



# Comhairle Cathrach Chorcaí Cork City Council

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

Andrea McAuliffe  
McCutcheon Halley Planning Consultants  
Joyce House,  
6, Barrack Square,  
Ballincollig,  
Co. Cork,  
P31 YX97.

25<sup>th</sup> January 2021

**RE: R619/20 – Section 5 Declaration**  
**Property: West Link, Togher Industrial Estate, Ballycureen, Cork**

Dear Sir/Madam,

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

- Sections 3 and 4 of the *Planning and Development Act 2000* (as amended), and
- Class 21 and Class 22 of the *Planning and Development Regulations 2011* (as amended)
- The *Architectural Heritage Protection Guidelines for Planning Authorities (2011)*

It is considered that the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers, West Link, Togher Industrial Estate, Ballycureen, Cork, **Is Development** and **Is Not Exempted Development**.

Yours faithfully,

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



**We are Cork.**

<b>PLANNER'S REPORT</b>		Cork City Council Culture, Community and Placemaking
<b>Ref. R 619/20</b>		
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	Whether the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers. West Link, Togher Industrial Estate, Ballycureen, cork, is exempted development	
<b>Location</b>	West Link, Togher Industrial Estate, Ballycureen, Cork	
<b>Applicant</b>	Cork Builders Providers	
<b>Date</b>	28/04/2021	
<b>Recommendation</b>	<i>Is Development and is Not Exempted Development</i>	

This report should be read in conjunction with the previous report on the file dated 30<sup>th</sup> November 2020.

### 1. FURTHER INFORMATION REQUESTED

- Please provide details as to the connection between the area of land where the proposed hard surface area is intended to be located and the established Cork Builder's Providers site and associated permitted light industrial and storage use
- Please Confirm the ownership of the area where the hard surfacing is proposed to be located.

### 2. FURTHER INFORMATION PROVIDED

In responding to the further information request, the applicant has submitted the following documentation.

1. The applicant submitted details outlining the functional relationship between the existing use on the site, and the proposed use of the extended hard surface area. It was noted that the extension of the hard standing area is required for the storage of sand and gravels ancillary to Cork Builders Providers service of sorting and bagging aggregates and sand which are packed into bagged materials and sold to the construction sector.
2. The applicant submitted details outlining their ownership of the Cork Builders Providers site, as well as the area where the hard standing area is proposed to be located.

### 3. ASSESSMENT

The applicant seeks confirmation of the following.

*That the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers is exempted development under Classes 21 and 22 of Part 1 Schedule 2 (article 6) of the Planning and Development Regulations*

As set out in the accompanying report dated 30<sup>th</sup> November, it is concluded that the proposed development requires the carrying out of works in order to provide the hard standing surface for use in connection with the adjoining light industrial/storage use. Having regard to Section 3(1) of the Planning and Development Act, 2000, as amended, it is considered that the proposed works constitute Development.

The key question therefore to be determined in this Section 5 declaration is whether the development of the hard standing area constitutes exempted development under Classes 21 and 22 of Part 1 Schedule 2 (Article 6) of the Planning and Development Regulations.

Having regard to Class 21, Part 1, Schedule 2 (Article 6) of the Planning and Development Regulations (2001) development of the following description is stated to be exempted development.

- a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—
  - i. the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
  - ii. the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
- a) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.
- b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building

Having regard to Column 2, of Class 21, Part 1, Schedule 2 (Article 6), there are certain following limitations and conditions on the exemption, which are set out as follows;

1. Any such development shall not materially alter the external appearance of the premises of the undertaking
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 meters above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

In addition, and having regard to the above, under Class 22, Part 2, Schedule 2 (Article 6) of the Planning and Development Regulations (2001), development of the following description is also considered to be exempted development.

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

Having regard to Column 2, of Class 22, Part 1, Schedule 2 (Article 6), there are certain following limitations and conditions on the exemption, which are set out as follows.

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

Having reviewed the documentation submitted by the applicant following the request for further information, it is clear that the applicant considered that the proposed development comes within the definition of Class 21(b) of Part 1, Schedule 2 (Article 6). The applicant also states that the development comes within the exemption specified under Class 22 Part 1, Schedule 2 (Article 6).

Of note in relation to the subject development is its location outside of the existing development boundary of the subject site. In this regard, it needs to firstly be determined whether the proposed location of the Hard Standing Area comes within the curtilage of the Cork Builder’s Providers Site.

It is noted that the term “Curtilage” is not defined in the Planning Legislation. The clearest guidance in relation to what constitutes “curtilage” is set out in the Architectural Heritage Protection Guidelines for Planning Authorities (2011). Section 13.1.5 of this document notes that the planning authority should consider the following in making a decision as to the extent of curtilage.

- a) Is, or was there a functional connection between the structures? For example was the structure within the curtilage constructed to service the main building, such as a coach-house, store and the like?
- b) Was there a historical relationship between the main structure and the structure(s) within the curtilage which may no longer be obvious? In many cases, the Planning Authority will need to consult historic maps and other documents to ascertain this;
- c) Are the structures in the same ownership? Were they previously in the same ownership, for example, at the time of construction of one or other of the structures?

Therefore, it is required to determine if there is a functional relationship between the subject site and the exiting Cork Builders Providers site. While there does appear to be a sand/gravel mix being stored in the area that is the subject of this declaration at present, as seen in Figure 1 below, the existing fencing in place suggests that there is not a functional relationship between the existing site and the proposed location for the hard standing area.



Figure 1 Image showing gravel/sand being stored behind existing boundary fence at Cork Builders Providers.

Secondly, there does not appear to be a historical relationship between both areas, noting that the area where the proposed hard standing area is now proposed, has not been associated with the activity of Cork Builders Providers since the granting of permission for the builder providers in 1998 under application

register reference 97/3586. In this regard, it is not considered that there is a historical connection between the Cork Builders Providers Site and the area where the hard standing area is now proposed to be located.

It is confirmed following the receipt of further information that the applicant is both in the ownership of the Cork Builders Provider site and the site where the proposed development is now proposed to be located.

Having regard to the lack of any existing or previous functional or historical connection between both sites, and notwithstanding that both sites are in the same ownership, it is not considered that the area of land where the hard standing area is proposed to be developed is within the curtilage of the Cork Builders Provider site.

In this regard, the exemptions set out under Class 21 and Class 22, Part 1, Schedule 2 (Article 6) of the Planning and Development Regulations, 2001, as amended, cannot be relied on in this instance, and the proposed works are therefore considered to development which is not exempt.

#### 4. RECOMMENDATION

In view of the above and having regard to —

- Sections 3 and 4 of the *Planning and Development Act 2000* (as amended), and
- Class 21 and Class 22 of the *Planning and Development Regulations 2011* (as amended)
- The *Architectural Heritage Protection Guidelines for Planning Authorities* (2011)

It is considered that the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers, West Link, Toghher Industrial Estate, Ballycureen, Cork, **Is Development and Is Not Exempted Development.**

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Sinéad Kearney  
Assistant Planner

The Secretary  
Planning Department  
Cork City Council  
City Hall  
Cork



11<sup>th</sup> January 2021

**Re: Council Ref. No. R619/20 – Request for Further Information  
Section 5 Declaration at Cork Builders Providers West Link, Togher Industrial Estate, Ballycurreen, Cork seeking confirmation that provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers is exempted development under Classes 21 and 22 of Part 1 Schedule 2 (Article 6) the planning and Development Regulations**

Dear Sir/Madam,

We McCutcheon Halley, 6 Joyce House, Barrack's Square, Ballincollig, Cork act on behalf Cork Builders Providers, West, Link, Togher Industrial Estate, Ballycurreen, Cork, and refer to the Council's request for further information (RFI) under Cork City Council Ref. R619/20 relating to the existing light industrial/storage site at Cork Builders Providers West Link, Togher Industrial Estate, Ballycurreen, Cork.

In the interest of clarity, we will respond to the items raised in the Council's RFI, in the order that they were raised:

- 1. Please provide details as to the connection between the area of land where the proposed hard surface area is intended to be located and the established Cork Builder's Providers site and associated permitted light industrial and storage use.**

As requested by the Planning Authority, we confirm that the proposed hard surface area is to be located immediately to the east of the existing builders' providers units. As per the attached letter in Appendix 1, the extension of hardstanding area is required for the storage of sand and gravels ancillary to Cork Builders Providers service of sorting and bagging aggregates and sand which are packed into bagged materials and sold to the construction/trade sector. The extension of hardstanding will act as a natural extension to the existing hard surface area used for storing material as shown in Figure 1 below.

Figure 1 below outlines the location of the hard surface area and the red line equates to Cork Builders Providers ownership as shown in the folio/extract from land direct.

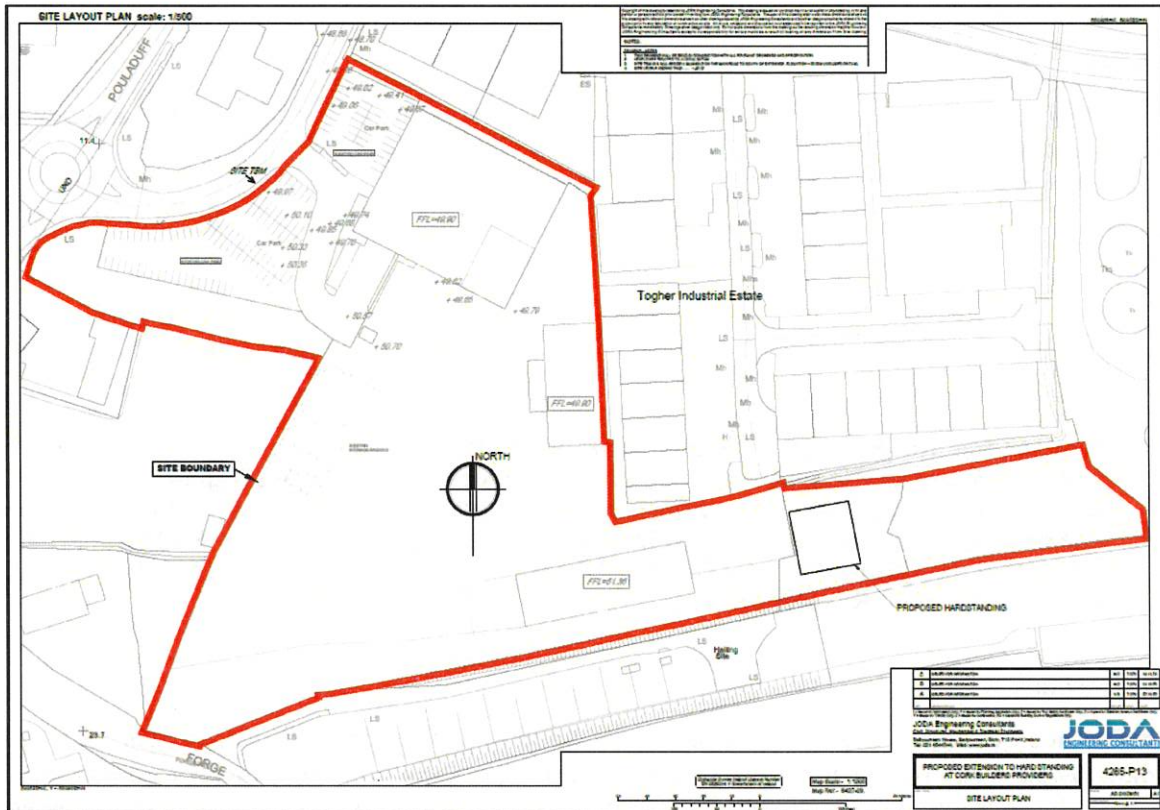


Fig. 1 Location of hard standing area outlined in red.

**2. Please Confirm the ownership of the area where the hard surfacing is proposed to be located.**

As requested by the Planning Authority, please find enclosed Folio 94608F. This area includes the location of the proposed hard standing area and is within the ownership of Cork Builders Providers – see attached and Figure 2 below which includes details from Landirect for Folio Ref. 94608F.

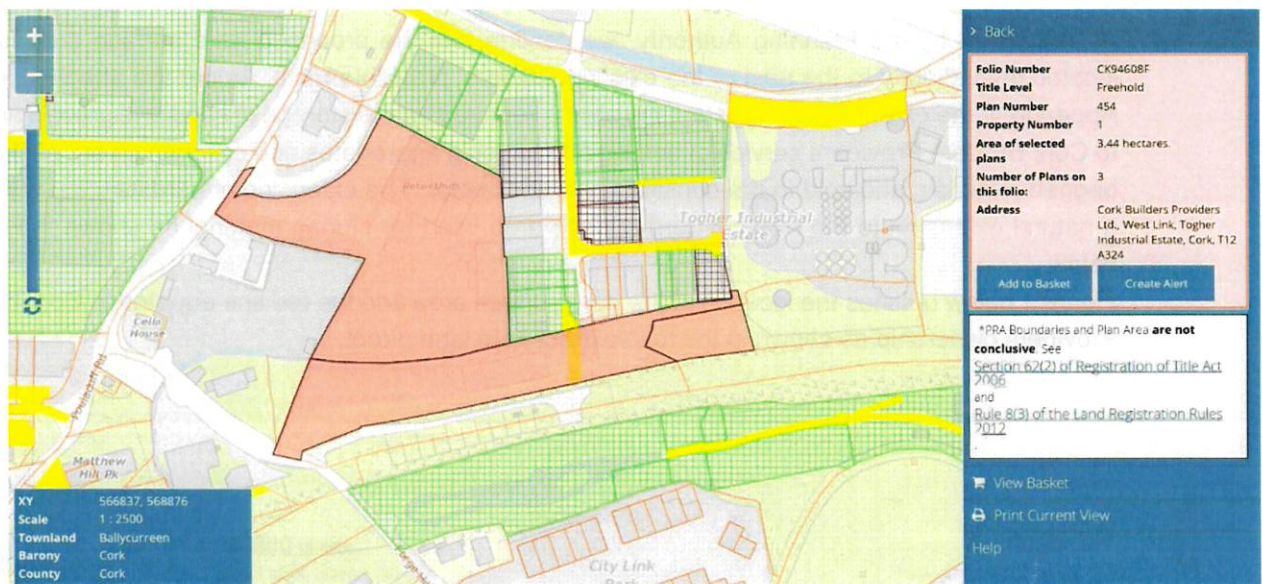


Fig. 2 Details of Folio Ref. 94608F from Landirect.

Please do not hesitate to contact us should you require any further information.

Yours sincerely

*Andrea Mc Auliffe*

Andrea Mc Auliffe  
McCutcheon Halley





## Appendix 1 – Letter from Cork Builders Providers on Hardstanding area requirements





Building Materials  
Plumbing & Heating  
Timber Importers  
Mains & Drains  
Ironmongery  
Plant & Scaffolding Hire  
In-House Kitchens

West Link, Toghher Industrial Estate, Cork, Ireland.  
Telephone: 00353 (0)21 4961700 Fax: 00353 (0)21 4961428  
E-Mail: sales@corkbp.ie Website: www.corkbp.ie

Northside Branch Fitz's Boreen, Mallow Road, Cork  
Telephone 00353 (021) 4391199 Fax: 00353 (021) 4391217  
E-Mail northside@corkbp.ie  
Web www.corkbp.ie

Now on Facebook 

Mr Terry O'Neill  
Managing Director  
JODA  
Engineering Consultants  
Ballycurren House  
Ballycurren  
Cork T12P4AY

16 December 2020

Comhairle Cathrach Chorcaí  
Cork City Council

11 JAN 2021

Strategic Planning & Economic  
Development Directorate

RE:

**Section 5 Declaration seeking confirmation that the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers, West Link, Toghher Industrial Estate, Ballycurren, Cork.**

Dear Terry

Cork Builders Providers can confirm that the requirement for the extension to the existing hard surface area is for the storage of sand and gravels ancillary to Cork Builders Providers service of sorting and bagging aggregates and sand which are packed into a variety of bagged materials. These are sold to the construction sector.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dan Twomey'.

Dan Twomey  
Managing Director



Appendix 2 - Folio 94608F

# Land Registry

County Cork

Folio 94608F

Register of Ownership of Freehold Land

Part 1(A) - The Property

For parts transferred see Part 1(B)

*5.32 Acres*

No.	Description	Official Notes
1	A plot of ground being part of the Townland of BALLYCURREEN and Barony of Cork containing 2.1530 Hectares shown as Plan(s) 454 edged RED on the Registry Map (OS MAP Ref(s) 6427/9).  The Registration does not extend to the mines and minerals	From Folio CK73481F
2	A plot of ground being part of the Townland of BALLYCURREEN and Barony of Cork shown as Plan(s) 594 edged RED on the Registry Map (OS MAP Ref(s) 6427/9).	From Folio CK78944F
3	A plot of ground being part of the Townland of BALLYCURREEN and Barony of Cork shown as Plan(s) A2C2Y edged RED on the Registry Map (OS MAP Ref(s) 6427/9).  The Registration does not extend to the mines and minerals	From Folio CK12691F

*8 Acres*

*2.06  
1.17  
0.22  
3.45 hectares  
x 2.471 = 8.52 Acres*

Comhairle Cathrach Chorcaí  
Cork City Council

11 JAN 2021

Strategic Planning & Economic  
Development Directorate

# Land Registry

County Cork

Folio 94608F

## Part 1(B) - Property Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

# Land Registry

County Cork

Folio 94608F

## Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1a	25-MAR-1998 D1998CK003282X	CORK BUILDERS PROVIDERS LIMITED (Limited Liability Company) of Casey's Cross, Pouladuff Road, Cork is full owner of property number(s) 1.  Land Cert Req No.: S97CK02132T Property No.:1 Date:23-JUN-1998 Issued to: P J O'DRISCOLL & SONS SOLICITORS Address:73 SOUTH MALL CORK
1b	03-OCT-2000 D2000CK013382H	CORK BUILDERS PROVIDERS LIMITED (Limited Liability Company) of Casey's Cross, Pouladuff Road, Cork is full owner of property number(s) 2, 3.

# Land Registry

County Cork

Folio 94608F

## Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	The property No.1 is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
2	The property Nos. 2 and 3 are subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
3	<p>10-FEB-1988 S1248/88</p> <p>The right of the County Council of the County of Cork, its successors and assigns of laying and forever after keeping laid and maintained below the surface of the property herein along the way shown coloured yellow and lettered J - K on Plan A2C2Y edged red thereof on the Registry Map (O.S. 6427/9) sewerage mains with valves, manholes fittings and appliances with full right and liberty for the said Council by their agents, contractors, workmen and servants with or without horses, carts, lorries, plant apparatus and equipment to enter upon the property herein for the ancillary purposes specified in Instrument No. S1248/88 such rights to be exercised in the manner specified in said instrument.</p>
4	<p>16-JUN-1992 S6389/92</p> <p>Charge for present and future advances repayable with interest.            ** (Maximum Duty £500 paid) **            The Governor and Company of the Bank of Ireland is owner of this charge.             Note: This charge is registered also on Folios 12691F, 69266F, 50352F and 94603F and affects property No.3 only.</p>
5	<p><del>26-MAR-1998 D1998CK003282X</del></p> <p><del>Charge for present and future advances repayable with interest.            ** (Maximum Duty £500.00 paid) **            The Governor and Company of the Bank of Ireland is owner of this charge.             NOTE: This charge affects property No.1 only.</del></p> <p style="text-align: center;"><del>Cancelled</del> <span style="float: right;"><del>D2004CK002278G 02-FEB-2004</del></span></p>



# landdirect.ie

An online service from the Property Registration Authority

main menu | form 17 | owner search | app search | view folio | request certified copy | map search | account | help | logout

**landdirect.ie Maps**

Welcome to our online Map that supports the spatial element of *landdirect.ie*. Using the available functions, you can go directly to a location on the Land Registry digital map in a number of ways and perform a variety of spatial/map queries.

If you are new to this part of the site [click here for help on Using the online Map.](#)

- ▶ **Zoom to Folio:**
- ▶ **Zoom to County:**
- ▶ **Zoom to Co-ordinates:** X:  Y:
- ▶ **Zoom to OSI Sheet:**
- ▶ **Plan Search**

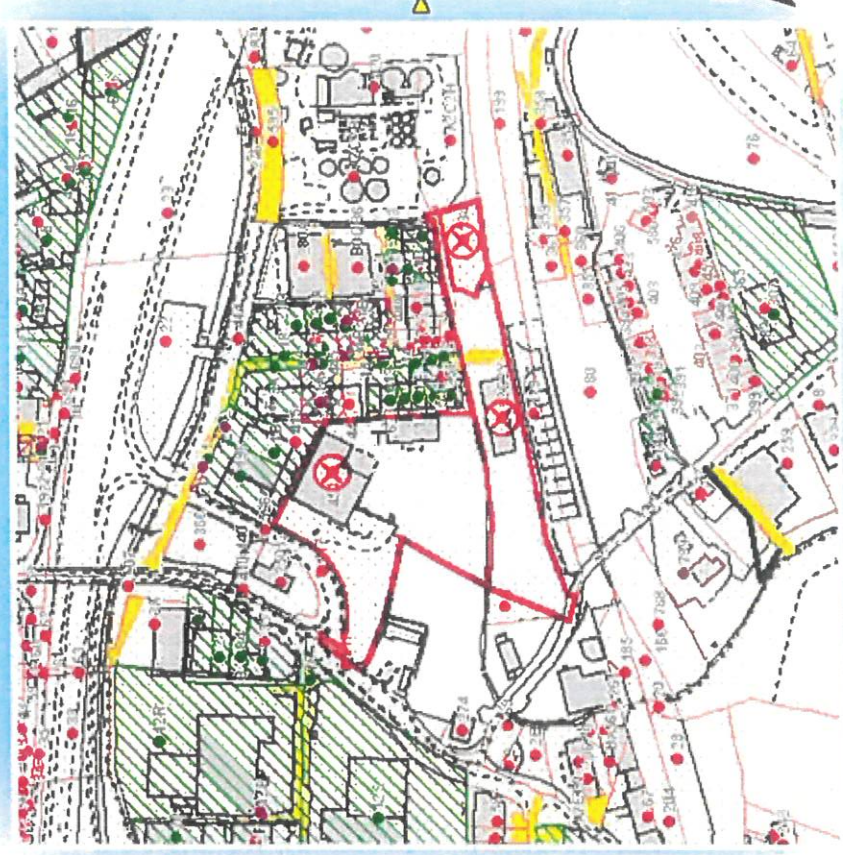
Map Data: [Addresses](#) | [Bookmarks](#) | [Area Search](#) | [Home](#)

**Special Registration Map**

Information: Based on centre point:  
 Easting: 566,723 Northing: 569,092  
 Map Width: 678,69M

Townland: **BALLYCURREEN**  
 E.D: **LEHENAGH**  
 Barony: **CORK BY**  
 County: **Cork**

11 JAN 2021



Current mode is: **Zoom In**





# Comhairle Cathrach Chorcaí Cork City Council

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

Andrea McAuliffe  
McCutcheon Halley Planning Consultants,  
6 Joyce House,  
Barrack Square,  
Ballincollig,  
Cork.

02 December 2020

**RE: Section 5 Declaration R619/20 Cork Builders Providers, West  
Link, Togher**

A Chara,

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

In view of the above it is recommended that Further Information be sought in accordance with Section 5(2)(b) of the *Planning and Development Act 2000*. The information to be sought is as follows:

1. Please provide details as to the connection between the area of land where the proposed hard surface area is intended to be located and the established Cork Builder's Providers site and associated permitted light industrial and storage use.
2. Please Confirm the ownership of the area where the hard surfacing is proposed to be located.

Is misa le meas,

**Kerry Bergin**  
Community, Culture and Placemaking Directorate  
Cork City Council



**We are Cork.**

## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R 619/20

**Description:** Whether the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers. West Link, Togher Industrial Estate, Ballycureen, cork, is exempted development

**Applicant:** Cork Builders Providers

**Location:** West Link, Togher Industrial Estate, Ballycureen, Cork

**Date:** 30/11/2020

## SUMMARY OF RECOMMENDATION

**Further Information to be Requested**

### Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

### Site Location

The site is located within the Togher Industrial Estate, Ballycureen, Cork. The site is located to the south of the N40, and is accessed via the existing Togher Industrial Estate Road.

### Subject Development

The proposed development subject to this Section 5 declaration request asks the following question of the Planning Authority in respect of the provision of a hard surfacing area to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers. The Applicant considers that the development is exempted development under Class 21 and Class 22 of Part 1. Schedule 2 (Article 6) of the Planning and Development Regulations 2001 (as amended) on the basis that:

- **The provision of a hard (i.e. concrete) surface within the cartilage of and in connection with an existing light industrial/storage use is exempted development under Class 21(b) Part 1, Schedule 2 (Article 6) of the Planning and Development Regulations**
- **The provision of a hard/concrete surface to be used in connection with existing light industrial/storage use permitted under Application Register Reference 97/3586 at Togher Industrial Estate will not contravene any of the conditions of the 97/3586 permission**
- **The light industrial use associated with the primary storage of materials use is a permitted use on the site.**
- **The conditions of the existing permissions do not preclude the proposed use.**

## Relevant Legislation

### Planning and Development Act, 2000

**Section 3 (1)** of the Act defines “*Development*” as, ‘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** of the Act refers to ‘*Exempted Development*’ and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

*‘Development consisting of the carrying out of the 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 of the structure or of neighboring structures’.*

### Definitions

The definition of “*Structure*” in the 2000 Act is as follows:

“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 (ii)”

### Planning and Development Regulations, 2001 (as Amended)

Having regard to Class 21, Part 1, Schedule 2 (Article 6) of the Planning and Development Regulations (2001) development of the following description is stated to be exempted development;

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- a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—
  - i. the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
  - ii. the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
  - a) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.
- b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building

Having regard to Column 2, of Class 21, Part 1, Schedule 2 (Article 6), there are certain following limitations and conditions on the exemption, which are set out as follows;

1. Any such development shall not materially alter the external appearance of the premises of the undertaking
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 meters above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

In addition, and having regard to the above, under Class 22, Part 2, Schedule 2 (Article 6) of the Planning and Development Regulations (2001), development of the following description is also considered to be exempted development;

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

Having regard to Column 2, of Class 22, Part 1, Schedule 2 (Article 6), there are certain following limitations and conditions on the exemption, which are set out as follows;

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

Notwithstanding the exemption set out above, the extent to which the classes of development specified in Part 1 of the Second Schedule are exempted is restricted by Article 9(1)(a) as follows:

1. Development to which article 6 relates shall not be exempted development for the purposes of the Act—
  - a) if the carrying out of such development would—
    - i. Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
    - ii. Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width
    - iii. Endanger public safety by reason of traffic hazard or obstruction of road users,
    - iv. Except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
    - v. Consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies
    - vi. Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or

the making of a new development plan, in the draft variation of the development plan or the draft development plan,

- vii. Consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
  - A consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended
  - B comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
  - C consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- 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,
- ix. Consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan in the draft variation of the development plan or the draft development plan,
- x. Consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- xi. Obstruct any public right of way
- xii. Further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

### Ministerial Guidelines

The document "Architectural Heritage Protection Guidelines for Planning Authorities (2011)" is of relevance as the word "curtilage" is not defined by the Planning Acts, nor is it defined in any other piece of legislation. On this basis, these Ministerial Guidelines set out how Planning Authorities should make decisions as to the extent of the curtilage of a protected structure, noting that the Planning Authority should consider the following;

- a) Is, or was there a functional connection between the structures? For example was the structure within the curtilage constructed to service the main building, such as a coach-house, store and the like?
- b) Was there a historical relationship between the main structure and the structure(s) within the curtilage which may no longer be obvious? In many cases, the Planning Authority will need to consult historic maps and other documents to ascertain this;
- c) Are the structures in the same ownership? Were they previously in the same ownership, for example, at the time of construction of one or other of the structures?

### Land use zoning

While the subject site is now located within the Cork City Administrative area following the boundary extension of 2019, the development of the subject site is regulated by the policies and objectives set out in the Cork County Development Plan, 2014 and the Ballincollig-Carrigaline Municipal District Local Area Plan, 2017, until such time as a new draft City Development Plan is published.

The subject site is located within the Ballincollig-Carrigaline Municipal District Local Area Plan 2017, and is zoned as "Existing Built Up Area". The objective for Existing Built Up Areas is set out under Objective ZU 3-1 as follows;

*Normally encourage through the Local Area Plan's development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted.*

It is further noted that the subject site is partially located within Flood Zone A.

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### Planning History

There is a significant planning history associated with the subject sites use as a light industrial unit.

**Application Register Reference 97/3586:** Permission was granted by Cork County Council on 24<sup>th</sup> February 1998 for the construction of builders providers and manufacturing facility including open storage, signage and ancillary works, subject to 8 no. conditions, none of which limit the subject development proposals.

**Application Register Reference 99/6528:** Permission was granted by Cork County Council on 1<sup>st</sup> March 2000 for an open hardstanding area including fencing & associated ancillary works to front of existing premises.

**Application Register Reference 00/2553:** Permission was granted on 1<sup>st</sup> August 2000 for development consisting of the construction of storage unit for builders suppliers materials & associated works, subject to 10 no. conditions, none of which limit the subject development proposal.

