane is a cul-de-sac which serves a number of residential properties. We refer the Board to the Site Location Map with the property outlined in red (Property referred to as No. 2 on the Site Location Map).

The building is part 1 storey onto Church Lane and part 2 storey adjacent the existing car sales business (to the west) operated by our Client, Mr. Marcus Hayes.

Access to the property is via a doorway onto Church Lane. There are 4no. windows on the southern elevation.

The car parking at the end of Church Lane is associated with the residential properties adjacent the property. There is a limited amount of on-street paid parking opposite the property.

The adjoining property to the north is a solicitors office (part 1 / 2 storeys) and the adjoining properties to the south are 3 storey residential with car ports onto Church Lane.



Figure 1: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).

The property is currently being used as a photography business (Thyme Studios). Internally, the property comprises two rooms at the ground floor level serving as photography studios and a storage room at the first-floor level. Externally, the property has a modern glazed double-door entrance with glazed side panels.



Figure 2: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).



Figure 3: View south on Church Lane with the property highlighted in red (Overlay by SLA).



Figure 4: View east on Church Avenue to the rear of the property highlighted in red (Overlay by SLA). The property abuts our Client car sales business.



Figure 5: View south from Church Avenue with the property highlighted in red. Undesignated refuse bins used by the operators of the property circled in red (Overlay by SLA).

5 RELEVANT PLANNING HISTORY

5.1 Subject Site

There is no planning history associated with the property on the DCC online planning portal.

This office has liaised with the DCC Planning Department regarding older planning files (pre-2003) and it can be confirmed that there is no older planning history associated with the property either.

5.2 Adjoining Sites

5.2.1 DCC Reg. Ref. 2527/21

Planning permission was sought by James Meagher on 20 Sep 2021 for development comprising the construction of 3no. residential dwellings (c. 447.3 sqm), consisting of 3no. 3 bed townhouses (two storey plus attic / three storey), all with associated private garden and screened terrace at first floor level to the rear, off-street car parking with access from Church Avenue, landscaping works, site services and associated site development works.

DCC granted planning permission on 11 October 2021 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 2 August 2022.

It should be noted that access to the rear of the property has been maintained by way of a proposed lane.

5.2.2 DCC Reg. Ref. 3602/09

Planning permission was sought by Cathal O'Neill on 31 July 2009 for development comprising a 1st & 2nd floor extension (72 sq. m) and alteration of the existing ground and part 1st floor office premises (99sq.m). This extension comprised of a 3 bed duplex apartment (1st floor & part 2nd floor with roof garden) over ground floor office.

DCC granted planning permission on 22 September 2009 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 22 April 2010.

In this planning application, the property was described as an "existing workshop" in the DCC Planners Report, dated 23 September 2009: -

"Site Description: The site is situated along Church Avenue, a corner site on the junction with Church Lane along the southern side of the Avenue. The site is bounded to the west by an open yard occupied by John Hayes Cars and to the south by an existing workshop and 3 storey dwellings to the rear."

Our Client is of the firm opinion that the property is in use since the 1960's a storage / lock-up (refer to Section 8.1 for further discussion).

5.2.3 DCC Reg. Ref. 2517/08

Permission refused for a 1st and 2nd floor extension (90sq.m) to & alteration of the existing office premises (99 sq. m).

5.2.4 DCC Reg. Ref. 6733/06

Permission refused for a 1st and 2nd floor dormer extension (50sqm) to & alterations of the existing office premises (99sqm).

5.2.5 DCC Reg. Ref. 1684/05

Permission granted for the demolition of existing commercial structures and construction of 2no three storey mews houses with off street parking, first floor terraces to rear and first and second floor balconies to front.

5.3 Planning Enforcement

Following engagement with DCC Enforcement, there is one recorder enforcement case associated with the property.

E0632/18 – 3A Church Lane, Rathmines, Dublin 6

A complaint was made that a change of use of lock-up to retail had occurred with resultant issues regarding car parking.

Case Opened: 19 July 2018

Case Closed: 13 September 2022

DCC Enforcement considered that no unauthorised works had taken place and no material change of use had occurred.

6 PLANNING CONTEXT

6.1 Dublin City Council Development Plan 2022 – 2028

The Dublin City Development Plan 2022 – 2028 (“the Development Plan”) came into effect on 14 December 2022 and is the statutory land-use plan governing the subject site at this time.

6.1.1 Land Use Zoning

The subject site is Zoned ‘Sustainable Residential Neighbourhoods – Zone Z1’, the objective of which is: -

“To protect, provide and improve residential amenities.”

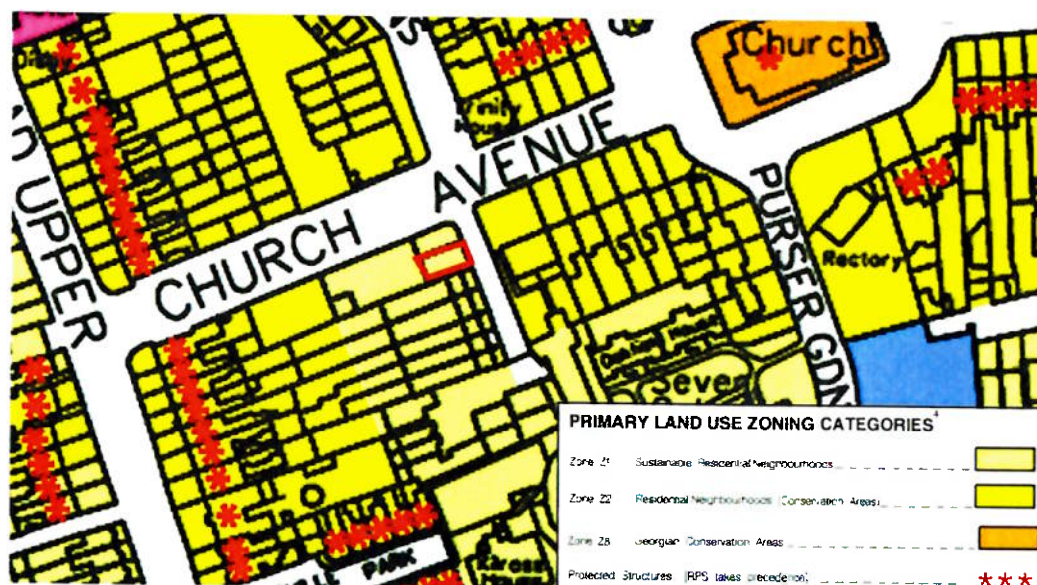


Figure 3: Extract from Map H of the Dublin City Council Development Plan 2022 – 2028, approximate development site boundary shown in red (Overlay by SLA).

The following table sets out the ‘Permissible Uses’ and uses ‘Open for Consideration’ under ‘Zone Z1’.

Permissible Uses
Assisted Living / Retirement Home, Buildings for The Health, Safety and Welfare of the Public, Childcare Facility, Community Facility, Cultural / Recreational Building and Uses, Delicatessen, Education, Embassy Residential, Enterprise Centre, Halting Site, Home-Based Economic Activity, Medical and Related Consultants, Open Space, Place of Public Worship, Public Service Installation, Residential, Shop (Local), Sports Facility and Recreational Uses, Training Centre.
Open For Consideration
Allotments, Beauty / Grooming Services, Bed and Breakfast, Betting Office, Build to Rent Residential, Café / Tearoom, Car Park, Civic And Amenity / Recycling Centre, Garden Centre / Plant Nursery, Guesthouse, Hostel (Tourist), Hotel, Industry (Light) , Laundromat, Live / Work Units, Media-Associated Uses , Mobility Hub, Off-Licence, Off-Licence (Part), Office, Park And Ride Facility, Petrol Station, Pigeon Loft, Postal Hotel / Motel, Primary Health Care Centre, Public House, Residential Institution, Restaurant, Student Accommodation, Veterinary Surgery

[SLA Emphasis in bold]

The property is currently used as a photography business. 'Media Associated Uses' are Open for Consideration on lands zoned 'Zone Z1'.

The Development Plan defines 'Media Associated Uses' as: -

*"Uses include: **photography** / audio visual / cinema / digital art / music production / recording studios / broadcasting studios / publishing that involves the production or creation of digital / audio or visual forms of mass communication."*

[SLA Emphasis in bold]

With regard uses which are 'Open for Consideration' the Development Plan states that: -

*"An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses**, and would otherwise be consistent with the proper planning and sustainable development of the area."*

[SLA Emphasis in bold]

With regard uses which are considered 'Non-conforming' the Development Plan states that: -

*"Throughout the Dublin City Council area there are uses that do not conform to the zoning objective for their area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Planning and Development Act 2000 (as amended) in respect of the continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, **and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

6.1.2 Protected Structures

The building is not subject to any protected structure designation under the Development Plan Record of Protected Structures.

No. 58 Rathmines Road Upper (RPS No. 7267) is described as a "house, including cast-iron balconies and railings" on the Record of Protected Structures. It would appear that the original property had rear access to Church Lane but this has become severed.

6.1.3 City Economy and Enterprise

Policy CEE4 of the Development Plan states that it is an objective to: -

*"To support the creation of an ecosystem of innovative start-ups, social enterprise, **micro-business** and small business and, where possible, to promote the development of skills and entrepreneurship, sites for high tech and potential start-ups, smart city programmes and collaboration between public bodies, industries and research."*

[SLA Emphasis in bold]

7 RELEVANT PLANNING LEGISLATION

7.1 Planning & Development Act 2000, as Amended

Section 2(1) of the Planning & Development Act 2000, as Amended (“the Act”) 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.**”*

‘Alteration’ “... includes—

- (a) plastering or painting or the removal of plaster or stucco, or*
- (b) the replacement of a door, window or roof,*

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;”

‘Use’, “in relation to land, does not include the use of the land by the carrying out of any works thereon;”

[SLA Emphasis in bold]

Section 3(1) of the Planning Act defines ‘development’ as: -

“(a) 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, or

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or (b) where land becomes used for any of the following purposes—

*(i) the placing or keeping of any vans, tents or **other objects**, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,*

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.”

[SLA Emphasis in bold]

Section 4(1) of the Planning Act states: -

The following shall be exempted developments for the purposes of this Act—

...

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

[SLA Emphasis in bold]

Section 5(1) of the Planning Act states: -

“If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.”

7.2 Planning & Development Regulations 2001, as Amended

Article 5(1) of the Planning & Development Regulations 2001, as amended ("the Regulations") provides that, subject to Article 9: -

A 'Light Industrial Building' "... means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area **without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;**"

A Repository "... means a structure (excluding any land occupied therewith) where **storage is the principal use and where no business is transacted other than business incidental to such storage;**"

[SLA Emphasis in bold]

Article 6(1) provides that, subject to Article 9: -

"... development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose 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.**"

[SLA Emphasis in bold]

Article 9(1) provides, inter alia, that: -

"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—

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

...

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

[SLA Emphasis in bold]

Article 10 provides that: -

"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**

(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."**

[SLA Emphasis in bold]

Part 4 of Schedule 2, subject to **Article 10**, lists the following exempted development classes of use: -

CLASS 1

"Use as a shop."

CLASS 2

"Use for the provision of —

(a) financial services,

(b) **professional services (other than health or medical services),**

(c) ...

where the services are provided principally to visiting members of the public."

CLASS 4

"Use as a light industrial building."

CLASS 5

"Use as a wholesale warehouse or as a repository."

[SLA Emphasis in bold]

Part 1 of Schedule 2, subject to Article 6, considers the following as exempted development: -

CLASS 22

"Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."

Conditions & Limitations

*"The raw materials, products, packing materials, fuel or waste stored **shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.**"*

[SLA Emphasis in bold]

8 DUBLIN CITY COUNCIL DECISION

The decision reached by Dublin City Council on 26 September 2023 in relation to the development at the property states that: -

"The development is deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 4 Change of Use)."

8.1 Planners Report

The Planners Report generally concludes the development is deemed exempted development. The following extracts from the Planners Report are of note: -

Material Change of Use

*"It is therefore considered that the **current use of the building** to provide food product photography typically for publications is a 'light industrial' use. The current use and prior previous uses of the building fall within Class 4 Use as a light industrial building, Schedule 2 Part 4 Change of Use of the Planning and Development Regulation 2001 (as amended). A change of use has therefore not occurred."*

[SLA Emphasis in bold]

Dublin City Council have failed to have full regard for the evidence provided by our Client which clearly demonstrate that the established use of the Property is a store / lock-up. Additional detail has been provided as part of this Referral which further supports this fact. The emphasis placed on the information provided by the Property owner which merely identified the recent existing use demonstrates that no consideration was not given to the established use (See Section 8 below for further assessment).

Façade Alterations

"... it is considered that the appearance of glazed door would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The works carried out to the façade of the property are therefore considered exempted development under Section 4(1) of the Planning and Development Act, 2000 (as amended)."

Signage

"There is one sign on the property. On the day of the site visit 20th September 2023 the sign was measured as 250mm square and comprises an area of 0.0625 sqm. The sign therefore does not exceed the limitations in Class 5, Part 2 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is considered exempted development."

9 ASSESSMENT

We submit that the decision of the Dublin City Council does not accord with relevant planning legislation and case law. From a review of the Council's Planner Report, it appears they have only considered the change of use based on the recent use of the Property with no emphasis on first identifying an established use of the Property. The Council did not apply the correct test in law and did not examine or apply the pre-1963 position as established in *Rehabilitation Institute v. Dublin Corporation*, unreported High Court, 14th January 1988. As such it is respectfully contended that the manner in which the assessment was carried out by Dublin City Council did not align with the principles set out in *Rehabilitation Institute v. Dublin Corporation* and the decision reached can therefore be considered irrational.

Below is our assessment of the property and how the development taken place at 3A Church Lane should be subject to Planning Permission.

Our Client contends the property is operating without the benefit of planning permission for the current use. Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. It is considered that: -

- The change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Works to the façade of the property is development which is not exempted development.

The proceeding sections of this Report elaborate further on the items outlined above.

9.1 Established Use

The historic mapping shows that the rear of No. 58 Rathmines Road Upper was associated with the house and formed a singular plot. The extract from the historic maps date from between 1830 and 1930. The rear of No. 58 Rathmines Road Upper would have been used as stables or storage associated with the residential use.

This is corroborated by extracts from the Valuation Records in 1935 and 1967 which record the use of the rear of No. 58 Rathmines Road Upper as a stable / store. These documents clearly show the property in continuous use as a store pre-1963. As such, it is respectfully submitted that the post 1963 position is that the established use was ancillary residential (store) and therefore the Photography Business represents a material change of use. Subsequent uses for commercial storage / lock-up would not have been authorised development. There is no planning history pertaining to the Property.

Dublin City Council have failed to have full regard for the evidence provided by our Client which clearly demonstrate that the established use of the Property is a store / lock-up. We refer the Board to Appendix A which includes verifiable, chronological information relating to the use of the Property: -

- Historic Mapping (an additional to the Referral).
 - Dating from 1830 to 1930.
- Extracts from the Valuation Records (included additional records from 1935).
 - Dating from 1935 to 1967.
- Confirmation from the Valuation Office of current rateable valuation.
 - Dating from 2013.
- Agent Property Advertisements.
 - Dating from 2018 & 2020.

Council's Planner Report states that it was not demonstrated that the Property was in continuous use since 1967 prior to the current use as a Photography Business. This view is refuted by our Client and with the additional information provided as part of this Referral it is abundantly clear that the established use pre-1963 is the key determining factor in considering whether a material change of use has occurred. Dublin City Council have clearly relied on the information of the Property owner which points to the recent use (motor repair/paint shop, screen printing, preparation/manufacturing of boards) as opposed the established authorised use (i.e. store / lock up). As set out above the principle established in *Rehabilitation Institute v. Dublin Corporation*, unreported High Court, 14th January 1988 have not been applied and the decision reached can therefore be considered irrational.

Furthermore, uncontroverted evidence have been provided by our Client that the post 1963 position is that the established use (store / lock-up) was ancillary residential and therefore the Photography Business represents a material change of use. Dublin City Council have failed to have full regard for the evidence provided by our Client. That which amounts to a material change of use is a question of fact as set out in the principles laid down in *Roadstone Province Ltd v. An Bord Pleanála* [2008] IEHC 210.

Without prejudice to the above, in the event where the established use is considered commercial storage / lock-up, Article 5(1) of the Regulations a repository is described as a structure “*where storage is the principal use and where no business is transacted other than business incidental to such storage*”.

The property is currently in use as a Photography Business (Thyme Studios) which would fall under the definition of a ‘professional service’ (i.e. a service provided principally to visiting members of the public and is not a health or medical service) under Class 2, Part 4 of Schedule 2 of the Regulations.

Under Article 10 of the Regulations 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.

It is our professional planning opinion that a change of use from ancillary residential (store) to a Photography Business represents a material change of use. Furthermore, in the event the established use is considered commercial storage / lock-up (a repository – Class 5) to use for the provision of professional services (Class 2(b)) cannot be considered exempted development. A change of use **between** classes of use specified in Part 4 of Schedule 2 of the Regulations is not exempted development and a material change of use has therefore occurred.

Photography Business

The current use also gives rise to a number of issues which have a material impact on the surrounding area which are set out below. Arguably, a material intensification of use of the Property has occurred in accordance with the principles laid down in *Galway County Council v. Lackagh Rock Ltd.* [1985] IR 210 and *Molmby v. Kearns*, unreported High Court, 19th January 1999.

The photography use falls under the category of ‘Media Associated Uses’ as set out in the Development Plan. This is a use which is ‘Open for Consideration’ on ‘Zone Z1’ lands. With regard uses which are ‘Open for Consideration’ the Development Plan states that: -

*“An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.***

[SLA Emphasis in bold]

It is considered that there are a number of undesired effects arising from the use of the property as a Photography Business that would likely be unacceptable where planning permission is sought: -

- A number of employees now use the property on a daily basis which gives rise to additional car and bicycle parking requirements as well as the generation of domestic waste.
- Access for deliveries and collections arising from the use of the property as a photography studio give rise to additional traffic which cannot be accommodated on the existing laneway.
- Parking issues arise from member of the public visiting the property (the business website refers to making appointments). The existing car parking on Church Lane is designated to the existing residents. Members of the public visiting the Photography Business use the laneway to park which gives rise to further traffic use given the frequency.
- It is not clear how waste from the property is managed in terms of safe storage or collection for suitable disposal.

The Planning Authority appears to have assessed the recent use over time rather than identifying the authorised or established use of the property.



Figure 6: Image from July 2023 showing note on the refuse bins to be collected – clearly no bin company is collecting waste from the property.

9.2 External Facade

The façade of the property onto Church Lane has been altered. A modern glazed double door entrance with glazed side panel has been installed in front of the original wooden door to the storage / lock-up. The external doors were installed in c. 2018. Extracts from Google Street View show the original door in place prior to this.



Figure 7: Extract from Google Street View showing original door (green outline) c. June 2009.



Figure 8: Extract from Google Street View showing original door (green outline) c. August 2014.



Figure 9: Extract from Google Street View showing new door (green outline) c. August 2018.



Figure 10: Image from July 2023 showing a modern glazed double door entrance with glazed side panels.

In our professional planning opinion, the change to the external appearance of the building does not fall under Section 4(1) of the Act as the current appearance is clearly inconsistent with the remainder of the laneway. The laneway has a number of carport doors for access to the existing residential properties and existing door is not considered in keeping with the majority of the streetscape. As such, we considered that the works are an 'alteration' as defined in the Act which do not fall under exempted development and as such require the benefit of planning permission.

10 CONCLUSION

For all the reasons and considerations set out in this Report, it is submitted to the Board that the Declaration issued by Dublin City Council that the development at 3A Church Lane is not exempted development is inconsistent with the relevant planning legislation and case law.

The assessment carried out by Dublin County Council which led to their decision is based on the existing use (light industrial) and not the established use (store / lock-up), which is irrational, resulting in an erroneous decision.

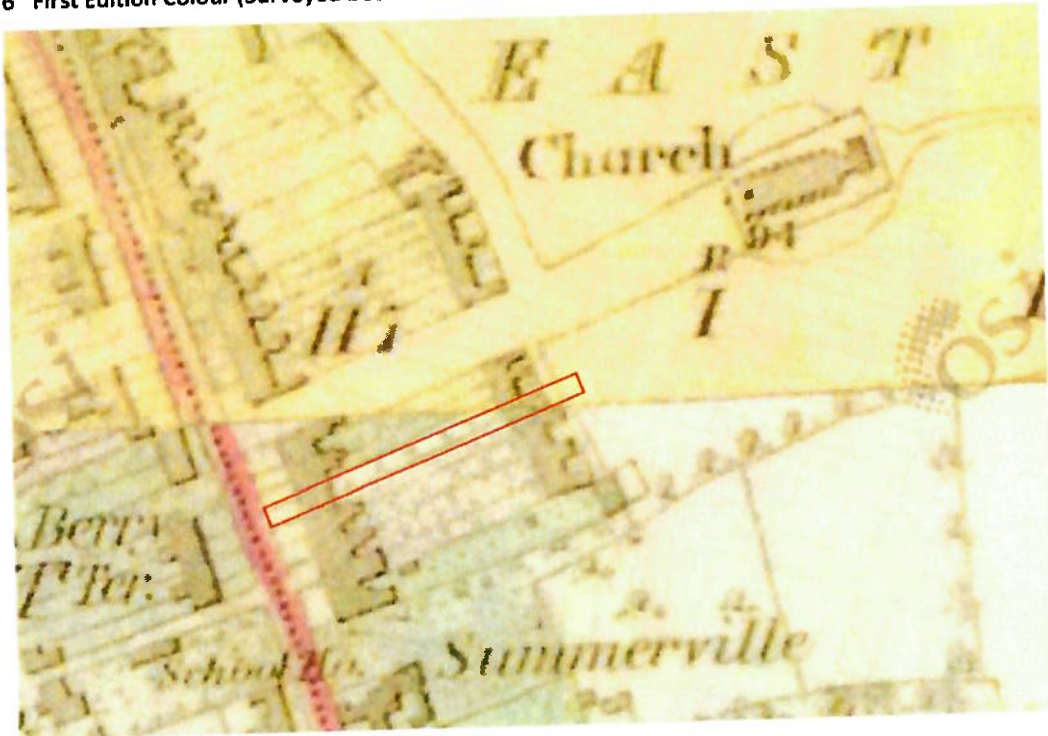
We invite the Board to concur with our opinion that the use of the property as a Photography Business is development which is not exempted development and the changes to the façade is development which is not exempted development.

