



PLANNER'S REPORT
Ref. R 599/20

Cork City Council
Development
Management
Community, Culture &
Placemaking

| | |
|------------------|---|
| Application type | SECTION 5 DECLARATION |
| Question | <i>Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window.</i> |
| Location | No. 28 Kempton Park, Ballyvolane, Cork City. |
| Applicant | Dan Riordan (owner) c/o Dennis Hennigan, Green Banks, Ballyvolane, Cork City (agent) |
| Date | 16/11/2020 |

Recommendation: Is development, and is EXEMPTED DEVELOPMENT

INTERPRETATION

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.

1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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.

2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the Planning Authority, the applicant states in Q2 of the application form:

'Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window'.

In my opinion, the intention of the request is clear, and that it is entirely reasonable to consider the question before the Planning Authority as being:

Whether the conversion of existing attic for storage space, including velux windows to side, and rear extension including attic and rear first floor window' is development or is exempted development?

3.0 SITE DESCRIPTION

The subject property is a single storey detached dwelling in the Existing Built-Up Area zoning area. The area is predominantly residential in nature, and the subject dwelling is unusual in

that it is a bungalow located at the end of a cul-de-sac in a line of two-storey semi-detached residential units.

4.0 DESCRIPTION OF THE DEVELOPMENT

The development relates to:

- The conversion of the attic to storage space, with 5 no. velux side rooflights

and

- Rear extension with attic storage in roof, and first floor window overhead.

5.0 RELEVANT PLANNING HISTORY

None known

6.0 LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“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)

4.(1) 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;

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, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to “the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house”.

Schedule 2, Part 1, Class 1

Exempted Development — General

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|--|
| Development within the curtilage of a house CLASS 1 The extension of a house, by the | 1. (a) Where the house has not been extended |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|--|
| <p><i>construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</i></p> | <p><i>previously, the floor area of any such extension shall not exceed 40 square metres.</i></p> <p><i>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i></p> <p><i>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i></p> <p><i>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</i></p> <p><i>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</i></p> <p><i>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</i></p> <p><i>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i></p> <p><i>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i></p> <p><i>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i></p> |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|---|
| | <p>(c) <i>The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i></p> <p>5. <i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p> |

7.0 ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. The construction of a rear extension, and conversion of the attic to storage is clearly ‘works’, which is defined in Section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’, and is it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION:

Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in Section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

The applicable Class of exempted development under the Regulations, to which consideration may be given to this question is:

Class 1

Extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

However, it is unclear from the drawings submitted if the rear extension is an extension of the main dwelling, or if it is a sub-division of the main dwelling. If the latter is the case, then no exemption for same applies, and retention permission would be required to be sought.

This requires clarification from the applicant.

8.0 CONCLUSION

The applicant is required to clarify the purpose of the rear extension, therefore, a request for further information should be sent.



Helen O' Sullivan
Assistant Planner
2/11/2020.

9.0 FURTHER INFORMATION

Further Information Request:

1. Please clarify the exact nature of the rear extension, and state its purpose i.e. an extension of the main dwelling or a granny flat extension.
2. Please submit a 1:100 Cross Section through the attic level of the rear extension.

10.0 FURTHER INFORMATION RESPONSE

The Planning Authority wrote to the applicant on the 3/11/2020, with a request for further information. The applicant's agent responded to the Planning Authority's request for further information on 10/11/2020, as follows:

1. *Rear extension is used as an extension to the main dwelling.*
2. *1:50 scale Cross Section through the attic level of the rear extension has been submitted.*

10.1 Exempted development

The applicant has clarified that the use of the rear extension as ancillary to the main dwelling. Therefore, the next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that elements of the proposal come within **both subsections (1) and (2) of section 4.**

Section 4(1)

In my opinion a minor component of this proposal comes within the scope of section 4(1), being the minor works proposed to the main dwelling i.e, The conversion of the attic of the main dwelling to storage space, with 5 no. velux side rooflights. I consider that this would come under the scope of section 4(1)(h) as it is a minor component of the proposal.

CONCLUSION

Is exempted development

Section 4(2)

I consider that the rear extension comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3). Article 6 and Class 1 applies, as it is an extension of a house for residential use.

Having assessed the proposed extension against Class 1 and its conditions and limitations I find as follows:

Condition / Limitation 1(a)

The house has not been previously extended, and development relates to 27 sq. m. approximately at the Ground Floor, therefore this condition and limitation do not apply.

Condition / Limitation 1(b)

The house is not terraced or semi-detached, therefore this condition and limitation do not apply.

Condition / Limitation 1(c)

The development at attic level is for storage purposes only, therefore this condition/limitation does not apply.

Condition / Limitation 2(a)

The dwelling has not been extended previously, therefore this condition/limitation does not apply.

Condition / Limitation 2(b)

The dwelling is detached, therefore this condition/limitation does not apply.

Condition / Limitation 2(c)

There is no first floor extension, as development is a ground floor rear extension of a bungalow (with attic storage in roof over), therefore this condition/limitation does not apply.

Condition / Limitation 3

The host dwelling is single storey, with attic storage overhead only, therefore this condition/limitation does not apply.

Condition / Limitation 4(a)

The rear wall of the house does include a gable, therefore this condition/limitation does not apply.

Condition / Limitation 4(b)

The rear wall of the house does include a gable, and the height of the walls of the extension do not exceed the height of the side walls of the house. Therefore this condition/limitation does not apply.

Condition / Limitation 4(c)

The height of the highest part of the roof of the extension's roof does not exceed the height of the highest part of the roof of the main dwelling. Therefore this condition/limitation does not apply.

Condition / Limitation 5

There remains well in excess of 25m² of open space will remain to the rear of the dwelling. Therefore this condition/limitation does not apply.

Condition / Limitation 6(a)

Ground floor windows proposed are more than 1 metre from the boundaries they face. Therefore this condition/limitation does not apply.

Condition / Limitation 6(b)

The attic window is a distance of 14.7 m. from the rear boundary it faces, and as such is well above the 11 m. minimum distance criteria. Therefore this condition/limitation does not apply.

Condition / Limitation 6(c)

The dwelling is detached, and the extension above ground level does not exceed 12 sq. m., and the attic window is not less than 11 metres from the boundary it faces. Therefore this condition/limitation does not apply.

Condition / Limitation 7

The roof is proposed to be used as a balcony or roof terrace. Therefore this condition/limitation does not apply.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is exempted development

11.0 ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

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.

11.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 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 **environmental impact assessment is not required.**

11.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. 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 these European sites. Accordingly it is considered that **appropriate assessment is not required.**

12.0 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, 9 and 10 and **Schedule 2, Part 1, Class 1** of the Planning and Development Regulations 2001 to 2018.

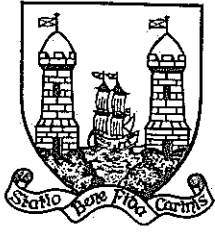
the Planning Authority considers that —

The conversion of existing attic for storage space, including velux windows to side, and a rear extension including attic and rear first floor window:

IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Helen O'Sullivan

Helen O' Sullivan
Assistant Planner
16/11/2020.



Comhairle Cathrach Chorcaí Cork City Council

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

Dennis Hennigan
Dennis Hennigan & Assoc. Ltd.
Green Banks
Ballyvolane
Cork
T23 AV6W

17th Nov 2020

**RE: Section 5 Declaration R599/20 – No. 28 Kempton Park,
Ballyvolane, Cork City**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise and having regard to:

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
 - Articles 6, 9 and 10 and *Schedule 2, Part 1, Class 1* of the Planning and Development Regulations 2001 to 2018
- the Planning Authority considers that —

The conversion of existing attic for storage space, including velux windows to side, and a rear extension including attic and rear first floor window:

IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Is misa le meas,

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.



DENNIS HENNIGAN
& Associates Ltd.

Green Banks, Ballyvolane, Cork. - Tel. 021 4553666 - Mob. 087 6166291 -
E-mail dennishennigan@eircom.net

**SECTION 5 DECLARATION APPLICATION FORM – DAN O' RIORDAN – 28
KEMPTON PARK, BALLYVOLANE, CORK. – R599/20**

Dear Sir or Madam,

Date 5th November, 2020

Please find attached herewith our response to your letter received on Thursday 5th November, 2020.

Point number 1 – We can confirm that this rear extension as shown on the drawings was built and is used as an extension to the main dwelling.

Point number 2 – Please see attached new cross section B – B which is nearly the exact same as the Section A – A which was submitted with application.

This Section 5 application was lodged on the first week of September and we expected a decision by 4 weeks like some previous Section 5 applications but we were told it could take 6 weeks.

My client just wanted confirmation in writing that this was exempted development so that it wouldn't hold up the sale of this house.

Please find attached herewith the following :

| Architectural Drawings | | | |
|------------------------|--------|-------------|--------|
| TITLE: | SCALE: | DRG. NO.: | Copies |
| Ground Floor layout | 1:50 | 20030-PA-03 | 2 no. |
| First floor layout | 1:50 | 20030-PA-04 | 2 no. |
| Section A - A | 1: 50 | 20030-PA-07 | 2no. |
| Section B - B | 1: 50 | 20030-PA-08 | 2no. |

Yours Sincerely,

Dennis Hennigan
Dennis Hennigan & Assoc. Ltd.
Green Banks,
Ballyvolane,
Cork, T23 AV6W,
Ireland.
Tel: +353 876166291





PLANNER'S REPORT
Ref. R 599/20

Cork City Council
Development
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| | |
|------------------|---|
| Application type | SECTION 5 DECLARATION |
| Question | <i>Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window.</i> |
| Location | No. 28 Kempton Park, Ballyvolane, Cork City. |
| Applicant | Dan Riordan (owner) c/o Dennis Hennigan, Green Banks, Ballyvolane, Cork City (agent) |
| Date | 16/11/2020 |

Recommendation: Is development, and is EXEMPTED DEVELOPMENT

INTERPRETATION

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.

1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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.

2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the Planning Authority, the applicant states in Q2 of the application form:

'Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window'.

In my opinion, the intention of the request is clear, and that it is entirely reasonable to consider the question before the Planning Authority as being:

Whether the conversion of existing attic for storage space, including velux windows to side, and rear extension including attic and rear first floor window' is development or is exempted development?

3.0 SITE DESCRIPTION

The subject property is a single storey detached dwelling in the Existing Built-Up Area zoning area. The area is predominantly residential in nature, and the subject dwelling is unusual in

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, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to "the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house".

Schedule 2, Part 1, Class 1

Exempted Development – General

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|---|---|
| <p>Development within the curtilage of a house</p> <p>CLASS 1</p> <p>The extension of a house, by the</p> | <p>1. (a) Where the house has not been extended</p> |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|---|
| | <p>(c) <i>The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i></p> <p>5. <i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p> |

7.0 ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is 'development', which is defined in the Act as comprising two chief components: 'works' and / or 'any material change in the use of any structures or other land'.

'Works' is defined in section 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The construction of a rear extension, and conversion of the attic to storage is clearly 'works', which is defined in Section 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal', and is it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION:
Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines 'exempted development' as having 'the meaning specified in Section 4' of the Act (which relates to exempted development).

10.1 Exempted development

The applicant has clarified that the use of the rear extension as ancillary to the main dwelling. Therefore, the next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that elements of the proposal come within **both subsections (1) and (2) of section 4.**

Section 4(1)

In my opinion a minor component of this proposal comes within the scope of section 4(1), being the minor works proposed to the main dwelling i.e, The conversion of the attic of the main dwelling to storage space, with 5 no. velux side rooflights. I consider that this would come under the scope of section 4(1)(h) as it is a minor component of the proposal.

CONCLUSION

Is exempted development

Section 4(2)

I consider that the rear extension comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3). Article 6 and **Class 1** applies, as it is an extension of a house for residential use.

Having assessed the proposed extension against Class 1 and its conditions and limitations I find as follows:

Condition / Limitation 1(a)

The house has not been previously extended, and development relates to 27 sq. m. approximately at the Ground Floor, therefore this condition and limitation do not apply.

Condition / Limitation 1(b)

The house is not terraced or semi-detached, therefore this condition and limitation do not apply.

Condition / Limitation 1(c)

The development at attic level is for storage purposes only, therefore this condition/limitation does not apply.

Condition / Limitation 2(a)

The dwelling has not been extended previously, therefore this condition/limitation does not apply.

