



Comhairle Cathrach Chorcaí Cork City Council

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

Ciaran Desmond
C/o Gary Quigley,
QDM Architecture,
19 South Mall,
Cork.

12/04/2024

RE: Section 5 Declaration R823/24 - 7 Father Mathew Quay, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 12th March 2024, I wish to advise as follows:

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 of the Planning and Development Regulations 2001 (as amended),

It is considered that the proposed conversion of the upper floors of No. 7 Father Matthew Quay, Cork is not exempted development as the building is a Protected Structure (Ref. PS085) and does not meet the requirements of S.I No. 75 of 2022 3(d) (viii) which states:

"No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure'.

Therefore, the conversion of the upper floors of No. No. 7 Father Matthew Quay, Cork from office to habitable accommodation **Is Development and Is Not Exempted Development.**

Mise le meas,

Valerie Kavanagh
Senior Staff Officer
Planning - Development Management



We are Cork.

Valerie Kavanagh

From: Evelyn Mitchell
Sent: 11 April 2024 15:01
To: David O'Regan
Cc: Valerie Kavanagh; Alan Swanwick
Subject: Section 5 R823/24
Attachments: R832-24 Protected S comm to apartment.docx

Hi David - I'm in agreement with the attached report/recommendation – Evelyn

PLANNER'S REPORT Ref. R823/24		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>'Our client intends to convert the existing derelict office building to 4 No apartments use under SI 75 Of 2022. Because the property is a Protected Structure, we are asking if Cork City Council consider the proposed change of use to be exempted development. The works proposed shall not materially alter any historical elements of the structure.'</i>	
Location	7 Father Matthew Quay, Cork.	
Applicant	Gary Quigley (Agent)	
Date of receipt	12/03/2024	
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: *'Our client intends to convert the existing derelict office building to 4 No apartments use under SI 75 Of 2022. Because the property is a Protected Structure, we are asking if Cork City Council consider the proposed change of use to be exempted development. The works proposed shall not materially alter any historical elements of the structure'.*

3. Site Description

The property in question is 4 storey mid terrace building in the city centre. The building is currently vacant and historically was in office use. The building is a Protected Structure (Ref. PS085) under the

Cork City Development Plan 2022-2028, it is listed on the NIAH (Ref: 20514323) and is located within the South Channel ACA.

4. Planning History

TP 99/23653 – Grant of permission for for a 9m² office use extension to the rear of No. 7 (Charlotte House), Fr. Matthew Quay, a listed building in the City Development Plan Review 1998.

5. Legislative Provisions

5.1 The Act

Section 2(1),

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

Section 3(1),

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

Section 4(1)(h),

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

Section 4(2),

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

Section 5(1),

(See section 1 of this report)

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

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

5.2 The Regulations

Article 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.

Article 9 (1)

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

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

SI No. 75 of 2022 -Planning and Development Act (Exempted Development) Regulations 2022

Amendment of Article 10 of Principal Regulations

3. The Principal Regulations are amended in article 10 (as amended by article 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)) by substituting for sub-article (6) the following:

“(6) (a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

- b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall -

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) **No development shall consist of or comprise the carrying out of works to a protected structure**, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

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.

I consider that the proposed change of use from office constitutes a material change of use of the upper floors of the structure in question and therefore is "Development".

6.2 Exempted development

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

S.I.No. 75 of 2022 is the relevant legislation (see above).

The applicant states in the cover letter that the structure was previously used for the purposes of offices and has been vacant for some time, no specific timeframe is outlined, the interior of the premises is stated as being in disrepair. The building is a Protected Structure (Ref. PS085) and is listed on the NIAH (Ref: 20514323) and is located within the South Channel ACA.

Works to the external façade are described in the submitted drawings as ‘*only repairs and maintenance*’, the proposed works to the external façade are more comprehensively outlined in the Heritage Impact Assessment submitted with this application. These include, ‘*demolition of flat roof to single storey addition to rear*’, ‘*demolition of portion of rear wall to yard area to create doorway*’, ‘*infill of an opening in rear wall (mid twentieth century in date) ...and creation of a door and window in this infill*’, ‘*insertion of new door and reopening of a historic window*’. All windows are proposed to be replaced with timber sliding sash windows with slimline double glazing.

Works to the internal layout are described as ‘*insertion of partition walls and internal doors along with repairs and restoration of features of architectural significance*’.