We would be grateful of acknowledgement of this application and that all future correspondence relating to this file is sent to the office of Stephen Little & Associates.

11 APPENDIX A

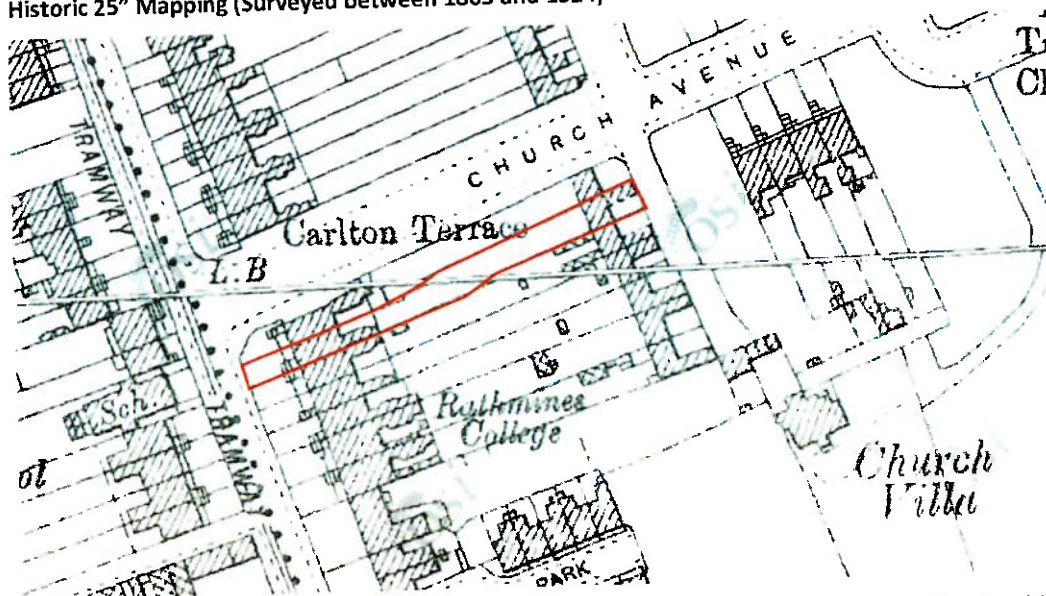
Historic Mapping

6" First Edition Colour (Surveyed between 1829 and 1834 and printed between 1829 and 1941)



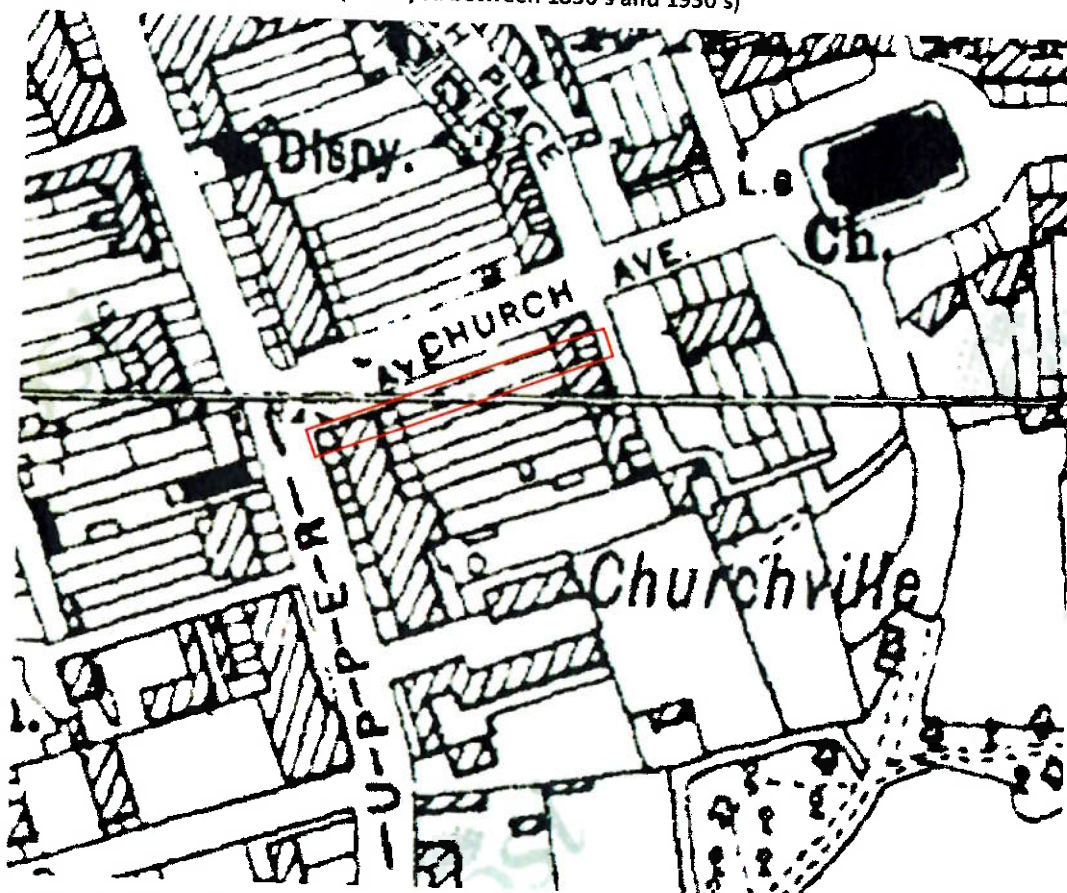
Note: No. 58 Rathmines Road Upper with stables / store to the rear (Outlined in red).

Historic 25" Mapping (Surveyed between 1863 and 1924)



Note: No. 58 Rathmines Road Upper which stables / store to the rear (Outlined in red). Clearly within the overall site / plot of No. 58 Rathmines Road Upper.

6" Last Edition Black & White (Surveyed between 1830's and 1930's)



Note: No. 58 Rathmines Road Upper which stables / store to the rear (Outlined in red). Clearly within the overall site / plot of No. 58 Rathmines Road Upper.

Sources

Map extracts:

<https://heritagedata.maps.arcgis.com/apps/webappviewer/index.html?id=0c9eb9575b544081b0d296436d8f60f8>

Map dates:

<https://www.tailte.ie/surveying/products/professional-mapping/historical-maps-and-data/>

Extracts from the Valuation Records - 1935

1935

Townland of Rathmines, Co. Dublin

Un District of Rathmines + Rathmines Electoral Division of Rathmines, Co. Dublin

No. 5, BOROUGH ELECTORAL AREA

Household No.	Household Name	Household Description	Household Address	Household Type	Household Value	Household Rating	Household Date
56	Glennan family	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	31 0 0	1935	1935
57	Richard Curley	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	28 0 0	1935	1935
58	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
59	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
60	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
61	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
62	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
63	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
64	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
65	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
66	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
67	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
68	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
69	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
70	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
71	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
72	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
73	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
74	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
75	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
76	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
77	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
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95	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
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97	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
98	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
99	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935
100	Mr. J. L. L. L.	Ho. off + on gen.	Rathmines, Co. Dublin	Ho. off + on gen.	26 0 0	1935	1935

66

A 2

Note: The property described as a stable (highlighted text). The property is shown here No. 58A Rathmines Road Upper which is the rear of No. 58 Rathmines Road Upper (i.e. now referred to as No. 3A Church Lane).

Extracts from the Valuation Records – 1967

[illegible]

Note: The property described as a store (highlighted text). The property is noted as 'in fee' which means it is owned by a Mr. George A. Dagg Ltd. as a store.

Confirmation from Valuation Office of Current Rateable Valuation (2013)

Valuation Report – Property No : 811809

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	STORE	137.97	55.00	7,588.35

Additional Items (€)	None
----------------------	------

	Total (€):	7,588.35
	Rateable Valuation (€):	7,580.00

NAV = Net Annual Value (Section 48 of the Valuation Act 2001)

Date Published : 31/12/2013

Valuation Date : 07/04/2011

Rating Authority DUBLIN CITY COUNCIL

Property No 811809

Local No/Map Ref Rear 58A

Valuation(€) 7580

Category INDUSTRIAL USES

Uses STORE,-

UNIT 3A CHURCH LANE, RATHMINES, DUBLIN 6

LOCATION

The property is located on Church Lane, Rathmines, Dublin 6. Church Lane runs parallel to Rathmines Road Upper and is accessed via Church Avenue close to its junction with the aforementioned Rathmines Road Upper. The property is situated to the rear of John Hayes Cars and Sinnott Solicitors.

It is strategically situated approx. 2.0 kms from the city centre and is immediately accessible to the south city suburbs of Rathmines, Ranelagh and Rathgar. The immediate area is residential in character whilst Rathmines village is situated approx. 1.0 km from the property.

DESCRIPTION

- The property comprises a lock up/ storage unit extending to approx. 190 sq. m (1,976 sq. ft.)
- The building is of traditional masonry block wall construction with concrete block infill walls and finished externally with a rendered block façade
- The entire is covered with a metal deck roof incorporating perspex roof panels.
- Clear internal eaves height of approx. 2.9 metres.

LEASE

Flexible terms available.

RENT

On application.

ACCOMMODATION

DESCRIPTION	SIZE (SQ. M.)	SIZE (SQ. FT.)
Ground Floor	84.63	911
First Floor	34.11	367
Total	118.74	1,278

N.B. Please note that we have measured the subject property on a Gross External Area Basis (GEA) in accordance with the Measuring Practice Guidance Notes prepared by the RICS/SCSI.

- Loading access is via 1 standard grade access door to the front elevation.
- Artificial lighting via roof hung fluorescent lighting

[illegible]

CONTACT:

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Thomas.King@ie.knightfrank.com

Eván Loneragan
Evan.Loneragan@ie.knightfrank.com



**Knight
Frank**

+353 01 634 2466
20-21 Upper Pembroke Street,
Dublin 2

Note: The property described as a lock-up / storage unit (highlighted text).

Stephen Little & Associates are committed
to progressing and achieving sustainable
development goals.

**Chartered Town
Planners and
Development
Consultants**

Address:
25-27
Upper Pembroke Street,
Dublin 2, D02 X352

Contact:
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info@sla-pdc.com
sla-pdc.com



Planning
Report

Section 5
Declaration

At 3A Church Lane,
Rathmines, Dublin 6

For Mr. Marcus Hayes

AUGUST 2023

Document Control: -

Author	Checked by	Purpose	Date
JW	MO'S	Draft	01.06.2023
-	MO'S	Final Draft	14.06.2023
EMP	<i>Michael Sulli</i>	Final	23.08.2023

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1 INTRODUCTION

We, Stephen Little & Associates Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, are instructed by our Client, Marcus Hayes, Kingsdeen Limited t/a John Hayes Cars, Hayes Cars, Nos. 6 – 8 Church Avenue, Rathmines, Dublin 6 to apply to Dublin City Council (DCC) for a Section 5 Declaration under the provisions of the Planning & Development Act 2000, as amended.

Our Client is seeking a declaration that existing use of and works carried out to the façade (including signage) of No. 3A Church Lane, Rathmines, Dublin 6 are not exempted development and requires the benefit planning permission as a result.

Our Client contends the property is operating without the benefit of planning permission for the current use (Photography Business). Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. Our Client is of the view that the on-going use of the property has a number of undesired impacts including on-the-fly car parking and waste collections which is incongruent with the residential street which the property is located on.

Our Client has expressed his astonishment at the outcome of enforcement proceedings (DCC Ref. E0632/18) in December 2022. DCC Enforcement Section determined that no unauthorised works had taken place and no material change of use had occurred regardless of the weight of evidence provided by our Client to demonstrate that unauthorised works had in fact taken place.

Furthermore, our Client is firmly of the view that the current use of the property is in flagrant disregard of all relevant fire and safety regulations.

We set out below our opinion as to why the current use and works to the façade of the property are not exempted development and requires the benefit planning permission as a result.

2 SECTION 5 QUERY

For the purposes of this Section 5 Declaration, the following questions are asked of the Planning Authority: -

- Whether the change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Whether the works carried out the façade of the property is development which is not exempted development.
- Whether the signage erected on the property is development which is not exempted development.

3 SITE CONTEXT & DESCRIPTION OF DEVELOPMENT

The property address is 3A Church Lane, Rathmines, Dublin 6 ("the property"). The property is c. 118 sq. m in area. Church Lane is a cul-de-sac which serves a number of residential properties. We refer the Planning Authority to the Site Location Map with the property outlined in red (Property referred to as No. 2 on the Site Location Map).

The building is part 1 storey onto Church Lane and part 2 storey adjacent the existing car sales business (to the west) operated by our Client, Mr. Marcus Hayes.

Access to the property is via a doorway onto Church Lane. There are 4no. windows on the southern elevation.

The car parking at the end of Church Lane is associated with the residential properties adjacent the property. There is a limited amount of on-street paid parking opposite the property.

The adjoining property to the north is a solicitors office (part 1 / 2 storeys) and the adjoining properties to the south are 3 storey residential with car ports onto Church Lane.

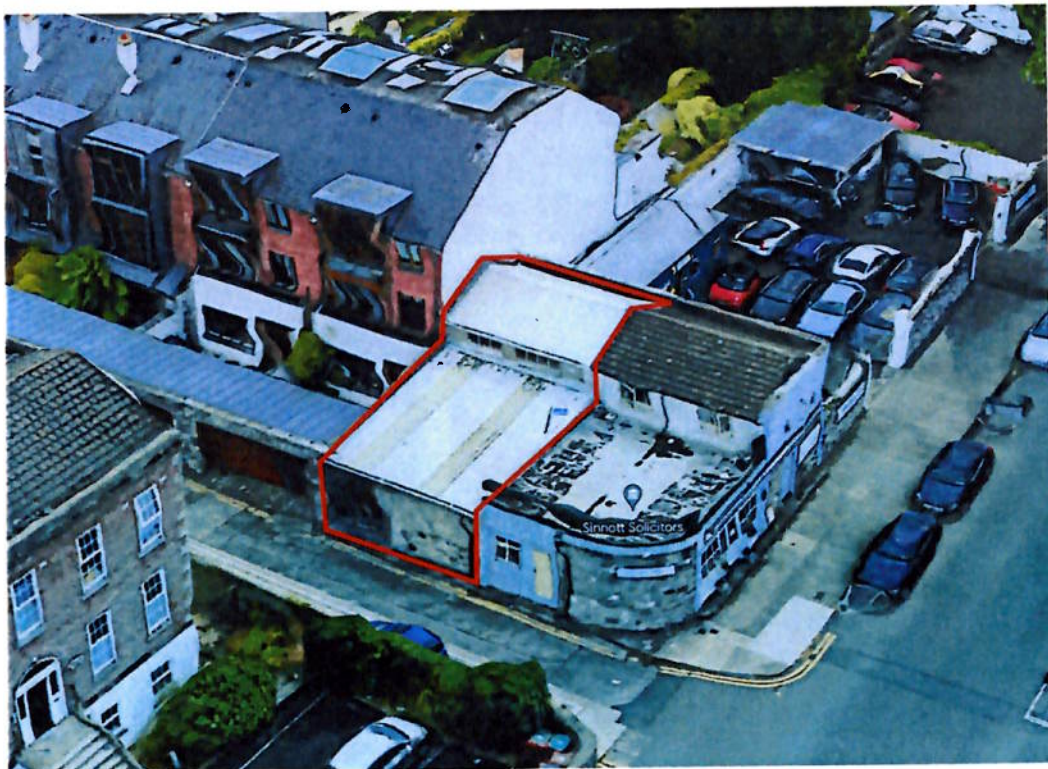


Figure 1: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).

The property is currently being used as a photography business (Thyme Studios). Internally, the property comprises of two rooms at ground floor level serving as photography studios and a storage room at first floor level. Externally, the property has a modern glazed double door entrance with glazed side panels.

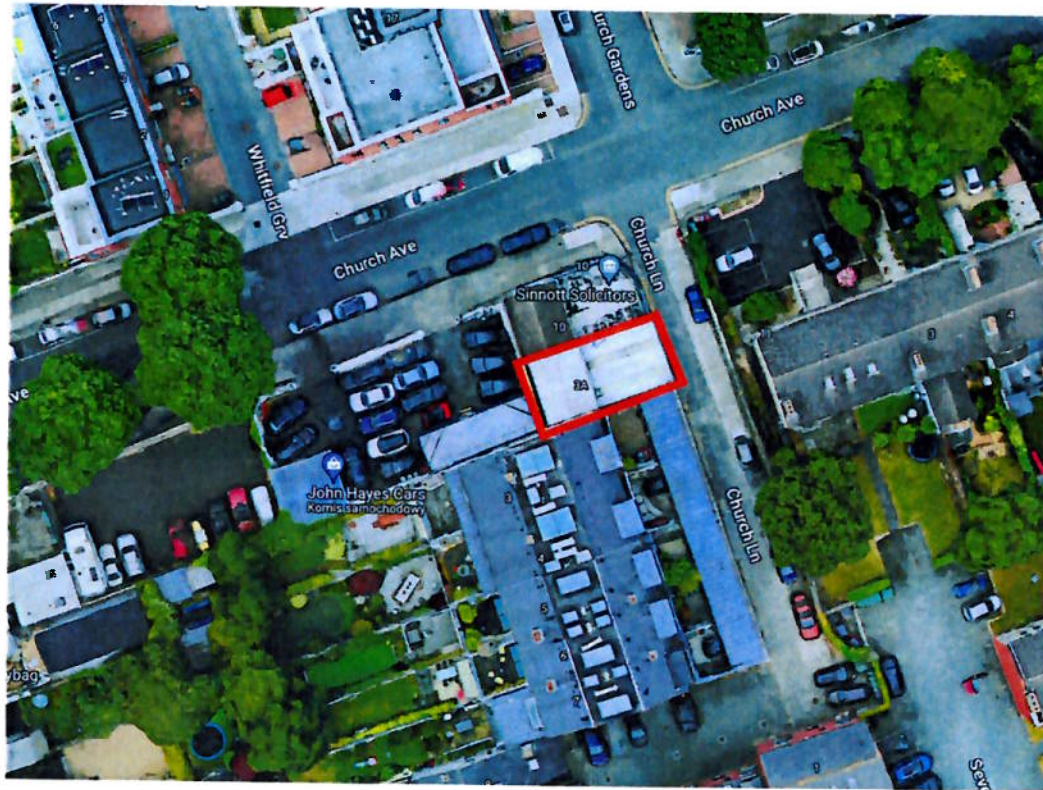


Figure 2: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).



Figure 3: View south on Church Lane with the property highlighted in red (Overlay by SLA).



Figure 4: View east on Church Avenue to the rear of the property highlighted in red (Overlay by SLA). The property abuts our Client car sales business.



Figure 5: View south from Church Avenue with the property highlighted in red. Undesignated refuse bins used by the operators of the property circled in red (Overlay by SLA).

4 RELEVANT PLANNING HISTORY

4.1 Subject Site

There is no planning history associated with the property on the DCC on-line planning portal.

This office has liaised with the DCC Planning Department regarding older planning files (pre-2003) and it can be confirmed that there is no older planning history associated with the property either.

4.2 Adjoining Site

4.2.1 DCC Reg. Ref. 3602/09

Planning permission was sought by Cathal O'Neill on 31 July 2009 for development comprising a 1st & 2nd floor extension (72 sq. m) and alteration of the existing ground and part 1st floor office premises (99sq.m). This extension comprised of a 3 bed duplex apartment (1st floor & part 2nd floor with roof garden) over ground floor office.

DCC granted planning permission on 22 September 2009 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 22 April 2010.

In this planning application, the property was described as an "existing workshop" in the DCC Planners Report, dated 23 September 2009: -

"Site Description: The site is situated along Church Avenue, a corner site on the junction with Church Lane along the southern side of the Avenue. The site is bounded to the west by an open yard occupied by John Hayes Cars and to the south by an existing workshop and 3 storey dwellings to the rear."

Our Client is of the firm opinion that the property is in use since the 1960's a storage / lock-up (refer to Section 7.1 for further discussion).

4.2.2 DCC Reg. Ref. 2527/21

Planning permission was sought by James Meagher on 20 Sep 2021 for development comprising the construction of 3no. residential dwellings (c. 447.3 sqm), consisting of 3no. 3 bed townhouses (two storey plus attic / three storey), all with associated private garden and screened terrace at first floor level to the rear, off-street car parking with access from Church Avenue, landscaping works, site services and associated site development works.

DCC granted planning permission on 11 October 2021 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 2 August 2022.

It should be noted that access to the rear of the property has been maintained by way of a proposed lane.

4.3 Planning Enforcement

Following engagement with DCC Enforcement, there is one recorder enforcement case associated with the property.

E0632/18 – 3A Church Lane, Rathmines, Dublin 6

A complaint was made that a change of use of lock up to retail had occurred with resultant issues regarding car parking.

Case Opened: 19 July 2018

Case Closed: 13 September 2022

DCC Enforcement considered that no unauthorised works had taken place and no material change of use had occurred.

5 PLANNING CONTEXT

5.1 Dublin City Council Development Plan 2022 – 2028

The Dublin City Development Plan 2022 – 2028 (“the Development Plan”) came into effect on 14 December 2022 and is the statutory land-use plan governing the subject site at this time.

5.1.1 Land Use Zoning

The subject site is Zoned ‘Sustainable Residential Neighbourhoods – Zone Z1’, the objective of which is: -

“To protect, provide and improve residential amenities.”

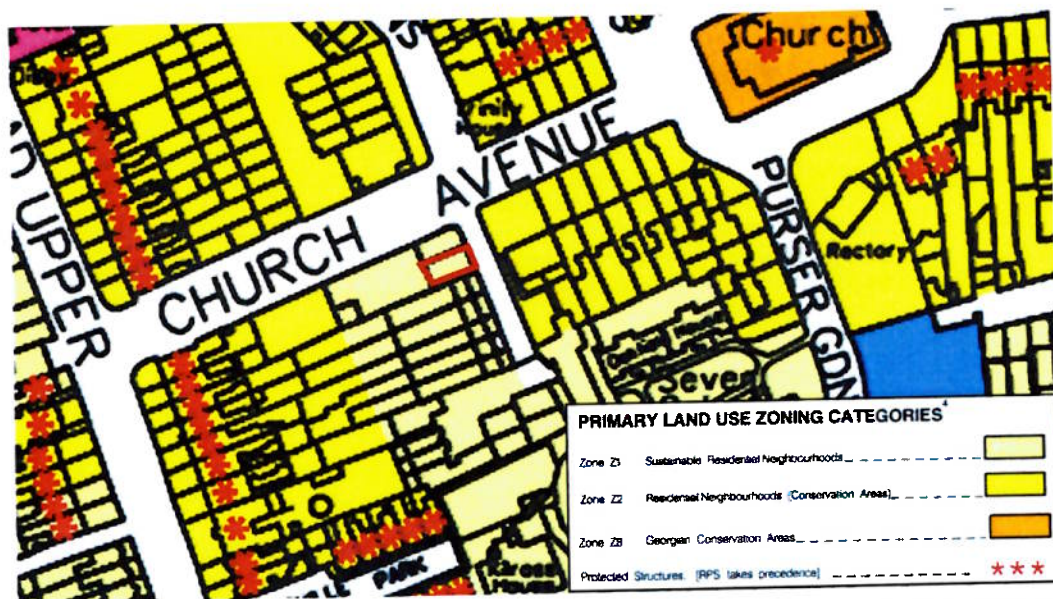


Figure 3: Extract from Map H of the Dublin City Council Development Plan 2022 – 2028, approximate development site boundary shown in red (Overlay by SLA).

The following table sets out the ‘Permissible Uses’ and uses ‘Open for Consideration’ under ‘Zone Z1’.

Permissible Uses
Assisted Living / Retirement Home, Buildings for The Health, Safety and Welfare of the Public, Childcare Facility, Community Facility, Cultural / Recreational Building and Uses, Delicatessen, Education, Embassy Residential, Enterprise Centre, Halting Site, Home-Based Economic Activity, Medical and Related Consultants, Open Space, Place of Public Worship, Public Service Installation, Residential, Shop (Local), Sports Facility and Recreational Uses, Training Centre.
Open For Consideration
Allotments, Beauty / Grooming Services, Bed and Breakfast, Betting Office, Build to Rent Residential, Café / Tearoom, Car Park, Civic And Amenity / Recycling Centre, Garden Centre / Plant Nursery, Guesthouse, Hostel (Tourist), Hotel, Industry (Light) , Laundromat, Live / Work Units, Media-Associated Uses , Mobility Hub, Off-Licence, Off-Licence (Part), Office, Park And Ride Facility, Petrol Station, Pigeon Loft, Postal Hotel / Motel, Primary Health Care Centre, Public House, Residential Institution, Restaurant, Student Accommodation, Veterinary Surgery

[SLA Emphasis in bold]

The property is currently used as a photography business. 'Media Associated Uses' are Open for Consideration on lands zoned 'Zone Z1'.

The Development Plan defines 'Media Associated Uses' as: -

*"Uses include: **photography** / audio visual / cinema / digital art / music production / recording studios / broadcasting studios / publishing that involves the production or creation of digital / audio or visual forms of mass communication."*

[SLA Emphasis in bold]

With regard uses which are 'Open for Consideration' the Development Plan states that: -

*"An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

With regard uses which are considered 'Non-conforming' the Development Plan states that: -

*"Throughout the Dublin City Council area there are uses that do not conform to the zoning objective for their area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Planning and Development Act 2000 (as amended) in respect of the continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, **and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

5.1.2 Protected Structures

The building is not subject of any protected structure designation under the Development Plan Record of Protected Structures.

No 56 Rathmines Road Upper (RPS No. 7267) is described as a "house, including cast-iron balconies and railings" on the Record of Protected Structures. It would appear that the original property had rear access onto Church Lane but this has become severed.

5.1.3 City Economy and Enterprise

Policy CEE4 of the Development Plan states that it is an objective to: -

*"To support the creation of an ecosystem of innovative start-ups, social enterprise, **micro-business** and small business and, where possible, to promote the development of skills and entrepreneurship, sites for high tech and potential start-ups, smart city programmes and collaboration between public bodies, industries and research."*

[SLA Emphasis in bold]

6 RELEVANT PLANNING LEGISLATION

6.1 Planning & Development Act 2000, as Amended

Section 2(1) of the Planning & Development Act 2000, as Amended ("the Act") 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.**"*

'Alteration' "... includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;"

'Use', "in relation to land, does not include the use of the land by the carrying out of any works thereon;"

[SLA Emphasis in bold]

Section 3(1) of the Planning Act defines 'development' as: -

"(a) 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, or

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or (b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed."

[SLA Emphasis in bold]

Section 4(1) of the Planning Act states: -

The following shall be exempted developments for the purposes of this Act—

...

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

[SLA Emphasis in bold]

Section 5(1) of the Planning Act states: -

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

6.2 Planning & Development Regulations 2001, as Amended

Article 5(1) of the Planning & Development Regulations 2001, as amended (“the Regulations”) provides that, subject to Article 9: -

A ‘Light Industrial Building’ “... means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area **without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;**”

A Repository “... means a structure (excluding any land occupied therewith) where **storage is the principal use and where no business is transacted other than business incidental to such storage;**”

[SLA Emphasis in bold]

Article 6(1) provides that, subject to Article 9: -

“... development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose 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.**”

[SLA Emphasis in bold]

Article 9(1) provides, inter alia, that: -

“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—

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

...

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

[SLA Emphasis in bold]

Article 10 provides that: -

“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

(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.”

[SLA Emphasis in bold]

Part 4 of Schedule 2, subject to Article 10, lists the following exempted development classes of use: -

CLASS 1

“Use as a shop.”

CLASS 2

“Use for the provision of —

(a) financial services,

(b) **professional services (other than health or medical services),**

(c) ...

where the services are provided principally to visiting members of the public."

CLASS 4

"Use as a light industrial building."

CLASS 5

"Use as a wholesale warehouse or as a repository."

[SLA Emphasis in bold]

Part 1 of Schedule 2, subject to Article 6, considers the following as exempted development: -

CLASS 22

"Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."

Conditions & Limitations

*"The raw materials, products, packing materials, fuel or waste stored **shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.**"*

[SLA Emphasis in bold]

Part 2 of Schedule 2, subject to Article 6, considers the following in relation to advertisement as exempted development: -

CLASS 5

"Advertisements, exhibited at the entrance to any premises, relating to any person, partnership or company carrying on a public service or a profession, business or trade at the premises."

Conditions & Limitations

*"1. **No such advertisement shall exceed 0.3 square metres in area.***

2. Not more than one such advertisement, or, in the case of premises with entrances on different road frontages, one such advertisement for each such frontage, shall be exhibited in respect of each such person, partnership or company on the premises."

[SLA Emphasis in bold]

7 PLANNING OPINION

Our Client contends the property is operating without the benefit of planning permission for the current use. Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. It is considered that: -

- The change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Works to the façade of the property is development which is not exempted development.
- Signage erected on the property is development which is not exempted development.

The proceeding sections of this Report elaborate further on the items outlined above.

7.1 Existing Use

Our Client is of the firm opinion that the current and established use of 3A Church Lane is a store / lock-up. We refer the Planning Authority to Appendix A which includes: -

- Extracts from the Valuation Records.
- Confirmation from Valuation Office of current rateable valuation.
- Agent Property Advertisements.

These documents clearly show the property in continuous use as a store / lock-up since 1967 and would in all likelihood have been in use as store / lock-up prior to 1967 also. It is acknowledged that there is no planning history pertaining to the property.

Under Article 5(1) of the Regulations a repository is described as a structure “where storage is the principal use and where no business is transacted other than business incidental to such storage”.

Under Planning Enforcement Ref. E0632/18 the DCC Enforcement Officer came to the conclusion that the property was considered a ‘light industrial use’. This is firmly refuted, and our Client is clear that the established use is a store / lock-up (evidence enclosed to confirm same).

The property is currently in use as a Photography Business (Thyme Studios) which would fall under the definition of a ‘professional service’ (i.e. a service provided principally to visiting members of the public and is not a health or medical service) under Class 2, Part 4 of Schedule 2 of the Regulations.

Under Article 10 of the Regulations 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.

It is our professional planning opinion that a change of use from a repository (Class 5) to use for the provision of professional services (Class 2(b)) cannot be considered exempted development. A change of use **between** classes of use specified in Part 4 of Schedule 2 of the Regulations is not exempted development and a material change of use has therefore occurred.

Furthermore, the current use gives rise to a number of issues which have a material impact on the surrounding area which are set out below.

Photography Business

The photography use falls under the category of ‘Media Associated Uses’ as set out in the Development Plan. This is a use which is ‘Open for Consideration’ on ‘Zone Z1’ lands. With regard uses which are ‘Open for Consideration’ the Development Plan states that: -

*“An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.**”*

[SLA Emphasis in bold]

It is considered that there are a number of undesired effects arising from the use of the property as a Photography Business that would likely be unacceptable where planning permission is sought: -

- A number of employees now use the property on a daily basis which gives to additional car and bicycle parking requirements as well as the generation of domestic waste.
- Access for deliveries and collections arising from the use of the property as a photography studio give rise to additional traffic which cannot be accommodated on the existing laneway.
- Parking issues arise from member of the public visiting the property (the business website refers to making appointments). The existing car parking on Church Lane is designated to the existing residents. Members of the public visiting the Photography Business use the laneway to park which gives rise to further traffic use given the frequency.
- It is not clear how waste from the property is managed in terms of safe storage or collection for suitable disposal.



Figure 6: Image from July 2023 showing note on the refuse bins to be collected – clearly no bin company is collecting waste from the property.

7.2 External Facade

The façade of the property onto Church Lane has been altered. A modern glazed double door entrance with glazed side panel has been installed in front of the original wooden door to the storage / lock-up.

The external doors were installed in c. 2018. Extracts from Google Street View show the original door in place prior to this.



Figure 7: Extract from Google Street View showing original door (green outline) c. June 2009.

