



Comhairle Cathrach Chorcaí

Cork City Council

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

HSE,
Cork University Hospital,
Wilton,
Cork

22nd December 2021

RE: R688/21 – Section 5 Declaration
Property: St Catherine’s Convent, Convent Lane, Bishopstown Avenue, Cork

Dear Sir/Madam,

Please see below response in relation to a Section 5 application which was submitted on a land/structure in which you are the legal owner:

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

- (a) Section 3 of the Planning and Development Acts, 2000 – 2021
- (b) Schedule 2, Part 1, Exempted Development, Change of Use Class 8(a) of the Planning and Development Regulations 2001 (as amended);
- (c) the nature of the proposed use and users of the facility

The Planning Authority has concluded that –

- the proposed change of use from a day centre to use a medical facility for blood testing does fall under the exemptions within Class 8(a) of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended),
- however, as the change of use contravenes Condition 2 as attached to planning permission ref: TP 13/35516, regard must be had to Article 9(a)(i) of the Regulations,
- the proposed change of use contravenes a condition attached to a permission under the Act and is inconsistent with the use specified in a permission (TP 13/35516) under the Act. The change of use is is therefore **‘development’** and **‘is not exempted development’**.

And therefore, the Planning Authority considers that –

Phlebotomy services involve blood testing and constitute the provision of a medical service. This change of use to a health centre or clinic or for the provision of any medical or health services from a day centre is provided for in the exemption under Class 8 of Schedule 2, Part 4 of the Planning and Development Regulations, 2001.

It should however be noted that the development contravenes Condition 2 of planning permission ref: T.P 13/35516, which restricted the use of the building to a daycare centre and is therefore inconsistent with the use permitted by this planning permission.



We are Cork.



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As part of the Governments' response to the Covid-19 emergency, on the 27 March 2020, provision was made under S.I. No. 93/2020 for regulations where by The Planning and Development Act 2000 (other than section 181) shall not apply to certain classes of development carried out by, or on behalf of, a State authority during the relevant period. One of these classes was Medical and Laboratory Testing which the Phlebotomy service would fall within. These were temporary measures and the relevant period lapsed on 30 June 2021.

As the medical service use of the property has continued to operate beyond this date, the development does not constitute exempted development under these regulations.

I therefore conclude that the proposed change of use **'is development'** and **'is not exempted development.'**

Yours faithfully,

Áine O'Leary
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



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Comhairle Cathrach Chorcaí

Cork City Council

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

Margaret Kenneally Montgomery,
c/o Brian McCutcheon,
MchCutcheon Halley Planning Consultants,
6 Joyce House,
Barrack Square,
Ballincollig,
Cork

22nd December 2021

RE: R688/21 – Section 5 Declaration
Property: St Catherine’s Convent, Convent Lane, Bishopstown Avenue, Cork

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- the proposed change of use contravenes a condition attached to a permission under the Act and is inconsistent with the use specified in a permission (TP 13/35516) under the Act. The change of use is therefore **‘development’** and **‘is not exempted development’**.

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Áine O'Leary
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SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 688/21
Applicant: Margaret Kenneally Montgomery
Location: St Catherine’s Convent, Convent Lane, Bishopstown Avenue, Cork

The question is, whether ‘the change of and intensification of use from use as the Pieta House Daycare centre (as permitted under 13/35516) to use by the Health Service executive as an Outpatient Department for Cork University Hospital is, or is not, development and is, or is not, exempted development’.

PURPOSE OF REPORT

This report relates to a request for a declaration under Section 5(1) of the Planning Act (“Request for a Declaration) regarding whether ‘the change of and intensification of use from use as the Pieta House Daycare Centre (as permitted under TP 13/35516) to use by the Health Service executive as an Outpatient Department for Cork University Hospital is, or is not, development and is, or is not, exempted development in terms of the meaning assigned to “development” in the Planning and Development Act, 2000 (as amended).

