



Comhairle Cathrach Chorcaí Cork City Council

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

Kevin Merritt
O' Shea Leader Consulting Engineers
Unit 38 Eastgate Drive
Little Island
Cork

19th August 2021

RE: R679/21 – Section 5 Declaration
Property: 21 Parkowen, Quaker Road, Ballintemple

Dear Sir/Madam,

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

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

It is considered that proposed construction of ground floor extension **Is Development** and is **Not Exempted Development**.

Yours faithfully,

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



We are Cork.

PLANNER'S REPORT Ref. R679/21		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Whether the construction of a ground floor extension constitutes development? And if so, is it exempt development.</i>	
Location	21 Parkowen, Quaker Road, Ballintemple.	
Applicant	Karin O'Driscoll	
Date	15/09/2021	
Recommendation	<i>Is Development and Is Not Exempted Development</i>	

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

1. Requirements for a Section 5 Declaration

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

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

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

2. The Question before the Planning Authority

In framing the question to the planning authority, the applicant states in Q2 of the application form:
"Construction Of Ground Floor Extension"

3. Site Description

The property in question is a dormer semi-detached dwelling in an established residential area of detached dwellings. It forms part of a semicircle of units around a green area. It is located at the end of the semi-circle and a laneway runs down alongside the boundary wall of the property.

4. City Development Plan 2015-2021 Site Zoning, Policies and Objectives.

The site is zoned *ZO 4 Residential, Local Services and Institutional Uses* with the objective to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.

The dwelling is located in an area designated as a Zone of Archaeological Potential. Objective 9.4 **Archaeological Heritage** states *"Cork City Council will aim to protect, record and promote the rich archaeological heritage of the city"*

The unit is located in the South Parish ACA. It is not a protected structure or listed on the NIAH. Objective 9.29 seeks to *"preserve and enhance the designated Architectural Conservation Areas in the City"*.

5. Legislative Provisions

5.1 The Act

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

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

Section 4(2),

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

Section 5(1),

(See section 1 of this report)

Section 82 (1) Notwithstanding paragraph (a), (h), (i) (ia), (j), (k) or (l) of section 4 (1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

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

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

5.2 The Regulations

Article 9 (1) (a)

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

- (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (vii) consist 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 of which is an objective of a development plan or local area plan for the area in which the development is being 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.*
- (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,*

- (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 and the development would materially affect the character of the area.

Schedule 2, Part 1, Class 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house....

6. ASSESSMENT

6.1 Development

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

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

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’

I consider that the proposed element constitutes development as the proposed extension comprises of works which includes excavation, construction and extension.

5.2 Exempted development

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

The front door is located on the western gable. In general, it is generally agreed by the planning authority that the location of the front door delineates the front of the dwelling. Therefore in this instance, the proposed extension is occurring to the side of the property and not to the rear. Therefore Class 1 of Part 1 of Schedule 2 does not apply as the proposed extension is located to the side of the property.

Further to this, the site is located within a designated zone of Archaeological potential. I note the adopted objection 9.24 which states “Cork City Council will aim to **protect**, record and promote the rich archaeological heritage of the city”. Article 9 1(a) (vii) states “development to which article 6 relates shall not be exempted development for the purposes of the Act – if the carrying out of such development would - consist 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 of which is an objective of a development plan** or local area plan for the area in which the development is being 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.

Article 9(a) (xii) (above) refers to works to the exterior of a structure located in an ACA. It should be noted that this report does not have the benefit of the input of the Conservation Officer.

Notwithstanding same, given the details of the proposed extension and the location, overall, it is my planning opinion that the proposed works would not materially affect the character of the area but this is stated with the advice that a Conservation opinion would be necessary to fully determine this.

Based on the above, it is considered that given siting on the proposed development and orientation of the existing dwelling, along with the adopted objectives, the development is not exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

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

7.2 Screening for Appropriate Assessment

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

8. Conclusion

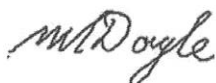
The question has been asked whether the construction of a ground floor extension is exempt. Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed construction of ground floor extension is development and is not exempted development

9. 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
- Article 9(1) (a) (vii) of the Planning and Development Regulations 2001 (as amended),
- Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed construction of ground floor extension **Is Development** and is **Not Exempted Development**.



Mary Doyle
Executive Planner
12/08/2021

3. Are you aware of any enforcement proceedings connected to this site? **NO**
 If so please supply details:

4. Is this a Protected Structure or within the curtilage of a Protected Structure? **NO**

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

5. Was there previous relevant planning application/s on this site? **NO**
 If so please supply details:

6. 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	EXISTING: 40.5 SQ. M. PROPOSED: 24.8 SQ. M.
(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) ----- ----- -----

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other ✓
Where legal interest is 'Other', please state your interest in the land/structure in question	RENTING PROPERTY	
If you are not the legal owner, please state the name and address of the owner if available	CORK CITY COUNCIL ANGELSEA STREET CORK	

9. I / We confirm that the information contained in the application is true and accurate:

Signature: Kalin O'Driscoll

Date: 29.07.2021

- 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.