**Application Register Reference: 00/6002:** Permission was granted on 13<sup>th</sup> August 2001 for development consisting of the construction of storage unit for builders suppliers materials, bulk excavation, extension of open storage yard & ancillary works, subject to 12 no. conditions, none of which limit the subject development proposal.

### **Sub-threshold EIS**

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIS is not required to be submitted.

### **Appropriate Assessment**

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

### **Assessment**

#### **Is the proposal "Development"?**

As per definition of "*development*" in Section 3 (1) of the Planning and Development Act 2000 (as amended), the issues of works proposed by this development will be assessed to determine the planning status of the proposed development.

#### *Works*

The proposed development requires the carrying out of works in order to provide the hard standing surface for use in connection with the adjoining light industrial/storage use. Having regard to Section 3(1) of the Planning and Development Act, 2000, as amended, it is considered that the proposed works constitute Development.

#### **Is the proposal exempted development?**

The planning agent for the applicant has submitted an assessment of the proposed development as part of this Section 5 declaration request. It is asserted that the proposed works are exempted development having regard to:

- Class 21 and Class 22 of the Part 1, Schedule 2 (Article 6) of the Planning and Development Regulations (2001), as amended.

Under Application Register Reference 97/3586 the light industrial/storage use was first permitted on the Cork Builder's Providers site and included the provision of open storage. On this basis, it can be determined that the light industrial and open storage uses are established long-standing uses on the subject site.

However, having reviewed the planning history of the site, it is noted that the area on which the hard surface area is proposed to be developed, is not within the established site boundary. On this basis, there is no established use on the area of the site that is the subject of this declaration.

In this regard, it cannot be determined that the proposed development is located within the curtilage of the established Cork Builder's Provider Site. The word "curtilage" is not defined by the Planning Acts nor is it defined in any other piece of legislation. In this regard, it will be necessary to determine whether the subject site is in fact within the curtilage of the subject site, in order for the proposed development to be able to

utilise the exempted development provisions set out under Class 21 and Class 22 of Part 1, schedule 2 (Article 6) of the Planning and Development Regulations.

The clearest guidance in relation to what constitutes "curtilage" is set out in the Architectural Heritage Protection Guidelines for Planning Authorities (2011). While this guidance specifically relates to architectural heritage, it sets out how to determine the extent of curtilage. Following this guidance, it is determined that there has not been a functional relationship between the Cork Builders Providers Site and the area where it is now proposed to develop a hard surface area. In addition, there does not appear to be a historic relationship between the Cork Builder's Providers site and the area now proposed to be developed. In fact, it appears that this area as never included within the site boundary line, prior to the submission of this Section 5 Declaration.

#### **RECOMMENDATION**

In view of the above it is recommended that Further Information be sought in accordance with Section 5(2)(b) of the *Planning and Development Act 2000*. The information to be sought is as follows:

1. Please provide details as to the connection between the area of land where the proposed hard surface area is intended to be located and the established Cork Builder's Providers site and associated permitted light industrial and storage use.
2. Please Confirm the ownership of the area where the hard surfacing is proposed to be located.



**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](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
Líonra/Web: [www.corkcity.ie](http://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**

Cork Builders Providers, West Link, Togher Industrial Estate, Ballycurreen, 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.*

~~Section 5 Declaration seeking confirmation that the provision of a hard surface to be used in connection with the adjoining light industrial/storage use at Cork Builders Providers, West Link, Togher Industrial Estate, Ballycurreen, Cork is exempted development under Classes 21 and 22 of Part 1 Schedule 2 (Article 6) the planning and Development Regulations~~

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**  
*(Use additional sheets if required).*

Please refer to the cover letter provided by McCutcheon Halley Planning Consultants and drawings provided by JODA Consulting Engineers.

**Comhairle Cathrach Chorcaí  
Cork City Council**  
  
11 NOV 2020  
  
**Strategic Planning & Economic  
Development Directorate**

### 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 <sup>st</sup> 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)	
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### 4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Cork Builders Providers	
Applicants Address		West Link, Togher Industrial Estate, Ballycurreen, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Andrea Mc Auliffe	
	Address:	McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Cork	
	Telephone:	[REDACTED]	
	Fax:	N/A	
	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. I / We confirm that the information contained in the application is true and accurate:

Signature: Andrew Mc Auliffe

Date: 11/11/2020

.....

**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.

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*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