DESCRIPTION OF SITE

The subject site is St. Catherine’s Convent, Convent Lane, Bishopstown Avenue, Cork

PLANNING HISTORY

Planning permission was granted in 2013 (TP 13/35516) for the partial change of use from Convent to Daycare Centre with ancillary staff overnight accommodation, new external ramp to main entrance, minor external works and internal alterations, all to existing Protected Structure (CC ref PS 1021).

This planning permission was subject to a conditions which states:

2. *Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001 (as amended) the use shall be restricted to a Daycare Centre (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.*

Reason: In the interests of proper planning and sustainable development

STATUTORY PROVISIONS

The exemption status of the subject works and use is appropriately assessed by the following provisions:

Planning & Development Act 2000 (as amended)

- Section 2 (1) *“In this Act, except where the context otherwise requires...‘development’ has the meaning assigned to it by section 3...”*
- Section 3 (1) *“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of 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) *“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) 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 5(2)(b) Provides that the Planning Authority may require further information to be submitted in order to issue the declaration

Planning and Development Regulations 2001 (as amended)

- Article 5: “day centre” means non-residential premises used for social or recreational purposes or for the provision of care (including occupational training);
- Article 6: 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: Development to which article 6 relates shall not be exempted development for the purposes of the Act- (amongst other reasons)
- (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,
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users.
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.
- Article 10(1): Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not —
- (a) involve the carrying out of any works other than works which are exempted development,
 - (b) contravene a condition attached to a permission under the Act,
 - (c) be inconsistent with any use specified or included in such a permission, or
 - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Article 10(2)(a): A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Other Relevant Statutory Instruments

S.I. No. 93/2020 - Planning and Development Act 2000 (Section 181) Regulations 2020

S.I. No. 133/2021 - Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (Continuation of Part 2) Order 2021

ASSESSMENT

Assessment under Section 5(1) of the Act is a two-part process. Firstly, it must be determined whether the works in question constitute development. Secondly, it must be determined whether the works constitute exempted development or not.

From an internet search it is evident that the HSE are currently utilising St Catherine's Convent as a clinic for outpatients. This is described on their website.

Extracts from HSE website accessed on 09.12.2021 as follows:

The screenshot shows the Cork University Hospital website. At the top, there is a search bar and a navigation menu with links for 'OUR SERVICES', 'GPS & CLINICIANS', 'RESEARCH & EDUCATION', 'CAREERS', and 'CUHG - HOSPITALS'. Below the navigation, the breadcrumb trail reads 'Visitors > Your Outpatient Appointment'. The main content area features a red heading 'Attending Outpatients at CUH' followed by a sub-heading 'Phlebotomy Services during COVID - updated 25/06/2020'. The text below states: 'Appointment Only - The blood room is now relocated in St Catherine's convent off the Model Farm Road. The Phone number is 021-4234910. The opening hours are 7.30-4.15 Monday to Friday.' Below this, there is a table with a date '23/04/2020' and a heading 'Phlebotomy Service'. The table content reads: 'The phlebotomy service has relocated and is operating a strict appointment system between the Dental Clinic and St. Catherine's Convent. To make an appointment call 087 - 6719838. Opening hours are 07.30 - 16.15 Monday to Friday.'

Source: [Coronavirus - COVID 19 Hospital Updates - Cork University Hospital \(hse.ie\)](https://www.hse.ie/eng/our-services/cork-university-hospital/coronavirus-covid-19-hospital-updates)

I consider that the use of the building to provide phlebotomy services constitutes "development," having regard to:

- the definition of development set out in Section 3(1) of the Act (which includes "the carrying out of any works...under land")
- the definition of "works" as set out in Section 2(1) of the Act (which includes any act of construction or excavation).

Consideration of the proposed use

Phlebotomy services involve blood testing and constitute the provision of a medical service. This change of use to a health centre or clinic or for the provision of any medical or health services from a day centre is provided for in the exemption under Class 8 of Schedule 2, Part 4 of the Planning and Development Regulations, 2001.

It should however be noted that the development contravenes Condition 2 of planning permission ref: T.P 13/35516, which restricted the use of the building to a daycare centre and is therefore inconsistent with the use permitted by this planning permission.

As part of the Governments' response to the Covid-19 emergency, on the 27 March 2020, provision was made under S.I. No. 93/2020 for regulations where by The Planning and Development Act 2000 (other than section 181) shall not apply to certain classes of development carried out by, or on behalf of, a State authority during the relevant period. One of these classes was Medical and Laboratory Testing which the Phlebotomy service would fall within. These were temporary measures and the relevant period lapsed on 30 June 2021.

As the medical service use of the property has continued to operate beyond this date, the development does not constitute exempted development under these regulations.

I therefore conclude that the proposed change of use 'is development' and 'is not exempted development.'

5. CONCLUSION

Having regard particularly to:

- (a) Section 3 of the Planning and Development Acts, 2000 – 2021
- (b) Schedule 2, Part 1, Exempted Development, Change of Use Class 8(a) of the Planning and Development Regulations 2001 (as amended);
- (c) the nature of the proposed use and users of the facility

It is concluded that:

- the proposed change of use from a day centre to use a medical facility for blood testing does fall under the exemptions within Class 8(a) of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended),
- however, as the change of use contravenes Condition 2 as attached to planning permission ref: TP 13/35516, regard must be had to Article 9(a)(i) of the Regulations,
- the proposed change of use contravenes a condition attached to a permission under the Act and is inconsistent with the use specified in a permission (TP 13/35516) under the Act. The change of use is therefore 'development' and 'is not exempted development'.

Gillian Tyrrell
Assistant Planner.

Enforcement Officer
Planning Department
Cork City Council
City Hall
Cork

14 October 2020

Re: Query in regard to potential unauthorised development at the former St. Catherine's Convent at Convent Lane Bishopstown Cork

Dear Sir/Madam,

We act for Margaret Kenneally Montgomery of Rosnalee, Convent Lane, Bishopstown Ave., Cork and make the following submission on her behalf in regard to the current use of the former St. Catherine's Convent on Convent Lane as an Out-Patient's Department by the Health Service Executive (HSE). The site in question is outlined in red on the location map which is attached as Fig 1.



Fig 1: Site Location Map

www.mhplanning.ie

McCutcheon Halley is a limited partnership registered under the Limited Partnerships Act, 1907, registration no. LPS12. Registered in Ireland No. 326490. Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCutcheon, BA(Econ) DipTP DipGIS MIPi (Chairman), Tom Halley, BA(Mod), MRUP BSc ARCH(Hons) Cert. Civil Eng. MIPi.

Also in DUBLIN
Kreston House, Arran Court
Arran Quay, Dublin 7
D07 K271
T. +353 (0) 1 804 4477
E. info@mhplanning.ie

CORK
6 Joyce House, Barrack Square
Ballincollig, Co. Cork
P31 YX97
T. +353 (0)21 420 8710
E. info@mhplanning.ie

The use of the site is governed by the planning permission which was granted to Pieta House under Ref. No. 13/35516, for "partial change of use from Convent to Daycare Centre with ancillary staff overnight accommodation". During the processing of that application the Planning Officer expressed the concern that, once permission was granted for a daycare centre (which is a Class 8 use), there was a risk that it could then be changed without further permission to a health centre (which is also a Class 8 use). This was considered to be unacceptable from a planning viewpoint as a health centre of similar size to the Pieta House daycare centre (670sqm) would materially contravene the zoning objective for the site. As result the grant of permission was subject to Condition 2 which specified that:

"Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001 (as amended) the use shall be restricted to a Daycare Centre (as specified in the lodged documentation) unless otherwise authorised by a prior grant of planning permission".

The permission was implemented by Pieta House and the site was used for a period of time as a daycare centre. Any subsequent change of use will therefore require a new planning permission unless it complies with the following description of the permitted use:

"The centre will operate as an appointments service only and not as a drop-in centre. It is anticipated that on average 15 people a day will be treated. It is envisaged that a small number of staff will reside for the first 6 months of setting up the centre but afterwards will only be occupied intermittently at night by staff. It will only be open to the public during day time hours".

We have been advised by our client that there has been a significant intensification of use of the site since the commencement of use by the HSE and that there is overspill parking on Convent Lane by minibuses and prison service vans bringing clients to the site.

In our opinion the HSE should be instructed to limit the number of clients to 15 per day in accordance with Condition 2 of 13/35516 until such time as permission is granted for retention of the unauthorised use as an Out Patients Department.

Please acknowledge receipt.

Yours sincerely,

Brian McCutcheon

Brian McCutcheon
McCutcheon Halley

16 SEP 2021

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

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

Fón/Tel: 021-4924762

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

St Catherine's Convent, Convent Lane, Bishopstown Avenue, 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.

Whether the change and intensification of use from use as the Pieta House Daycare centre (as permitted under 13/35516) to use by the Health Service Executive as an Out Patients Department for Cork University Hospital is, or is not, development and is, or is not, exempted development.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- The current use of the premises and the works carried out to facilitate that use are not covered by the Planning Regulations issued under S.I. No. 93 of 2020.
- The change of use from the permitted use is material because it contravenes the zoning objective for the site "to protect and provide for residential uses, local services, institutional use and civic uses".
- The change of use is material because it has led to a significant increase in the traffic and overspill car parking generated by the site which causes congestion traffic hazard and obstruction of access to existing dwellings on Convent Lane.
- As the change of use is material, it is 'development' as defined by Section 3 of the Planning Act.
- As the change of use contravenes Condition 2 of 13/35516, it is not 'exempted development' under Article 9(1)(a)(i) of the Planning Regulations.

3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

Ref No E8234 (a copy of the formal complaint dated 14.10.2020 is attached)

4. Is this a Protected Structure or within the curtilage of a Protected Structure? Yes, RPS 1021

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? Not known

5. Was there previous relevant planning application/s on this site? Yes

If so please supply details:

Permission was granted for Pieta House Daycare Centre under Planning Ref. 13/35516

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	677m2
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ <u>previous</u> use (please circle)	Proposed/ <u>existing</u> use (please circle)
Daycare centre for Pieta House	Out Patients Department for CUH

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	Owner of adjacent dwelling	
If you are not the legal owner, please state the name and address of the owner if available	HSE Cork University Hospital, Wilton, Cork	

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

Signature: *Bin McCutcheon*

Date: 10th September 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.

The Development Management Section
Community, Culture and Placemaking
Directorate
Cork City Council
City Hall
Anglesea Street,
Cork

10 September 2021

Re: Request for Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) in regard to development at the former St. Catherine's Convent at Convent Lane Bishopstown Cork

Dear Sir/Madam,

We act for Margaret Kenneally Montgomery of Rossnalee, Convent Lane, Bishopstown Ave., Cork and submit the attached request for a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) in regard to development at the former St. Catherine's Convent at Convent Lane Bishopstown Cork.

We also enclose a site location map; a copy of a previous enforcement complaint; and a cheque for €80.00.

Yours sincerely,

Brian McCutcheon

Brian McCutcheon
McCutcheon Halley

Comhairle Cathrach Chorcaí
Cork City Council

16 SEP 2021

Strategic Planning & Economic
Development Directorate

www.mhplanning.ie

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Also in DUBLIN
Kreston House, Arran Court
Arran Quay, Dublin 7
D07 K271
T. +353 (0) 1 804 4477
E. info@mhplanning.ie

CORK
6 Joyce House, Barrack Square
Ballincollig, Co. Cork
P31 YX97
T. +353 (0)21 420 8710
E. info@mhplanning.ie