

DAVID HIGGINS DIP ARCH TECH  
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The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

Date: 4<sup>th</sup> November 2023

**Ref: ED/1073** GALA, AGHARDS HOUSE, THORNHILL GARDENS, CELBRIDGE, CO. KILDARE W23D6Y1, Application for confirmation that the use of an area amounting to 12.5 sqm of the existing 164 sqm retail shop unit for the sale of hot food for consumption off the premises is exempt under Section 2 (shop (d)) of the planning and development regulations.

Dear Sir/Madam,

I have been instructed by my client Mohammad Rahman who operates the GALA shop at Aghards House, Thornhill, Celbridge, Co. Kildare, through his company Mr. Cuisine Ltd, to appeal Kildare County Councils decision / notification that the use of an area of the existing shop unit for the sale of hot food is not exempt from planning (see copy attached). As enclosed is a fee of €220.00 as required under the legislation.

The are of the shop which has been development for the sale of hot food has a total floor area of 12.5sqm which represents 7.6% of the total floor area of the shop (see floor plan attached) and therefore can only be considered as an ancillary use to the main shop / retail business. Furthermore the sale of hot food is only available while the shop is open and cannot operate independently of the shop unit, which further confirms it's ancillary to the use of the shop unit.

Under Section 2 of the planning and development regulations the definition of a SHOP in section d states **"for the sale of sandwiches or other food for consumption of the premises, where the sale of such food is subsidiary to the main retail use"**

Given the stated definition in the planning legislation, I would respectfully contend that the use of this small are of the existing shop premises should be considered exempt under the relevant sections. This practice is in place in a multitude of shop units throughout the county, as deli counters etc and no Action is taken by the county councils, so why is this operator being pursued?

I would also like to have it noted that Kildare county Councils issue with the use of the small area for the sale of hot food, is I believe, directly as a result of complaints being made by a neighbouring resident, who has continuously complained to the council about the various businesses in this neighbourhood centre. They have complained about the noise from the creche located in the building on

**AN BORD PLEANÁLA**  
LDG- 068413-23  
ABP- \_\_\_\_\_  
05 DEC 2023  
Fee: € 220 Type: cheque  
Time: \_\_\_\_\_ By: Ry B/L

numerous occasions, also about the air conditioning units servicing the hairdressers, which have been decommissioned and also about ventilation fans located to the rear of the shop unit, which have been moved to the gable end of the building.

Over the last number of years every effort has been made on each occasion by the owners and operators of the different units to placate the resident, but unfortunately none seem to make any difference. The building and its commercial uses, were granted by Kildare County Council as part of proper planning, to function as a neighbourhood centre, to enable the residence of the ever-expanding town of Celbridge have access to some services within their community, without the need to always travel into the centre of town, and thereby cause congestion and pollution in doing so.

It is normal and natural that this neighbourhood centre in providing these service to the general public, will generate some degree on noise and traffic from the customers using the services, but given the location this must surely be considered part of urban living within a collection of housing developments and schools etc.

I understand that the resident who has made these various complaints holds a political position within the council, and it would be most regrettable if that position within Kildare County Council was seen to influence any decisions made by Kildare County Council with regard to this matter or any other matter when there is a personal interest.

Also I have request that Kildare County Council refrain from any further action with regard to the enforcement notice issued in relation to this matter until this application has been fully processed by to An Bord Pleanala.

Documents enclosed with this appeal

- Application covering letter.
- Drg's No MTC-23-RP-01, Site location map.
- Drg's No MTC-23-RP-02, Site layout plan,
- Drg's No MTC-23-RP-03, Ground Floor Plan,
- KCC decision letter

Please do not hesitate in contacting me if you require any further information with regard to this Section 5 application.