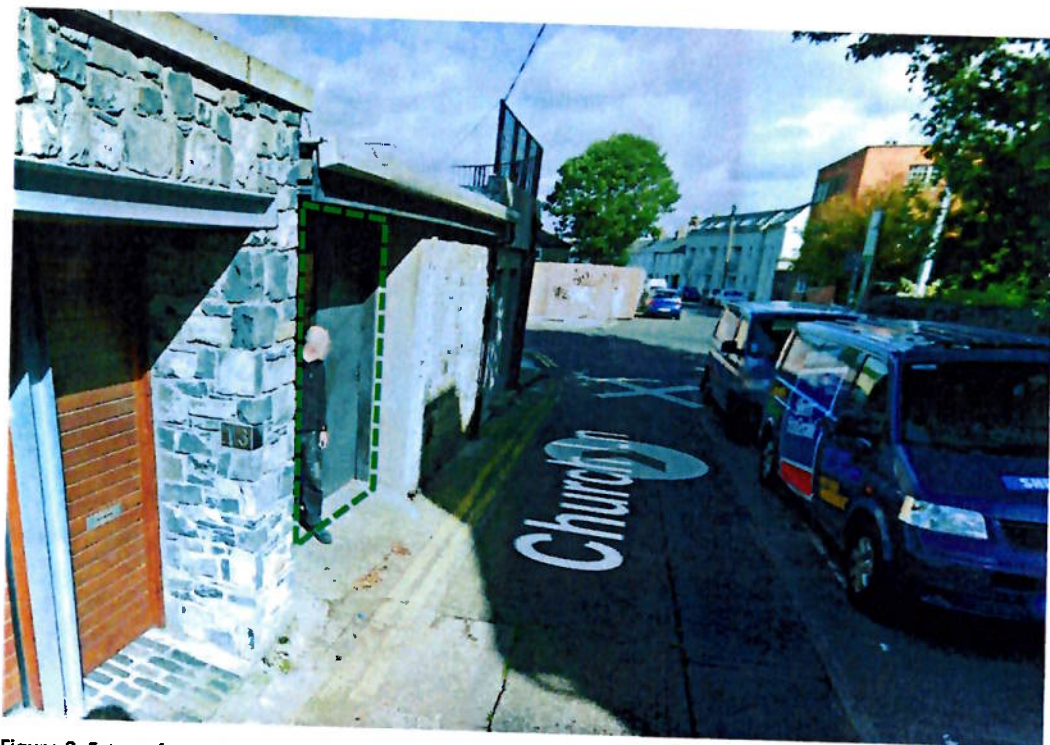


Figure 8: Extract from Google Street View showing original door (green outline) c. August 2014.



Figure 9: Extract from Google Street View showing new door (green outline) c. August 2018.



Figure 10: Image from July 2023 showing a modern glazed double door entrance with glazed side panels.

In our professional planning opinion, the change to the external appearance of the building does not fall under Section 4(1) of the Act as the current appearance is clearly inconsistent with the remainder of the laneway. The laneway has a number of carport doors for access to the existing residential properties and existing door is not considered in keeping with the majority of the streetscape. As such, we considered that the works are an 'alteration' as defined in the Act which do not fall under exempted development and as such require the benefit of planning permission.

7.3 Signage

There is signage on the façade of the property associated with the Photography Business use.



Figure 11: Image from July 2023 showing signage associated with the business on the façade of the property.

Class 5 of Part 4 of Schedule 2 of the Regulations sets out that advertisement at the entrance of a premises related to that building is exempted subject to certain limitations.

Our Client contends that the signage does not fall within the exemptions (i.e. the sign area is larger than 0.3 sq. m) set out in Class 5 of Part 4 of Schedule 2 of the Regulations.

8 CONCLUSION

For all the reasons and considerations set out in this Report, we invite the Planning Authority to concur with our opinion that the use of the No. 3A Church Lane as a Photography Business is development which is not exempted development and the changes to the façade and signage erected is development which is not exempted development.

We refer the Planning Authority to the following plans and particulars that accompany this Section 5 application: -

- Statutory Fee €80.00.
- Completed Section 5 Application Form.
- 2no. copies the Section 5 Application Report prepared by Stephen Little & Associates Chartered Town Planners & Development Consultants.
- 2no. copies of a Site Location Map.

We would be grateful of acknowledgement of this application and that all future correspondence relating to this file is sent to the office of Stephen Little & Associates.

Extracts from the Valuation Records – 1967

Note: The property described as a store (highlighted text).

Confirmation from Valuation Office of Current Rateable Valuation

Valuation Report – Property No : 811809

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	STORE	137.97	55.00	7,588.35

Additional Items (€)	None
----------------------	------

	Total (€):	7,588.35
	Rateable Valuation (€):	7,580.00

NAV = Net Annual Value (Section 48 of the Valuation Act 2001)

Date Published : 31/12/2013

Valuation Date : 07/04/2011

Rating Authority DUBLIN CITY COUNCIL

Property No 811809

Local No/Map Ref Rear 58A

Valuation(€) 7580

Category INDUSTRIAL USES

Uses STORE,-

Agent Property Advertisements

UNIT 3A CHURCH LANE, RATHMINES, DUBLIN 6

LOCATION

The property is located on Church Lane, Rathmines, Dublin 6. Church Lane runs parallel to Rathmines Road Upper and is accessed via Church Avenue close to its junction with the aforementioned Rathmines Road Upper. The property is situated to the rear of John Hayes Cars and Sunnott Solicitors.

It is strategically situated approx. 2.0 kms from the city centre and is immediately accessible to the south city suburbs of Rathmines, Ranelagh and Rathgar. The immediate area is residential in character whilst Rathmines village is situated approx 1.0 km from the property.

ACCOMMODATION

DESCRIPTION	SIZE (SQ. M.)	SIZE (SQ. FT.)
Ground Floor	84.63	911
First Floor	34.11	367
Total	118.74	1278

N.B. Please note that we have measured the subject property on a Gross External Area Basis (GEA) in accordance with the Measuring Practice Guidance Notes prepared by the RICS/SCSI.

DESCRIPTION

- The property comprises a lock up/ storage unit extending to approx. 119 sq. m (1278 sq. ft.)
- The building is of traditional masonry block wall construction with concrete block infill walls and finished externally with a rendered block façade.
- The entire is covered with a metal deck roof incorporating perspex roof panels.
- Clear internal eaves height of approx. 2.9 metres.

RENT

On application

LEASE

Flexible terms available.

LOADING

- Loading access is via a standard grade access door to the front elevation.
- Artificial lighting via roof hung fluorescent lighting.

DISCLAIMER

Thomas King and Evan Loneragan are acting as agents for the property described above. The information contained in this document is for general information only and does not constitute an offer of any financial product. The information is provided for your information only and should not be relied upon for any financial decision. The information is provided for your information only and should not be relied upon for any financial decision. The information is provided for your information only and should not be relied upon for any financial decision.



+353 01 634 2466

20-21 Upper Pembroke Street,
Dublin 2

CONTACT:

Thomas King
Thomas.King@ie.knightfrank.com

Evan Loneragan
Evan.Loneragan@ie.knightfrank.com



Note: The property described as a lock-up / storage unit (highlighted text).

Stephen Little & Associates are committed
to progressing and achieving sustainable
development goals.

**Chartered Town
Planners and
Development
Consultants**

Address:
29/27
Upper Pembroke Street
Dublin 2, D02 X301

Contact:
T: 01 224 1076 ext 6507
info@slr.pdc.com
slr.pdc.com



Planning
Report

Section 5
Declaration

At 3A Church Lane,
Rathmines, Dublin 6

For Mr. Marcus Hayes

AUGUST 2023

Document Control: -

Author	Checked by	Purpose	Date
JW	MO'S	Draft	01.06.2023
-	MO'S	Final Draft	14.06.2023
EMP	Michael Sulli	Final	23.08.2023

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1 INTRODUCTION

We, Stephen Little & Associates Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, are instructed by our Client, Marcus Hayes, Kingsdeen Limited t/a John Hayes Cars, Hayes Cars, Nos. 6 – 8 Church Avenue, Rathmines, Dublin 6 to apply to Dublin City Council (DCC) for a Section 5 Declaration under the provisions of the Planning & Development Act 2000, as amended.

Our Client is seeking a declaration that existing use of and works carried out to the façade (including signage) of No. 3A Church Lane, Rathmines, Dublin 6 are not exempted development and requires the benefit planning permission as a result.

Our Client contends the property is operating without the benefit of planning permission for the current use (Photography Business). Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. Our Client is of the view that the on-going use of the property has a number of undesired impacts including on-the-fly car parking and waste collections which is incongruent with the residential street which the property is located on.

Our Client has expressed his astonishment at the outcome of enforcement proceedings (DCC Ref. E0632/18) in December 2022. DCC Enforcement Section determined that no unauthorised works had taken place and no material change of use had occurred regardless of the weight of evidence provided by our Client to demonstrate that unauthorised works had in fact taken place.

Furthermore, our Client is firmly of the view that the current use of the property is in flagrant disregard of all relevant fire and safety regulations.

We set out below our opinion as to why the current use and works to the façade of the property are not exempted development and requires the benefit planning permission as a result.

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The property address is 3A Church Lane, Rathmines, Dublin 6 ("the property"). The property is c. 118 sq. m in area. Church Lane is a cul-de-sac which serves a number of residential properties. We refer the Planning Authority to the Site Location Map with the property outlined in red (Property referred to as No. 2 on the Site Location Map).

The building is part 1 storey onto Church Lane and part 2 storey adjacent the existing car sales business (to the west) operated by our Client, Mr. Marcus Hayes.

Access to the property is via a doorway onto Church Lane. There are 4no. windows on the southern elevation.

The car parking at the end of Church Lane is associated with the residential properties adjacent the property. There is a limited amount of on-street paid parking opposite the property.

The adjoining property to the north is a solicitors office (part 1 / 2 storeys) and the adjoining properties to the south are 3 storey residential with car ports onto Church Lane.

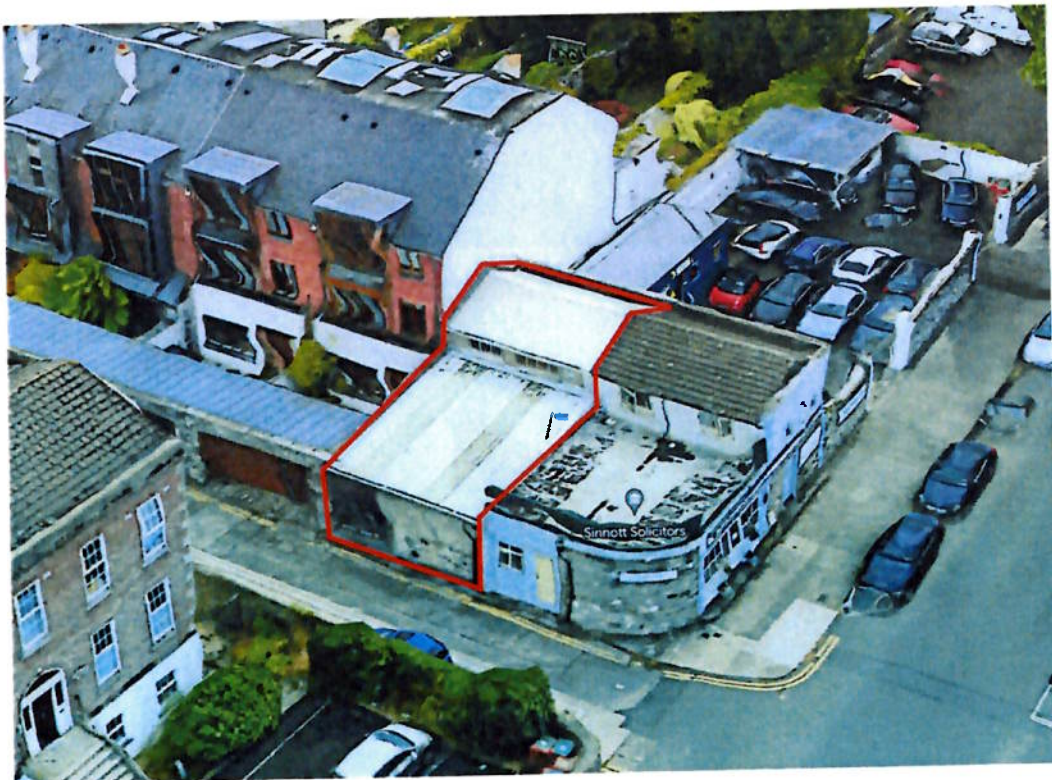


Figure 1: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).

The property is currently being used as a photography business (Thyme Studios). Internally, the property comprises of two rooms at ground floor level serving as photography studios and a storage room at first floor level. Externally, the property has a modern glazed double door entrance with glazed side panels.

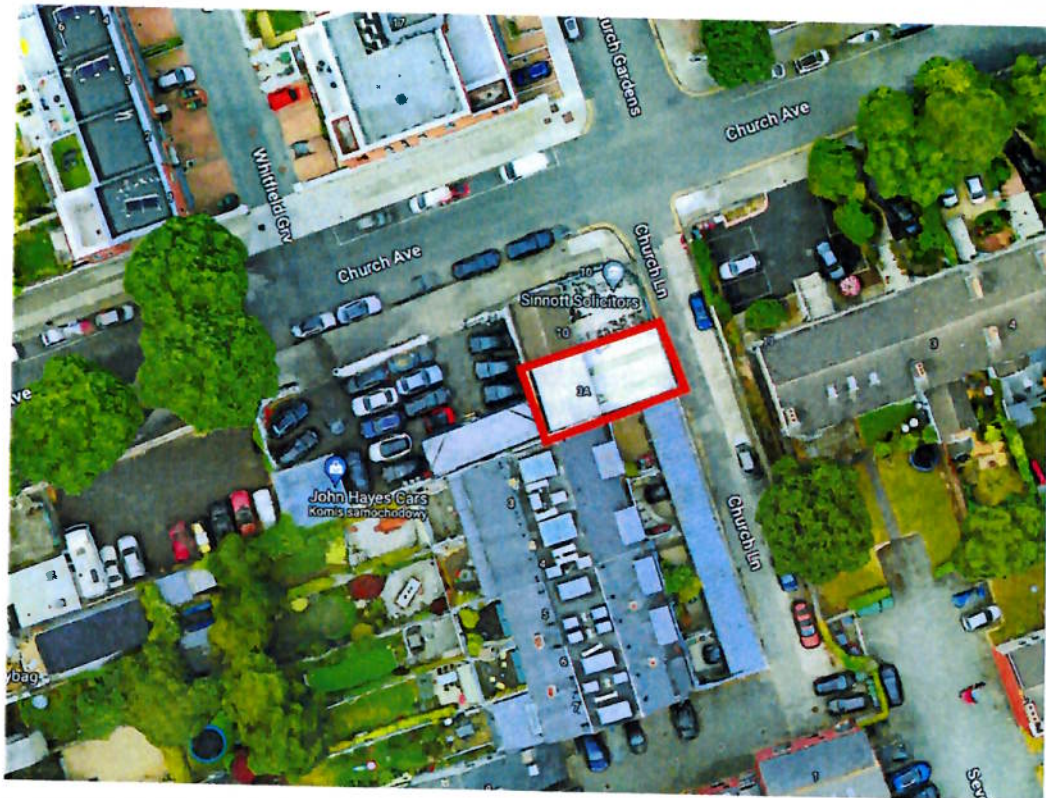


Figure 2: Extract from Google Earth with the subject building outlined indicatively in red (Overlay by SLA).



Figure 3: View south on Church Lane with the property highlighted in red (Overlay by SLA).



Figure 4: View east on Church Avenue to the rear of the property highlighted in red (Overlay by SLA). The property abuts our Client car sales business.



Figure 5: View south from Church Avenue with the property highlighted in red. Undesignated refuse bins used by the operators of the property circled in red (Overlay by SLA).

4 RELEVANT PLANNING HISTORY

4.1 Subject Site

There is no planning history associated with the property on the DCC on-line planning portal.

This office has liaised with the DCC Planning Department regarding older planning files (pre-2003) and it can be confirmed that there is no older planning history associated with the property either.

4.2 Adjoining Site

4.2.1 DCC Reg. Ref. 3602/09

Planning permission was sought by Cathal O'Neill on 31 July 2009 for development comprising a 1st & 2nd floor extension (72 sq. m) and alteration of the existing ground and part 1st floor office premises (99sq.m). This extension comprised of a 3 bed duplex apartment (1st floor & part 2nd floor with roof garden) over ground floor office.

DCC granted planning permission on 22 September 2009 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 22 April 2010.

In this planning application, the property was described as an "existing workshop" in the DCC Planners Report, dated 23 September 2009: -

"Site Description: The site is situated along Church Avenue, a corner site on the junction with Church Lane along the southern side of the Avenue. The site is bounded to the west by an open yard occupied by John Hayes Cars and to the south by an existing workshop and 3 storey dwellings to the rear."

Our Client is of the firm opinion that the property is in use since the 1960's a storage / lock-up (refer to Section 7.1 for further discussion).

4.2.2 DCC Reg. Ref. 2527/21

Planning permission was sought by James Meagher on 20 Sep 2021 for development comprising the construction of 3no. residential dwellings (c. 447.3 sqm), consisting of 3no. 3 bed townhouses (two storey plus attic / three storey), all with associated private garden and screened terrace at first floor level to the rear, off-street car parking with access from Church Avenue, landscaping works, site services and associated site development works.

DCC granted planning permission on 11 October 2021 which was the subject to a Third Party Appeal. An Bord Pleanála subsequently granted permission on 2 August 2022.

It should be noted that access to the rear of the property has been maintained by way of a proposed lane.

4.3 Planning Enforcement

Following engagement with DCC Enforcement, there is one recorder enforcement case associated with the property.

E0632/18 – 3A Church Lane, Rathmines, Dublin 6

A compliant was made that a change of use of lock up to retail had occurred with resultant issues regarding car parking.

Case Opened: 19 July 2018

Case Closed: 13 September 2022

DCC Enforcement considered that no unauthorised works had taken place and no material change of use had occurred.

5 PLANNING CONTEXT

5.1 Dublin City Council Development Plan 2022 – 2028

The Dublin City Development Plan 2022 – 2028 (“the Development Plan”) came into effect on 14 December 2022 and is the statutory land-use plan governing the subject site at this time.

5.1.1 Land Use Zoning

The subject site is Zoned ‘Sustainable Residential Neighbourhoods – Zone Z1’, the objective of which is: -

“To protect, provide and improve residential amenities.”

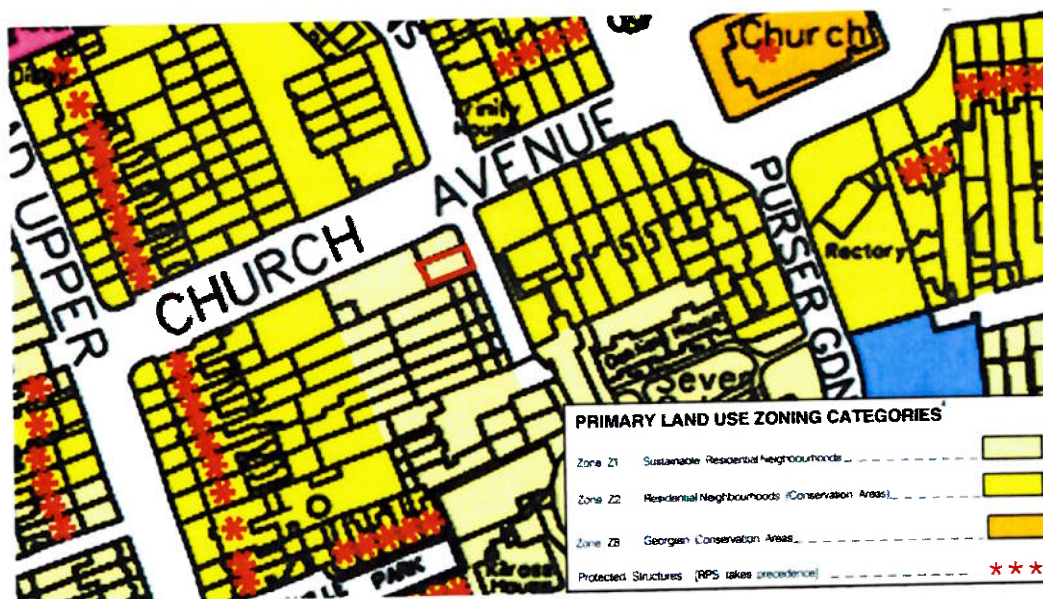


Figure 3: Extract from Map H of the Dublin City Council Development Plan 2022 – 2028, approximate development site boundary shown in red (Overlay by SLA).

The following table sets out the ‘Permissible Uses’ and uses ‘Open for Consideration’ under ‘Zone Z1’.

Permissible Uses
Assisted Living / Retirement Home, Buildings for The Health, Safety and Welfare of the Public, Childcare Facility, Community Facility, Cultural / Recreational Building and Uses, Delicatessen, Education, Embassy Residential, Enterprise Centre, Halting Site, Home-Based Economic Activity, Medical and Related Consultants, Open Space, Place of Public Worship, Public Service Installation, Residential, Shop (Local), Sports Facility and Recreational Uses, Training Centre.
Open For Consideration
Allotments, Beauty / Grooming Services, Bed and Breakfast, Betting Office, Build to Rent Residential, Café / Tearoom, Car Park, Civic And Amenity / Recycling Centre, Garden Centre / Plant Nursery, Guesthouse, Hostel (Tourist), Hotel, Industry (Light) , Laundromat, Live / Work Units, Media-Associated Uses , Mobility Hub, Off-Licence, Off-Licence (Part), Office, Park And Ride Facility, Petrol Station, Pigeon Loft, Postal Hotel / Motel, Primary Health Care Centre, Public House, Residential Institution, Restaurant, Student Accommodation, Veterinary Surgery

[SLA Emphasis in bold]

The property is currently used as a photography business. 'Media Associated Uses' are Open for Consideration on lands zoned 'Zone Z1'.

The Development Plan defines 'Media Associated Uses' as: -

*"Uses include: **photography** / audio visual / cinema / digital art / music production / recording studios / broadcasting studios / publishing that involves the production or creation of digital / audio or visual forms of mass communication."*

[SLA Emphasis in bold]

With regard uses which are 'Open for Consideration' the Development Plan states that: -

*"An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

With regard uses which are considered 'Non-conforming' the Development Plan states that: -

*"Throughout the Dublin City Council area there are uses that do not conform to the zoning objective for their area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Planning and Development Act 2000 (as amended) in respect of the continuing use. When extensions to, or improvements of, premises accommodating such uses are proposed, each shall be considered on their merits, **and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.**"*

[SLA Emphasis in bold]

5.1.2 Protected Structures

The building is not subject of any protected structure designation under the Development Plan Record of Protected Structures.

No 56 Rathmines Road Upper (RPS No. 7267) is described as a "house, including cast-iron balconies and railings" on the Record of Protected Structures. It would appear that the original property had rear access onto Church Lane but this has become severed.

5.1.3 City Economy and Enterprise

Policy CEE4 of the Development Plan states that it is an objective to: -

*"To support the creation of an ecosystem of innovative start-ups, social enterprise, **micro-business** and small business and, where possible, to promote the development of skills and entrepreneurship, sites for high tech and potential start-ups, smart city programmes and collaboration between public bodies, industries and research."*

[SLA Emphasis in bold]

6 RELEVANT PLANNING LEGISLATION

6.1 Planning & Development Act 2000, as Amended

Section 2(1) of the Planning & Development Act 2000, as Amended ("the Act") 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.**"*

'Alteration' "... includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;"

'Use', "in relation to land, does not include the use of the land by the carrying out of any works thereon;"

[SLA Emphasis in bold]

Section 3(1) of the Planning Act defines 'development' as: -

"(a) 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, or

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or (b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed."

[SLA Emphasis in bold]

Section 4(1) of the Planning Act states: -

The following shall be exempted developments for the purposes of this Act—

...

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

[SLA Emphasis in bold]

Section 5(1) of the Planning Act states: -

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

6.2 Planning & Development Regulations 2001, as Amended

Article 5(1) of the Planning & Development Regulations 2001, as amended (“the Regulations”) provides that, subject to Article 9: -

A ‘Light Industrial Building’ “... means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area **without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;**”

A Repository “... means a structure (excluding any land occupied therewith) where **storage is the principal use and where no business is transacted** other than business incidental to such storage;”

[SLA Emphasis in bold]

Article 6(1) provides that, subject to Article 9: -

“... development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose 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.**”

[SLA Emphasis in bold]

Article 9(1) provides, inter alia, that: -

“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—

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

...

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

[SLA Emphasis in bold]

Article 10 provides that: -

“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

(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.”

[SLA Emphasis in bold]

Part 4 of Schedule 2, subject to **Article 10**, lists the following exempted development classes of use: -

CLASS 1

“Use as a shop.”

CLASS 2

“Use for the provision of —

(a) financial services,

(b) professional services (other than health or medical services),

(c) ...

where the services are provided principally to visiting members of the public."

CLASS 4

"Use as a light industrial building."

CLASS 5

"Use as a wholesale warehouse or as a repository."

[SLA Emphasis in bold]

Part 1 of Schedule 2, subject to Article 6, considers the following as exempted development: -

CLASS 22

"Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."

Conditions & Limitations

"The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building."

[SLA Emphasis in bold]

Part 2 of Schedule 2, subject to Article 6, considers the following in relation to advertisement as exempted development: -

CLASS 5

"Advertisements, exhibited at the entrance to any premises, relating to any person, partnership or company carrying on a public service or a profession, business or trade at the premises."

Conditions & Limitations

"1. No such advertisement shall exceed 0.3 square metres in area."

"2. Not more than one such advertisement, or, in the case of premises with entrances on different road frontages, one such advertisement for each such frontage, shall be exhibited in respect of each such person, partnership or company on the premises."

[SLA Emphasis in bold]

7 PLANNING OPINION

Our Client contends the property is operating without the benefit of planning permission for the current use. Furthermore, our Client takes exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use. It is considered that: -

- The change of use of the property from a store / lock-up to a Photography Business is development which is not exempted development.
- Works to the façade of the property is development which is not exempted development.
- Signage erected on the property is development which is not exempted development.

The proceeding sections of this Report elaborate further on the items outlined above.

7.1 Existing Use

Our Client is of the firm opinion that the current and established use of 3A Church Lane is a store / lock-up. We refer the Planning Authority to Appendix A which includes: -

- Extracts from the Valuation Records.
- Confirmation from Valuation Office of current rateable valuation.
- Agent Property Advertisements.

These documents clearly show the property in continuous use as a store / lock-up since 1967 and would in all likelihood have been in use as store / lock-up prior to 1967 also. It is acknowledged that there is no planning history pertaining to the property.

Under Article 5(1) of the Regulations a repository is described as a structure “*where storage is the principal use and where no business is transacted other than business incidental to such storage*”.

Under Planning Enforcement Ref. E0632/18 the DCC Enforcement Officer came to the conclusion that the property was considered a ‘light industrial use’. This is firmly refuted, and our Client is clear that the established use is a store / lock-up (evidence enclosed to confirm same).

The property is currently in use as a Photography Business (Thyme Studios) which would fall under the definition of a ‘professional service’ (i.e. a service provided principally to visiting members of the public and is not a health or medical service) under Class 2, Part 4 of Schedule 2 of the Regulations.

Under Article 10 of the Regulations 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.

It is our professional planning opinion that a change of use from a repository (Class 5) to use for the provision of professional services (Class 2(b)) cannot be considered exempted development. A change of use **between** classes of use specified in Part 4 of Schedule 2 of the Regulations is not exempted development and a material change of use has therefore occurred.

Furthermore, the current use gives rise to a number of issues which have a material impact on the surrounding area which are set out below.

Photography Business

The photography use falls under the category of ‘Media Associated Uses’ as set out in the Development Plan. This is a use which is ‘Open for Consideration’ on ‘Zone Z1’ lands. With regard uses which are ‘Open for Consideration’ the Development Plan states that: -

*“An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development **would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.**”*

[SLA Emphasis in bold]

It is considered that there are a number of undesired effects arising from the use of the property as a Photography Business that would likely be unacceptable where planning permission is sought: -

- A number of employees now use the property on a daily basis which gives to additional car and bicycle parking requirements as well as the generation of domestic waste.
- Access for deliveries and collections arising from the use of the property as a photography studio give rise to additional traffic which cannot be accommodated on the existing laneway.
- Parking issues arise from member of the public visiting the property (the business website refers to making appointments). The existing car parking on Church Lane is designated to the existing residents. Members of the public visiting the Photography Business use the laneway to park which gives rise to further traffic use given the frequency.
- It is not clear how waste from the property is managed in terms of safe storage or collection for suitable disposal.



Figure 6: Image from July 2023 showing note on the refuse bins to be collected – clearly no bin company is collecting waste from the property.

7.2 External Facade

The façade of the property onto Church Lane has been altered. A modern glazed double door entrance with glazed side panel has been installed in front of the original wooden door to the storage / lock-up.

The external doors were installed in c. 2018. Extracts from Google Street View show the original door in place prior to this.



Figure 7: Extract from Google Street View showing original door (green outline) c. June 2009.



Figure 8: Extract from Google Street View showing original door (green outline) c. August 2014.



Figure 9: Extract from Google Street View showing new door (green outline) c. August 2018.



Figure 10: Image from July 2023 showing a modern glazed double door entrance with glazed side panels.

In our professional planning opinion, the change to the external appearance of the building does not fall under Section 4(1) of the Act as the current appearance is clearly inconsistent with the remainder of the laneway. The laneway has a number of carport doors for access to the existing residential properties and existing door is not considered in keeping with the majority of the streetscape. As such, we considered that the works are an 'alteration' as defined in the Act which do not fall under exempted development and as such require the benefit of planning permission.

7.3 Signage

There is signage on the façade of the property associated with the Photography Business use.



Figure 11: Image from July 2023 showing signage associated with the business on the façade of the property.

Class 5 of Part 4 of Schedule 2 of the Regulations sets out that advertisement at the entrance of a premises related to that building is exempted subject to certain limitations.

Our Client contends that the signage does not fall within the exemptions (i.e. the sign area is larger than 0.3 sq. m) set out in Class 5 of Part 4 of Schedule 2 of the Regulations.

8 CONCLUSION

For all the reasons and considerations set out in this Report, we invite the Planning Authority to concur with our opinion that the use of the No. 3A Church Lane as a Photography Business is development which is not exempted development and the changes to the façade and signage erected is development which is not exempted development.

We refer the Planning Authority to the following plans and particulars that accompany this Section 5 application: -

- Statutory Fee €80.00.
- Completed Section 5 Application Form.
- 2no. copies the Section 5 Application Report prepared by Stephen Little & Associates Chartered Town Planners & Development Consultants.
- 2no. copies of a Site Location Map.

We would be grateful of acknowledgement of this application and that all future correspondence relating to this file is sent to the office of Stephen Little & Associates.

Extracts from the Valuation Records – 1967

Note: The property described as a store (highlighted text).

Confirmation from Valuation Office of Current Rateable Valuation

Valuation Report – Property No : 811809

Level	Use	Area (m ²)	NAV (€ per m ²)	NAV (€)
0	STORE	137.97	55.00	7,588.35

Additional Items (€)

None

	Total (€):	7,588.35
	Rateable Valuation (€):	7,580.00

NAV = Net Annual Value (Section 48 of the Valuation Act 2001)

Date Published : 31/12/2013

Valuation Date : 07/04/2011

Rating Authority DUBLIN CITY COUNCIL

Property No 811809

Local No/Map Ref Rear 58A

Valuation(€) 7580

Category INDUSTRIAL USES

Uses STORE,-

Agent Property Advertisements

Knight Frank

RATHMINES, DUBLIN 6

UNIT 3A CHURCH LANE, RATHMINES, DUBLIN 6

LOCATION

The property is located on Church Lane, Rathmines, Dublin 6. Church Lane runs parallel to Rathmines Road Upper and is accessed via Church Avenue close to its junction with the aforementioned Rathmines Road Upper. The property is situated to the rear of John Hayes Cars and Smittit Solicitors.

DESCRIPTION

- The property comprises a lock up storage unit extending to approx. 10 sq m (127.6 sq ft).
- The building is of traditional masonry brick wall construction with concrete block infill walls and finished externally with a rendered black façade.
- The entire is covered with a metal deck roof incorporating perspex roof panels.
- Clear internal eaves height of approx. 2.9 metres.

RENT

No application.

LEASE

Flexible terms available.

ACCOMMODATION

DESCRIPTION	SIZE (SQ. M.)	SIZE (SQ. FT.)
Ground Floor	84.63	911
First Floor	34.11	367
Total	118.74	1278

N.B. Please note that we have measured the subject property on a Gross External Area Basis (GEAB) in accordance with the Measuring Practice Guidance Notes prepared by theRICS/RICS.

CONTACT:

Thomas King
 Thomas.King@knightfrank.com
 Evan Lonergan
 Evan.Lonergan@knightfrank.com

**0-21 Upper Pembroke Street,
 #353 01 634 2466**

Note: The property described as a lock-up / storage unit (highlighted text).

Stephen Little & Associates are committed
to progressing and achieving sustainable
development goals.

**Chartered Town
Planners and
Development
Consultants**

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