Condition / Limitation 2(b)

The dwelling is detached, therefore this condition/limitation does not apply.

Condition / Limitation 2(c)

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*
to be exempted development.

Section 177U(9)

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.

11.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 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 **environmental impact assessment is not required**.

11.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. 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 these European sites. Accordingly it is considered that **appropriate assessment is not required**.

12.0 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, 9 and 10 and **Schedule 2, Part 1, Class 1** of the Planning and Development Regulations 2001 to 2018

the Planning Authority considers that —

The conversion of existing attic for storage space, including velux windows to side, and a rear extension including attic and rear first floor window:

IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.



Comhairle Cathrach Chorcaí Cork City Council

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

Dennis Hennigan
Green Banks
Ballyvolane
Cork

03rd November, 2020

RE: R599/20

Property: No. 28 Kempton Park, Ballyvolane, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I am asked to advise as follows:

1. Please clarify the exact nature of the rear extension, and state its purpose i.e. an extension of the main dwelling or a granny flat extension.
2. Please submit a 1:100 Cross Section through the attic level of the rear extension.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.



PLANNER'S REPORT
Ref. R 599/20

Cork City Council
Development Management
Strategic Planning and
Economic Development

| | |
|------------------|---|
| Application type | SECTION 5 DECLARATION |
| Question | <i>Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window.</i> |
| Location | No. 28 Kempton Park, Ballyvolane, Cork City. |
| Applicant | Dan Riordan (owner) c/o Dennis Hennigan, Green Banks, Ballyvolane, Cork City (agent) |
| Date | 02/11/2020 |
| Recommendation | Request further information |

INTERPRETATION

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.

1.0 REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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.

2.0 THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the Planning Authority, the applicant states in Q2 of the application form:

'Conversion of existing attic for storage space, including velux windows to side. Rear extension including attic and rear first floor window'.

In my opinion, the intention of the request is clear, and that it is entirely reasonable to consider the question before the Planning Authority as being:

Whether the conversion of existing attic for storage space, including velux windows to side, and rear extension including attic and rear first floor window' is development or is exempted development?

3.0 SITE DESCRIPTION

The subject property is a single storey detached dwelling in the Existing Built-Up Area zoning area. The area is predominantly residential in nature, and the subject dwelling is unusual in that it is a bungalow located at the end of a cul-de-sac in a line of two-storey semi-detached residential units.

4.0 DESCRIPTION OF THE DEVELOPMENT

The development relates to:

- The conversion of the attic to storage space, with 5 no. velux side rooflights

and

- Rear extension with attic storage in roof, and first floor window overhead.

5.0 RELEVANT PLANNING HISTORY

None known

6.0 LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“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)

4.(1) 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;

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, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.*

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to “*the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house*”.

Schedule 2, Part 1, Class 1

Exempted Development — General

| <i>Column 1 Description of Development</i> | <i>Column 2 Conditions and Limitations</i> |
|--|--|
| <i>Development within the curtilage of a house</i> <i>CLASS 1 The extension of a house, by the construction or erection of an</i> | <i>1. (a) Where the house has not been extended previously, the floor area of any such extension</i> |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|---|---|
| <p><i>extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</i></p> | <p><i>shall not exceed 40 square metres.</i></p> <p><i>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i></p> <p><i>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i></p> <p><i>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</i></p> <p><i>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</i></p> <p><i>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</i></p> <p><i>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i></p> <p><i>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i></p> <p><i>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i></p> <p><i>(c) The height of the highest part of the roof of any</i></p> |

| Column 1 <i>Description of Development</i> | Column 2 <i>Conditions and Limitations</i> |
|---|---|
| | <p><i>such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i></p> <p>5. <i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p> |

7.0 ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. The construction of a rear extension, and conversion of the attic to storage is clearly ‘works’, which is defined in Section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’, and it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION: Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in Section 4’ of the Act (which relates to exempted development).



**DENNIS HENNIGAN
& Associates Ltd.**

Green Banks, Ballyvolane, Cork. - Tel. 021 4553666 - Mob. 087 6166291 -
E-mail dennishennigan@eircom.net

**SECTION 5 DECLARATION APPLICATION FORM – DAN O’ RIORDAN – 28
KEMPTON PARK, BALLYVOLANE, CORK.**

Date 6th September, 2020

Dear Sir or Madam,

Please find attached herewith a list of the drawings and documentation accompanying this application is detailed below.

| Architectural Documents | | | |
|--|--------|-----------|--------|
| TITLE: | SCALE: | DRG. NO.: | Copies |
| Section 5 Declaration Application Form | n/a | n/a | 2 no. |
| Cheque / Cash | n/a | n/a | €80.00 |

| Architectural Drawings | | | |
|-------------------------|--------|--------------|--------|
| TITLE: | SCALE: | DRG. NO.: | Copies |
| Site Location Map | 1:2500 | 20030-PA-01 | 2 no. |
| Site Location Map | 1:1000 | 20030-PA-01a | 2 no. |
| Site layout | 1:250 | 20030-PA-02 | 2 no. |
| Ground Floor layout | 1:50 | 20030-PA-03 | 2 no. |
| First floor layout | 1:50 | 20030-PA-04 | 2 no. |
| Front & Rear Elevations | 1: 100 | 20030-PA-05 | 2 no. |
| Side Elevations | 1: 100 | 20030-PA-06 | 2no. |
| Section A - A | 1: 50 | 20030-PA-07 | 2no. |

Yours Sincerely,

Dennis Hennigan
Dennis Hennigan & Assoc. Ltd.
Green Banks,
Ballyvolane,
Cork, T23 AV6W,
Ireland.
Tel: +353 876166291



Helen 55
Can you prepare rpt
please.
Thanks MW
14/10/20-

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

The applicable Class of exempted development under the Regulations, to which consideration may be given to this question is:

Class 1

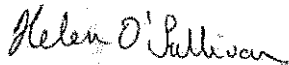
Extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

However, it is unclear from the drawings submitted if the rear extension is an extension of the main dwelling, or if it is a sub-division of the main dwelling. If the latter is the case, then no exemption for same applies, and retention permission would be required to be sought.

This requires clarification from the applicant.

8.0 CONCLUSION

The applicant is required to clarify the purpose of the rear extension, therefore, a request for further information should be sent.



Helen O' Sullivan
Assistant Planner
2/11/2020.

FURTHER INFORMATION

Further Information Request:

1. Please clarify the exact nature of the rear extension, and state its purpose i.e. an extension of the main dwelling or a granny flat extension.
2. Please submit a 1:100 Cross Section through the attic level of the rear extension.

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

R-Phost/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

No. 28 KEMPTON PARK
BALLYVOLANE, 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.

CONVERSION OF EXISTING ATTIC FOR STORAGE SPACE
INCLUDING VELUX WINDOWS TO SIDE.
REAR EXTENSION INCLUDING ATTIC AND REAR
FIRST FLOOR WINDOW

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

BOTH ATTIC CONVERSIONS ARE USED FOR
ADDITIONAL STORAGE. THE LOW PITCH OF THE
EXISTING ROOF (30°) DOES NOT GIVE THE
REQUIRED HEIGHTS TO ALLOW THESE SPACES
TO BE USED AS HABITUAL SPACE AND COMPLY
WITH REGULATIONS.

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)

EXISTING FLOOR AREA = 85.0m²
 EX. ATTIC SPACE = 20.13m²
 REAR GR. EXTENSIONS = 27.42m²
 REAR ATT. = 11.22m²

| | | |
|--|---------------------------------------|--|
| (a) Floor area of existing/proposed structure/s | | REAR GR. EXTENSIONS = 27.42m ² REAR ATT. = 11.22m ² |
| (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 checked="" 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) | |
| N/A | N/A | |

4. APPLICANT/ CONTACT DETAILS

| | | | |
|--|-----------------|---|-----------------------------|
| Name of applicant (principal, not agent): | | DAN RIORDAN | |
| Applicants Address | | 28 KEMPTON PARK BALLYUOLANE, CORK. | |
| Person/Agent acting on behalf of the Applicant (if any): | Name: | DENNIS HEWIGAN | |
| | Address: | GREEN BANKS BALLYUOLANE, CORK. | |
| | Telephone: | [REDACTED] | |
| | Fax: | _____ | |
| | E-mail address: | [REDACTED] | |
| 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: 6th SEPTEMBER, 2020

.....

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