

Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Alan Duggan
57 Dospel Drive,
Grange Heights,
Grange,
Cork.

20/07/2022

**RE: Section 5 Declaration R724/22 11 Arbour Court, Grange,
Douglas, Cork**

A Chara,

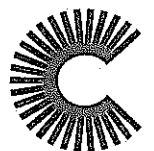
From the information provided by you on the application form it appears that you are not the owner of the property in question. However, you ticked that you were the owner. The planning authority considers this a misinterpretation of the question asked and an error on your behalf. Notwithstanding this, the Section 5 process is open for any party to seek a declaration and therefore it is considered appropriate to issue this declaration to you.

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise as follows:

~~The Planning Authority, in view of the above and having regard to~~

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)
- Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

It is considered that *the construction of a pedestrian access gate in an existing rear boundary wall* **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.



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Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 20th July 2022.

Is mise le meas,

Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT Ref. R 724/22		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>An ope was cut out of the boundary wall to create a(n) entrance from 11 Arbour Court to Dosel Drive</i>	
Location	11 Arbour Court (backing onto Dosel Drive)	
Applicant	Alan Duggan	
Date	19/07/2022	
Recommendation	<i>Is Development and Is Exempted Development</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. Requirements for a Section 5 Declaration

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) 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.

The requirements for making a section 5 declaration are set out in the Act.

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q2 of the application form:

An ope was cut out of the boundary wall to create a(n) entrance from 11 Arbour Court to Dosel Drive

3. Site Description

The property in question is a two-storey dwelling (bungalow type dwelling with raised roof accommodating bedrooms at first floor level) in an established residential area. It is bounded to the rear by a brick wall on which the applicant has placed wooden pallet fencing to increase its height. There is an existing wooden door with glazing in this rear wall which adjoins the Dosel Road (the rear of the property in question).

4. Planning History

One planning application is attached to this site:

This is summarised as follows:

Planning Ref:	Details
18/04149 Cork County Council	Permission granted for extensions and alterations to No. 11 Arbour Court. Works include the raising of the roof, 5 no. roof lights, 1 st floor bedroom, conversion of existing front window to a bay window, new porch, additional high level window and conversion of existing car-port to a bedroom.

5. Legislative Provisions

5.1 The Act

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

5.2 The Regulations

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (a) (ii) “Consist or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4metres in width”.
- (a) (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,

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as 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 –

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned

6. ASSESSMENT

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’

I consider that the installation of the gate in question constitutes development as it comprises of works which includes both demolition (gap in existing wall) & construction.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

Class 5 of Part 1 of Schedule 2 Exempted Development of the Planning and Development Regulations 2001 (as amended) states:

	Conditions/Limitations
<p>CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</p> <p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>

Article 9(i) (a) (ii) “Consist or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4metres in width”.

In forming its conclusion, the Local Authority noted that the existing gate opens directly onto public open space which is of width approx. 5m; and not directly onto the estate road of Dosel Drive which is approx. 9.4m wide. There is no existing pathway from the gate to the road and therefore the gate/access does not access the public road but rather the adjacent public open space which, at 5m, is relatively and considerably wide. The gate immediately accesses the open space and is

deemed to be the formation of an access to the open space as opposed to specifically accessing the estate road. There is a further 5m to cross before persons reach the edge of the estate road. The distance to traverse same and the volume of traffic within an estate road both ameliorate the issue of public safety in this circumstance.

Therefore, based on the above the planning authority considers that this element of the Planning Regulations does not apply in this instance.

There are no conditions under the existing Planning Permission 18/4149 relating to boundary treatments. The installation of a gate in the boundary wall does not contravene same.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. Other

The person who has sought the declaration has ticked the box declaring themselves the owner of the property in question. This, in fact, does not appear to legally be the case. Notwithstanding same, the Section 5 process is open for any party to seek a declaration and therefore it is considered appropriate that the Council issue a declaration.

9. Conclusion

The question has been asked whether the construction of a pedestrian access gate in an existing brick boundary wall to the rear of 11 Arbour Court, Grange, is development; and if so, is it exempted development?

The question before the planning authority relates specifically to the installation of the "gate" (0.9m x 2m) high. The issue of the additional wooden pallets on top of the existing wall does not fall under the remit of the current assessment.

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is exempted development.

10. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended); and

- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),
- Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that the construction of a pedestrian access gate in an existing rear boundary wall **Is Development** and is **Exempted Development**.

Mary Doyle
Executive Planner
19/07/2022

Note: Section 5 (3) (a) the Planning and development Act 2000 (as amended) allows for the person to whom the decision was issued, refer a declaration for review by the Board on payment of the required fee within 4 weeks of the date of the issuing of the declaration.

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

DEVELOPMENT MANAGEMENT
CCP

20 JUN 2022

R-Post/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

11 Harbour Court, Grange, Douglas, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

On 28.5.21, a ope was cut out of the boundary wall to create a entrance from 11 Harbour Court to DASEL DRIVE

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

This will affect the residents of DASEL DRIVE, also each house in Harbour Court would make a entrance on this boundary wall

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s		
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?		Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:		
Existing/ previous use (please circle)	Proposed/existing use (please circle)	
Boundary wall between to different two estates	Extra entrance to house.	

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		ALAN DUGGAT	
Applicants Address		57 DASEL DRIVE GRANGE HTS, GRANGE.	
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:		
	Fax:		
E-mail address:			
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

6.1 / We confirm that the information contained in the application is true and accurate:

Signature: 

Date: 17/08/2022

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution