

## Mary Dolan

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**From:** Planning Department  
**Sent:** Wednesday 26 April 2023 18:19  
**To:** [REDACTED]  
**Cc:** 'john@mbeprojects.com'  
**Subject:** DED 550 Notification of Decision on Section 5 Declaration.  
**Attachments:** DED 550 Declaration on Development & Exempted Development Notification of Decision.pdf

A Chara,

Please find attached decision documentation in respect of RCC Planning Ref. No. DED 550 Section 5 Declaration.

Mise le meas,

**Mary Dolan, Administrative Officer, Planning,**  
Áras an Chontae, Roscommon, Co. Roscommon, F42 VR98.

☎ (090) 6637176 ✉ [marydolan@roscommoncoco.ie](mailto:marydolan@roscommoncoco.ie)

**Please address all e-mail correspondence to [planning@roscommoncoco.ie](mailto:planning@roscommoncoco.ie)**

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Ros Comáin  
Roscommon  
County Council



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**ROSCOMMON COUNTY COUNCIL**

**PLANNING AND DEVELOPMENT ACT, 2000 (as amended)**

**SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

**NOTIFICATION OF DECISION**

Rachel Fitzgerald,

Reference Number: DED 550

Application Received: 27<sup>th</sup> March, 2023.

Location: Roosky Townland, Co. Roscommon.

WHEREAS a question has arisen as to whether development consisting of a change of use to a shop (hairdresser) on the ground floor of an existing 2-storey building at Roosky Townland, Roosky, Co. Roscommon, is or is not development or is or is not exempted development.

AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:

- a) Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- b) Article 5 (1) of the Planning and Development Regulations 2001 (as amended)
- c) Article 9 of the Planning and Development Regulations 2001 (as amended)
- d) Article 10 (1) of the Planning and Development Regulations 2001 (as amended)
- e) Schedule 2, Part 4 of the Planning and Development Regulations 2001 (as amended)
- f) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Act 2000 (as amended);

AND WHEREAS Roscommon County Council has concluded that:

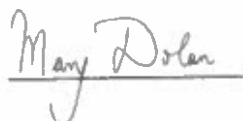
- a) The proposed development constitutes development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations.
- b) The proposed development is not exempted development as defined in the Planning & Development Act 2000 (as amended) and associated Regulations.

NOW THEREFORE:

By virtue of the powers vested in me by the Local Government Acts 1925 – 2019 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and, having considered the various submissions and reports in connection with the application described above, it is hereby declared that **development consisting of a change of use to a shop (hairdresser) on the ground floor of an existing 2-storey building at Roosky Townland, Roosky, Co. Roscommon, constitutes development that is not exempted development as defined within the Planning and Development Act 2000 (as amended) and associated Regulations.**

Any person issued with a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) may, on payment to An Bord Pleanála of the prescribed fee, refer a Declaration for review within 4 weeks of the date of the issuing of the Declaration.

**Signed on behalf of the said Council**

A handwritten signature in cursive script, reading "Mary Dolen", written over a horizontal line.

**Administrative Officer,  
Planning.**

**Date: 21<sup>st</sup> April, 2023**

**c.c. Murtagh Building & Engineering Ltd.,  
Corraun,  
Tarmonbarry,  
Co. Roscommon.**

**Planner's Report on application under  
Section 5 of the Planning and Development Act 2000 (as amended)**

<b>Reference Number:</b>	DED 550
<b>Re:</b>	Application for a Declaration under Section 5 of the Planning and Development Act 2000, regarding Exempted Development for a change of use to a shop (hairdresser) on ground floor of an existing two storey building.
<b>Name and Address of Applicant:</b>	Rachel Fitzgerald
<b>Location of Development:</b>	Roskey, Co Roscommon

WHEREAS a question has arisen as to whether the following works - for a change of use to a shop (hairdresser) on ground floor of an existing two storey building, is or is not development, and is or is not exempted development:

I have considered this question, and I have had regard particularly to –

- (a) Sections 2, 3, 4 and 5 of the Planning and Development Acts 2000 (as amended);
- (b) Article 5 (1) of the Planning and Development Regulations 2001 as amended
- (c) Article 9 of the Planning and Development Regulations 2001 as amended
- (d) Article 10 (1) of the Planning and Development Regulations 2001 as amended
- (e) Schedule 2, Part 4 of the Planning and Development Regulations 2001 as amended
- (f) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);

**Site Location & Development Description**

The proposed development is located in the centre of Roskey Village, off the R 371. The site consists of a two storey detached building which appears to have last been used as a dwelling.

**Planning History**

PD 05/1559: Planning permission granted for change of use from a dwelling to a restaurant, the demolition of an existing two storey extension and construction of a 78m<sup>2</sup> single storey extension to the rear of the existing building, the provision of car parking, shop front, landscaping, connection to the existing services and other ancillary works relating to the development.

PD 05/1521: Incomplete application.

Preplanning (September 2022): Ref. No. PP 4190: Change of use to a Hairdresser and Home Décor Store.

Conclusion of minutes: The applicant was advised that the proposed development was acceptable in principle but a planning application was required.

**Relevant statutory provisions**

**Planning and Development Acts 2000 (as amended)**

**Section 2.(1)**

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



### Section 3.(1)

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

## **Planning and Development Regulations 2001 (as amended)**

### **Article 5 (1)**

*'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –*

- (a) for the retail sale of goods,*
  - (b) as a post office,*
  - (c) for the sale of tickets or as a travel agency,*
  - (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*
  - (e) for hairdressing,*
  - (f) for the display of goods for sale,*
  - (g) for the hiring out of domestic or personal goods or articles,*
  - (h) as a launderette or dry cleaners,*
  - (i) for the reception of goods to be washed, cleaned or repaired,*
- but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for*  
*the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;*

### **Article 10 (1)**

*Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act.*

## **Part 4, Schedule 2 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) any other services (including use as a betting office),*
- where the services are provided principally to visiting members of the public.*

### CLASS 3

*Use as an office, other than a use to which class 2 of this Part of this Schedule applies.*

### CLASS 4

*Use as a light industrial building.*

### CLASS 5

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

CLASS 6

*Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).*

CLASS 7

*Use—*

- (a) for public worship or religious instruction,*
- (b) for the social or recreational activities of a religious body,*
- (c) as a monastery or convent.*

CLASS 8

*Use—*

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),*
- (b) as a crèche,*
- (c) as a day nursery,*
- (d) as a day centre.*

CLASS 9

*Use—*

- (a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),*
- (b) a museum,*
- (c) a public library or public reading room,*
- (d) a public hall,*
- (e) an exhibition hall,*
- (f) a social centre, community centre or non-residential club, but not as a dance hall or concert hall.*

CLASS 10

*Use as—*

- (a) an art gallery (but not for the sale or hire of works of art),*
- (b) a museum,*
- (c) a public library or public reading room,*
- (d) a public hall,*
- (e) an exhibition hall,*
- (f) a social centre, community centre or non-residential club, but not as a dance hall or concert hall.*

CLASS 11

*Use as—*

- (a) a theatre,*
- (b) a cinema,*
- (c) a concert hall,*
- (d) a bingo hall,*
- (e) a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms.*

## CLASS 12

*Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018*

### Assessment

The question to be determined in this Section 5 referral is whether *a change of use to a shop (hairdresser) on ground floor of an existing two storey building* is or is not development and is or is not exempted development. Having considered the definition of both “works” and “development” outlined above, I would deem that these proposed development constitutes works and is therefore development.

Having established that the ‘works’ undertaken amount to ‘development’, the issue to be considered is whether the development is exempted development or not. Of particular relevance to this Section 5 referral is Article 10 (1) of the Regulations 2001 as amended which provides that *‘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.*

In order to ascertain if the proposed development falls within Article 10 (1) the last legitimate use of the building must be established. RCC acknowledges that the application states that the existing use is a ‘shop-Haberdashery.’ No evidence exists to support this claim other than a sign on the door of the building. In the event that a shop once existed, this is irrelevant in the context of this Section 5 DED application, as this use did not have the benefit of planning permission and hence was not an authorised use and cannot be considered in the context of the exemptions.

With respect to establishing the use, the last relevant planning permission for this site was permission granted for a change of use **from a dwelling** to a restaurant under PD / 05/1559. However, it is evident from street view images over a number of years ranging from 2009 and 2021 (see below) and separate correspondence provided to the Planning Authority by the applicant as part of pre-planning documentation (which included photographic evidence of the interior of the structure) that this permission was never acted upon. Notwithstanding the fact that there is no evidence that the previously permitted use was implemented, having regard to the definition of shop in **Article 5 (1)** of the Regulations a ‘restaurant’ would not fall within Class 1 in **Part 4, Schedule 2 Exempted Development-Classes of use.**

So having regard to all of the information available to RCC and the planning history as per PD 05/1559 which established the existing use as residential at the time that application was made, RCC is satisfied that the last authorised use on site was residential.



Source: Google Streetview (Aug 2021) -

Having established that the last authorised use was residential and having regard to the definition of a 'shop' as set out in *Exempted Development Article 5 (1)* of the Regulations I am satisfied that the authorised use on site which is 'residential' does not fall within any of the classes in Part 4 Schedule 2 and therefore the proposed change of use cannot be considered to be exempted development under the provisions of the Planning & Development Act, 2000 as amended.

#### **Environmental Considerations :**

The development is not of a nature set out in Part 2 Schedule 5 of the Planning and Development Regulations 2001 (as amended).

The site is located c2.5 km away from Clooneen Bog SAC. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to and distance from any sensitive location, there is no real likelihood of significant effects on European sites arising from the proposed development

#### **Final Assessment**

WHEREAS a question has arisen as to whether *a change of use to a shop (hairdresser) on ground floor of an existing two storey building at Roosky Td., Co. Roscommon* is or is not development, and is or is not exempted development:

I have considered this question, and I have had regard particularly to –

- a) Sections 2, 3, 4 and 5 of the Planning and Development Acts 2000 (as amended);
- b) Article 5 (1) of the Planning and Development Regulations 2001 as amended
- c) Article 9 of the Planning and Development Regulations 2001 as amended
- d) Article 10 (1) of the Planning and Development Regulations 2001 as amended
- e) Schedule 2, Part 4 of the Planning and Development Regulations 2001 as amended
- f) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);

I have concluded that *a change of use to a shop (hairdresser) on ground floor of an existing two storey building* is development and is **not** exempted development and I recommend that a declaration to that effect should be issued to the applicant.

#### **Recommendation**

I have concluded that *a change of use to a shop (hairdresser) on ground floor of an existing two storey building at Roosky, Co Roscommon* is development and is **not** exempted development and I recommend that a declaration to that effect should be issued to the applicant.



Signed \_\_\_\_\_  
Roscommon South Planner

Date: 19/04/2023































































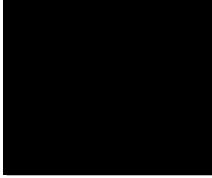








Rachel Fitzgerald,



**Date:** 28<sup>th</sup> March, 2023.

**Planning Reference:** DED 550

**Re:** Application for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development.

**Development:** A change of use to a shop (hairdresser) on ground floor of an existing 2-storey building at Roosky Td., Co. Roscommon.

\*\*\*\*\*

A Chara,

I wish to acknowledge receipt of your application received on the 20<sup>th</sup> March, 2023, for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development along with the appropriate fee in the sum of €80.00 Receipt No. L01/0/221929 dated 27<sup>th</sup> March, 2023 refers, receipt enclosed herewith for the attention of the agent.

**Note:** Please note your Planning Reference No. is **DED 550**.  
This should be quoted in all correspondence and telephone queries.

Mise le meas,

A handwritten signature in blue ink, appearing to read 'M. Doherty', written over a horizontal line.

**Administrative Officer,  
Planning.**



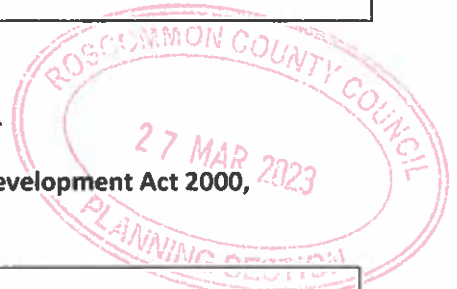



Comhairle Contae  
Ros Comáin  
Roscommon  
County Council

Áras an Chontae,  
Roscommon,  
Co. Roscommon  
Phone: (090) 66 37100  
Email: [planning@roscommoncoco.ie](mailto:planning@roscommoncoco.ie)

## **Roscommon County Council**

**Application for a Declaration under Section 5 of the Planning & Development Act 2000,  
regarding Exempted Development**



Name:	Rachel Fitzgerald
Address:	
Name & Address of Agent:	Murtagh Building & Engineering Ltd, Corraun, Tarmonbarry, Co. Roscommon, N39 DT62
Nature of Proposed Works	Proposed development consists of a Change of use to a shop (hairdresser) on ground floor of an existing 2-storey building
Location (Townland & O.S No.)	Townland : Roosky O.S Map Series: 2046-C, Centre X,Y= 605028.2101,786977.9515
Floor Area	86.7m. Not effected by proposed development
Height above ground level	Proposed Development is on the Ground Floor. Existing G.F.L. is approx 50mm above G.L. Not effected by proposed development
Total area of private open space remaining after completion of this development	1420m.sq. of private open space Not effected by proposed development
Roofing Material (Slates, Tiles, other) (Specify)	Existing roof finish is slate. Not effected by proposed development
Proposed external walling (plaster, stonework, brick or other finish, giving colour)	Existing external walling is plastered stone/block work. Painted cream colour. Not effected by proposed development
Is proposed works located at front/rear/side of existing house.	N/A (Proposal development is change of use only)

## Roscommon County Council

Application for a Declaration under Section 5 of the Planning & Development Act 2000,  
regarding Exempted Development

Has an application been made previously for this site	Yes
If yes give ref. number (include full details of existing extension, if any)	051559, 051521
Existing use of land or structure	Shop: Haberdashery
Proposed use of land or structure	Shop: Hairdresser
Distance of proposed building line from edge of roadway	Existing building line is 3m from the road edge
Does the proposed development involve the provision of a piped water supply	Existing mains water connection
Does the proposed development involve the provision of sanitary facilities	Existing sanitary facilities and connection to public sewer

Signature: John Murtagh On Behalf of Murtagh Building & Engineering Ltd

Date: 24/03/2023

**Note:** This application must be accompanied by:-

- (a) €80 fee ✓
- (b) Site Location map to a scale of 1:2500 clearly identifying the location ✓
- (c) Site Layout plan to the scale of 1:500 indicating exact location of proposed development ✓
- (d) Details specification of development proposed ✓



PROJECT:  
SECTION 5 APPLICATION AT:  
ROOSKY TOWNLAND, MAIN STREET  
ROOSKY, CO. ROSCOMMON

CLIENT:  
RACHEL FITZGERALD

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**LEGEND - KEY PLAN**

- Description
- Revision / Layer Editor
- Publisher / Source
- Ordnance Survey Ireland DTS
- Data Source / Reference

○ M4020  
Revision Date - 31-Dec-1914  
Survey Date - 31-Dec-1914  
Levelled Date - 31-Dec-1914

○ M4024  
Revision Date - 31-Dec-1912  
Survey Date - 31-Dec-1912  
Levelled Date - 31-Dec-1912

○ M4025  
Revision Date - 31-Dec-1912  
Survey Date - 31-Dec-1912  
Levelled Date - 31-Dec-1912

○ M4037  
Revision Date - 31-Dec-1912  
Survey Date - 31-Dec-1912  
Levelled Date - 31-Dec-1912

○ L2006  
Revision Date - 31-Dec-1913  
Survey Date - 31-Dec-1913  
Levelled Date - 31-Dec-1913

○ File Format  
Tagged Image File Format (TIFF)

○ File Name  
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○ Clip Extent / Area of Interest (AOI)  
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U.L.L.B.V. = 607469.2304,785180.9519  
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○ Projection / Spatial Reference  
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**Centre Point Coordinates:**

○ X,Y = 605028.2104,786977.9519

○ Data Extraction Date  
27-Dec-2023  
Product Version

○ 1.3  
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REV DATE DESCRIPTION BY

ISSUE REVISION

PRODUCED BY

**Murtagh**  
BUILDING A ENGINEERING LTD

STATUS

PLANNING SUBMISSION

SECTION 5 APPLICATION

SHEET TITLE

RURAL PLACE MAP

23.027 200



**RURAL PLACE MAP**  
SCALE: 1:10,560

Site Outlined in Red  
Land Ownership in Blue





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LEGEND - KEY PLAN

Description:  
Digital Cartographic Model (DCM)  
Publisher / Source:  
Ordnance Survey Ireland (OSI)  
Data Source - Reference:  
PRISM2  
File Format:  
Autodesk AutoCAD (DWG, RVT)  
File Name:  
v\_50278123\_1.dwg  
Clip Extent / Area of Interest (AOI):  
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LRX.LY= 605144.750178891 9515  
ULY.LY= 605111.7501787063 9515  
LRY.LY= 605144.7501787063 9515  
Projection / Spatial Reference:  
Projection= HEWY95, Irish Transverse Mercator  
Centre Point Coordinates:  
X,Y= 605028.2101786977 9515  
Reference Index:  
Map Series / Map Sheet:  
1:2,500 | 2046-C  
Data Extraction Date:  
Date: 27-Oct-2021  
Source Data Release:  
DCIMS Release V1.145.117  
Product Version:  
Version= 1.3  
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REV	DATE	DESCRIPTION	BY

PRODUCED BY:

Drawn	Chk	Revision
JM	JM	1
DATE	SCALE	
24/03/2023	1:1,000@A4	
PROJECT	DESCRIPTION	
23.027	201	



**SITE LOCATION MAP**  
SCALE: 1:1,000

— Site Outlined in Red  
— Land Ownership in Blue



MAIN STREET ROOSKY

SUBJECT  
BUILDING**PLANNING SYMBOLS LEGEND:**

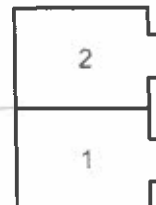
SUBJECT BUILDING



LANDOWNERSHIP INDICATED THUS



SITE BOUNDARY

**SITE LAYOUT PLAN**  
SCALE: 1:500Corraun  
Tarmenbarry  
Co. Roscommonjohn@mbeprojects.com  
www.mbeprojects.com  
+353 86 349 0965**PROJECT****SECTION 5 APPLICATION AT,  
ROOSKY TD, MAIN STREET,  
ROOSKY, CO. ROSCOMMON****CLIENT****RACHEL FITZGERALD****GENERAL NOTES:**

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**LEGEND / KEY PLAN****ROOSKY TOWNLAND**

REV	DATE	DESCRIPTION	BY

ISSUE / REVISION

PRODUCED BY

STATUS

**PLANNING PERMISSION**

SECTION 5 APPLICATION

SHEET TITLE

**SITE LAYOUT PLAN**

DRAWN	CHK	REVISION
JM	JM	
DATE	SCALE	
24/03/2023	1:500 @A3	
PROJECT NUMBER	DRAWING NUMBER	
23.027	202	



PROJECT  
SECTION 5 APPLICATION AT;  
ROOSKY TOWNLAND, MAIN STREET  
ROOSKY, CO. ROSCOMMON

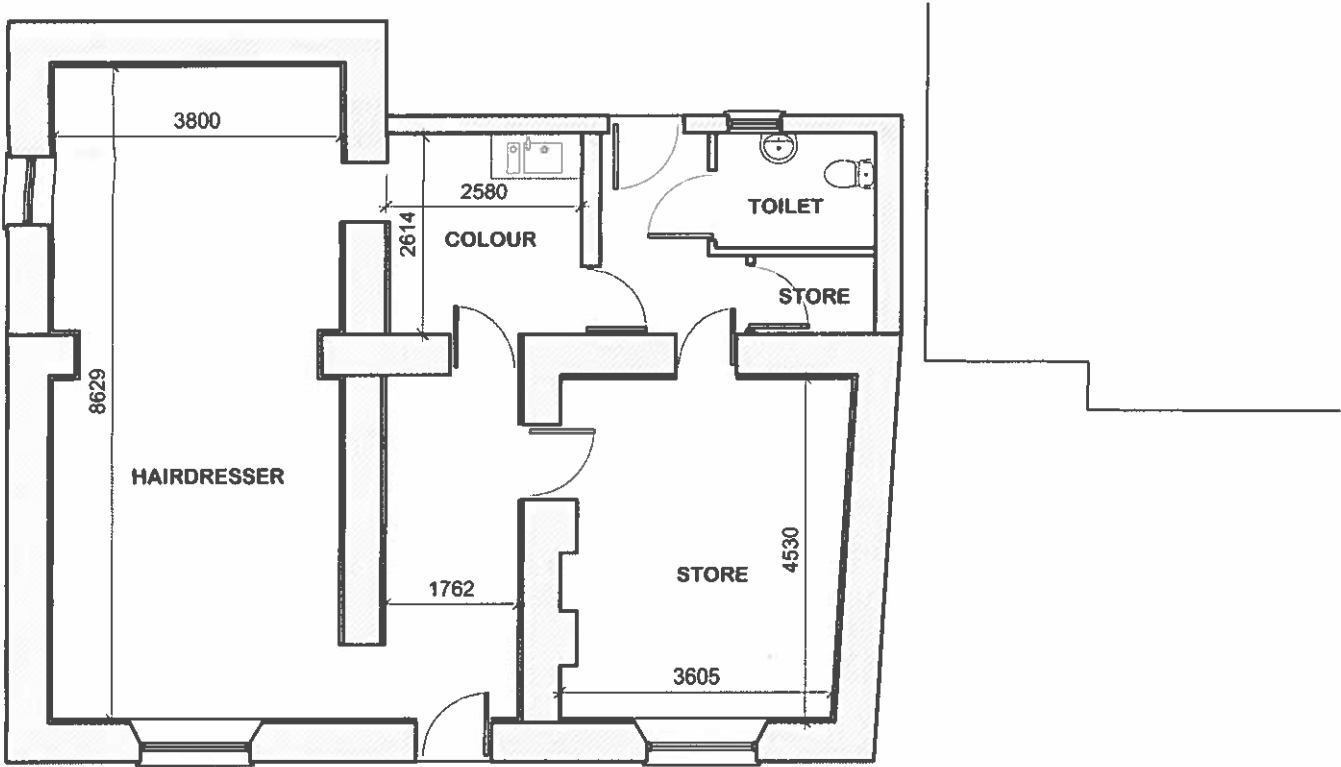
CLIENT  
RACHEL FITZGERALD

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LEGEND / KEY PLAN



FRONT ELEVATION  
SCALE: 1:100



GROUND FLOOR PLAN  
SCALE: 1:100



REV	DATE	DESCRIPTION	BY

ISSUE / REVISION

PRODUCED BY

STATUS  
PLANNING PERMISSION  
SECTION 5 APPLICATION

SHEET TITLE  
GROUND FLOOR PLAN  
FRONT ELEVATION

DRAWN	CHK	REVISION
JM	JM	
DATE	SCALE	
24.03.2023	1:500@A3	
PROJECT NUMBER	DRAWING NUMBER	
23.027	203	