Yours Sincerely,



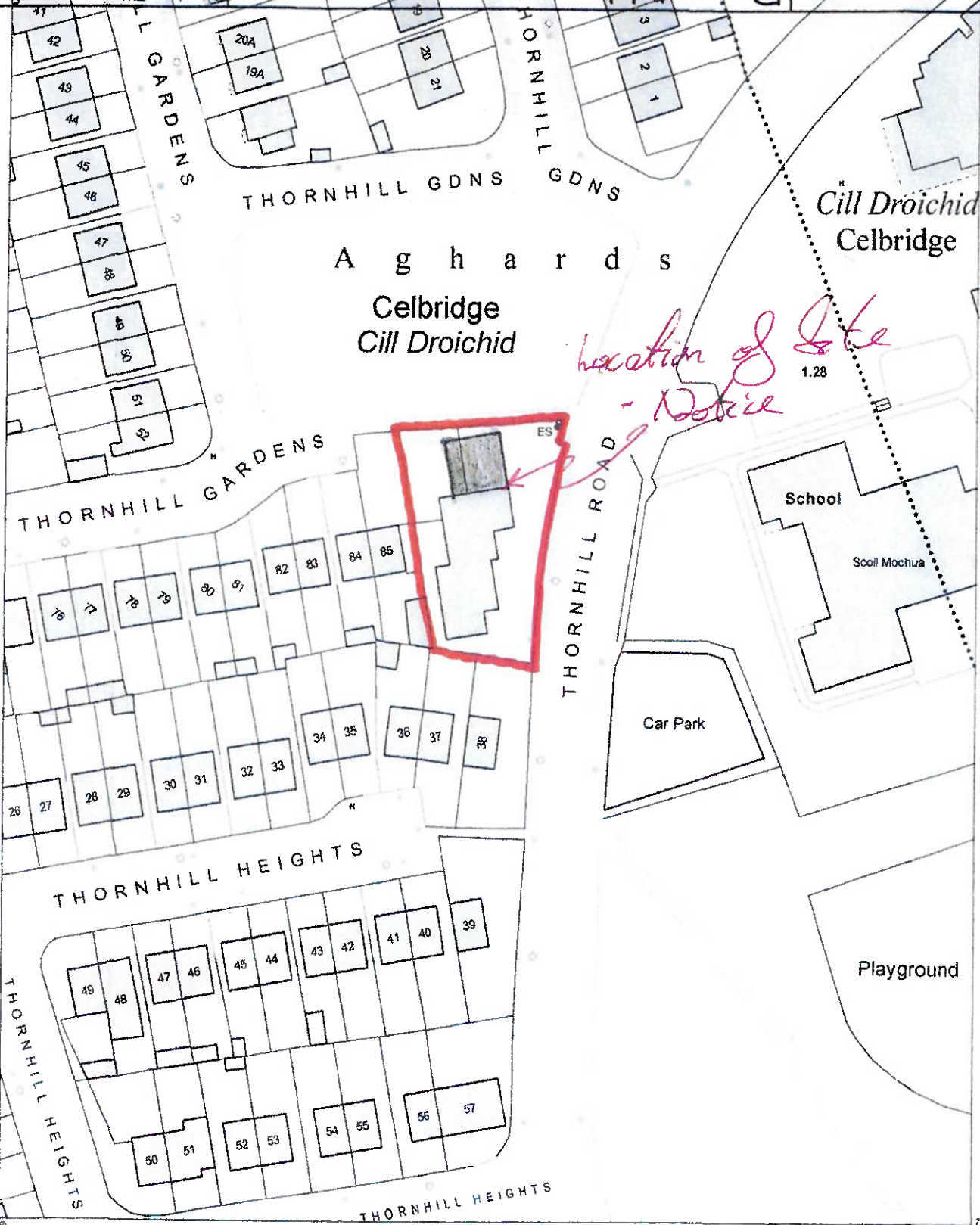
David Higgins Dip Arch Tech

Incl:

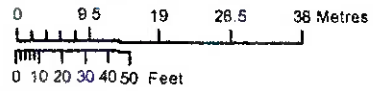
# Planning Pack Map

Ph: 045-434763 www.dharchitectural.ie

Project: Application for retention of Dell / Takeaway at Aghards, Thornhill, Celbridge, Co. Kildare.  
 Drawings: David Higgins  
 Architectural: DH Architectural  
 Engineering: Newbridge, Co. Kildare.  
 Date: 09/08/2023  
 Scale: 1:1,000  
 MCT/23-RP-01