Note - SI No. 75 (viii) **No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.**

A declaration under section 57 of the Act has not been submitted with this Section 5 application.

There are proposed alterations to the ground floor vacant office space that include the conversion of 1 no. room to bike store and removal of flat roof area to create an external yard. It has not been indicated if the bike store is to facilitate the proposed apartments or the office.

The proposed upper floors consist of 4 No apartments use under SI 75 Of 2022. 1 no. 1 bed apartment (2 persons) and 3 no. 2 bed apartments (4 persons).

The scheme must comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities. The applicant has not clearly set out how each of the proposed residential units on site would comply with all of the required minimum floor areas and standards that are set out in Section 7 Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities December 2022.

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

“Converting the existing derelict office building to 4 No apartments use under SI 75 Of 2022. Because the property is a Protected Structure, we are asking if Cork City Council consider the proposed change of use to be exempted development. The works proposed shall not materially alter any historical elements of the structure”.

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
- Articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended),

It is considered that the proposed conversion of the upper floors of No. 7 Father Matthew Quay, Cork is not exempted development as the building is a Protected Structure (Ref. PS085) and does not meet the requirements of S.I No. 75 of 2022 3(d) (viii) which states:

“No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure”.

Therefore, the conversion of the upper floors of No. No. 7 Father Matthew Quay, Cork from office to habitable accommodation **Is Development and Is Not Exempted Development.**



Alan Swanwick
Assistant Planner
10/04/2024



QDM Architecture,
19 South Mall,
Cork.

T: (087) 284 3889
E: info@qdmarchitecture.com
W: www.qdmarchitecture.com

Attention: Cork City Council
Company: -
Client Name: Charlotte Holdings
Project Name: Douglas Hall
Description / Reference:
Development of 4 apartments.

Issue Date: 11 Mar 2024

Project Number: 22-19

PLANNING - FIRE CERTS - CONSULTATION - PROJECT MANAGEMENT

REQUEST FOR A SECTION 57 DECLARATION.

Dear Sir / Madam,

We enclose The following documents:

Document / drawing	Reference	Quantity
OS Map	-	1
Proposed Plans, sections & elevations	PD1 - PD5	1
Existing Plans, sections & elevations	EX1 - EX-8	1
Heritage Impact Assesment		1

We act on behalf of Charlotte Holdings Ltd, and wish to submit the following application for a Section 5 Declaration in relation to the redevelopment of the above structure, a Protected Structure, No 7 Father Mathew Quay, Cork.

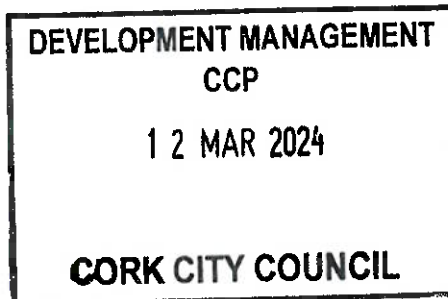
The structure was previously used for the purposes of offices, and has been vacant for some time. The interior of the premises has suffered from vandalism & ingress from pigeons.

Our client has the intention of reverting the structure back to it's original use, residential through the provision of 4 apartments. We shall make a formal application under SI 75 of 2022, should the Council agree that the proposed change of use and minor internal modifications are considered Exempted Development.

We trust the above is satisfactory, however should any further information be required, please do not hesitate to contact this office.

Regards,

Gary Quigley.



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

7 Father Mathew Quay,
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.

Our client intends to convert the existing derelict office building to 4 No apartments use under SI 75 of 2022.

Because the property is a Protected Structure, we are asking if Cork City Council consider the proposed change of use to be exempted development.

The works proposed shall not material alter any historical elements of the structure.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Works / Development relating to Question:

- Internal upgrade works to existing building;
 - Repairing all timber framed sash windows.
 - New electrical installation, including fire alarm.
 - Insulation to floors.
 - Dry lining all walls.
 - External repairs to render, paint finish to facade.

All of the works are internal and shall be done sensitively, under close supervision. The works proposed to the exterior will be carried out utilising heritage materials (i.e. timber sash windows etc.)

We have engaged Dan Noonan who has conducted a Heritage Impact Assessment, which concludes the proposed development would be beneficial for the preservation and continued use of the structure.

Drawings attached show the proposed floor plans.

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

Signature: _____



Date: _____

11 March 2024

Gary Quigley

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