*Location of Site - Notice*



OUTPUT SCALE: 1:1,000



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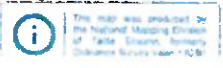
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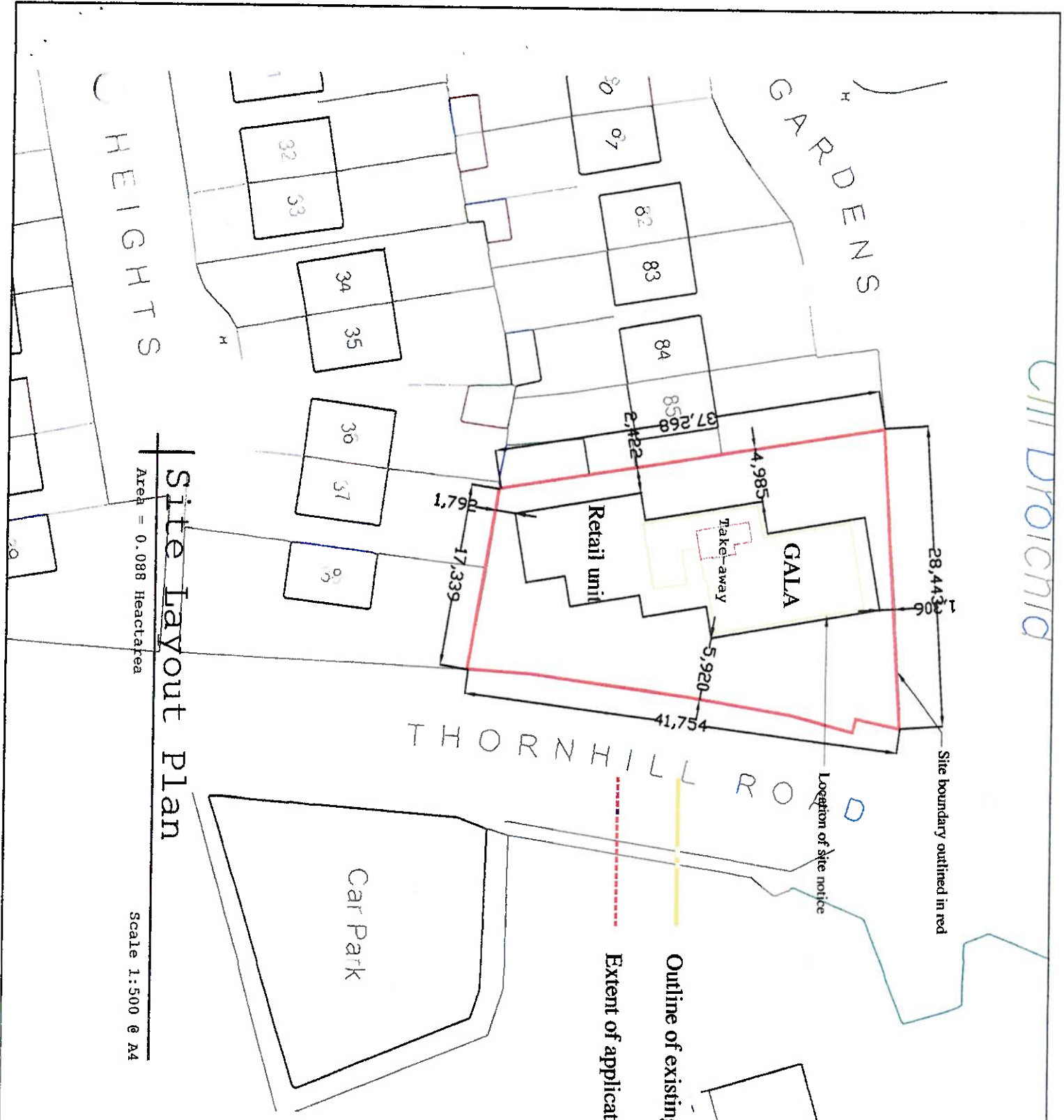
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**Site Layout Plan**

Area = 0.088 Hectare

Scale 1:500 @ A4

- Notes:**
- 1) This drawing has been prepared for the sole purpose of obtaining planning permission and should not be used as a working drawing.
  - 2) Figure dimensions only to be taken from this drawing.
  - 3) All dimensions to be checked on site.
  - 4) Architects to be informed immediately of any discrepancies before work proceeds.



Extent of application for exemption of Deli / Takeaway  
 Outline of existing retail unit (GALA)

Ref	Description	Date

**Planning Drawing**

**David Higgins**  
 Dip Arch Tech  
**Architectural Services**  
 Clonrings, Newbridge,  
 Co. Kildare.  
 Mob: 087-6740531 Web: www.dharchitectural.ie

**dh** Architectural

**Project:** Proposed alterations to existing house at No 189 Celbridge Abbey, Celbridge, Co. Kildare.

**Drawing No:** Site Layout Plan

**Proj. No:** CC-21-P-02

**Scale:** 1:500 @ A4

**Date:** Nov-2021

Comhairle Contae Chill Dara  
Kildare County Council



Date: 9<sup>th</sup> November 2023.  
Our Ref: ED/1073.

**REGISTERED POST**

Mohammed Rahman,  
c/o David Higgins,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at GALA, Aghards House, Thornhill Meadows, Celbridge, Co. Kildare.**

Dear Sir/Madam,

I refer to your correspondence received on 18<sup>th</sup> October 2023 in connection with the above.

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

Yours sincerely,

**Senior Executive Officer,  
Planning Department.**



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

**ED/001073.**

**WHEREAS** a question has arisen as to whether the use of part of the existing premises for takeaway food, ancillary to the main shop use at GALA, Aghards House, Thornhill Meadows, Celbridge, Co. Kildare is exempted development,

**AS INDICATED** on the plans and particulars received by the Planning Authority on 18<sup>th</sup> October 2023

**AND WHEREAS** Mohammed Rahman requested a declaration on the said question from Kildare County Council

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

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

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


- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6, 9 and 10(1) of the Planning and Development Regulations 2001 (as amended);
- (c) The nature, extent and purpose of the works.

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the use of part of the existing premises for takeaway food, ancillary to the main shop use at GALA, Aghards House, Thornhill Meadows, Celbridge, Co. Kildare

***IS development and IS NOT EXEMPTED development pursuant to Section 2 and 3 of the Planning and Development Act 2000 (as amended) and Article 6, Article 9 and Article 10(1) of the Planning and Development Regulations 2001 (as amended).***

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

9<sup>th</sup> November 2023.

  
Senior Executive Officer,  
Planning Department.

# DAVID HIGGINS DIP ARCH TECH

DHArchitectural

Clonsilla, Newbridge, Co. Kildare

01890 200000

01890 200001

01890 200002

The Planning Department,  
Aras Chill Dara,  
Devoy Park,  
Naas,  
Co. Kildare.

Date: 17<sup>th</sup> October 2023

**Ref: GALA, AGHARDS HOUSE, THORNHILL GARDENS, CELBRIDGE, CO. KILDARE W23D6Y1, Application for confirmation that the use of an area amounting to 12.5 sqm of the existing 164 sqm retail shop unit for the sale of hot food for consumption off the premises is exempt under Section 2 (shop (d)) of the planning and development regulations.**

Dear Sir/Madam,

Enclosed please find all copies of documentation relating to the above Section 5 application. The application relates to the use of a small area of the existing shop for the sale of hot food to the public.

Under Section 2 of the planning and development regulations the definition of a SHOP in section d states **"for the sale of sandwiches or other food for consumption of the premises, where the sale of such food is subsidiary to the main retail use"**

As the area dedicated to the sale of hot food is only 12.5 sqm and the overall premises is 164sqm I would respectfully contend that the use is ancillary to the main retail use and therefore exempt under the regulations.

Also I would request that Kildare County Council refrain from any further action with regard to the enforcement notice issued in relation to this matter until this application has been fully processed by Kildare County Council and referred to An Bord Pleanala if required.

Documents enclosed with this application

- Application form,
- Planning application fee €80.00,
- Drg's No MTC-23-RP-01, Site location map,
- Drg's No MTC-23-RP-02, Site layout plan,
- Drg's No MTC-23-RP-03, Ground Floor Plan,
- Drg's No DGA-23-P-04, Elevations & Section, scale 1:100,

Please do not hesitate in contacting me if you require any further information with regard to this Section 5 application.

Yours Sincerely,



David Higgins Dip Arch Tech

Incl: