



Comhairle Cathrach Chorcaí Cork City Council

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

Declan Healy,
139 Silversprings Lawn,
Cork
T23 Y867

1st November 2021

RE: R691/21 – Section 5 Declaration
Property: 139 Silversprings Lawn, Cork, T23 Y867

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:

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

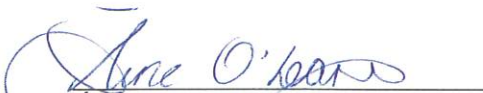
The Planning Authority has concluded that –

- Is exempted development

And therefore, the Planning Authority considers that –

- The conversion of the garage to residential use and the construction of a single storey extension (to rear of converted garage) at 139 Silversprings Lawn, Tivoli, Cork **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT**

Yours faithfully,


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



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R691/21		
Application type	Section 5 Declaration	
Description	<i>Whether the conversion of the garage to residential use and the construction of a single storey extension (to rear of converted garage) is development and if so, if it is exempted development.</i>	
Location	139 Silversprings Lawn, Cork, T23 Y867	
Applicant	Declan Healy	
Date	01/11/2021	
Recommendation	<i>Is Development and Is 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:

Is the conversion of a garage at 139 Silversprings Lawn, to usage as living space, exempted from planning permission?

Additional Details Regarding Question/ Works/ Development

The applicant states:

Works have been carried out, in 2010. As the extension was 8.47m² planning permission was not sought. The purpose of this application is to confirm that planning permission was not required. The extension was on the ground floor only. No works were carried out on the first floor.

The intention of the request is clear in that there are two separate elements that require consideration under this Section 5. The first relates to the conversion of the garage to usage as living space and the second relates to the construction of an extension (to the rear of the garage). It is reasonable to consider the question before the planning authority as being;

Whether the conversion of the garage to residential use and the construction of a single storey extension (to rear of converted garage) is development and if so, if it is exempted development.

3. SITE DESCRIPTION

The subject site is located within the Silversprings Lawn housing development in Mayfield. The subject site comprises a semi-detached dwelling with attached garage (which has been converted into residential use and is subject to this section 5) and front lawn.

The majority of the dwellings in Silversprings Lawn include attached garages, many of which have been converted to habitable accommodation/ living space.

4. PLANNING HISTORY

Subject Site

None.

Applications in the vicinity

Planning Ref. 14/36039 – Permission granted to construct a ground floor extension at the rear of dwelling, construct a two-storey extension at the side of dwelling also construct a single-story entrance porch to the front of dwelling and increase the height of a section of the existing western and southern boundary walls to 2.0m above road level and alterations to existing elevations with associated site works at 166 Silversprings Lawn, Tivoli, Cork.

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 5(2)

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

Article 6(1)

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

Article 9

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

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

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

Schedule 2, Part 1, Class 1

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 <i>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</i></p>	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres</i> b) <i>Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i> c) <i>Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i> 2. <ol style="list-style-type: none"> (a) <i>Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</i> (b) <i>Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October</i>

<p style="text-align: center;"><i>Column 1</i> <i>Description of Development</i></p>	<p style="text-align: center;"><i>Column 2</i> <i>Conditions and Limitations</i></p>
	<p><i>1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</i></p> <p><i>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</i></p> <p><i>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i></p> <p><i>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i></p> <p><i>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i></p> <p><i>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i></p> <p><i>5. The construction construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p><i>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p><i>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p><i>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p><i>7. The roof of any extension shall not be used as a balcony or roof garden.</i></p>

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

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.'*

The conversion of the garage to living accommodation includes alterations and a change of use and therefore falls within the definition of 'works'. The construction of the extension (to rear of garage) is an act of construction and falls within the definition of 'works'. Therefore, the proposal constitutes development within the meaning of the Act.

CONCLUSION: Is development

6.2 Exempted development

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

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

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

Section 4(1)

I am of the view that a minor element of the proposal falls within the scope of section 4(1), being the works proposed to the front of the garage including the replacement of the garage door with glazed sliding doors and change in roof profile from the flat roof to a lean to roof. The sliding doors on the front elevation of the converted garage comprise a similar style and finish to that of the existing windows on the dwelling. The change in profile of the roof structure has resulted in a small increase in height for the converted garage. The front elevation is finished in brick cladding similar to that on the existing house. It is noted that other garages in the estate have been converted into residential use some of which include lean to roof. I consider these elements (change of roof profile and replacement of garage door etc.) come within the scope of section 4(1)(h) where the alterations 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)

It is therefore necessary to consider whether the proposed change of use and extension comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

I consider that article 6 and **Class 1** applies, as the proposal relates to a change of use of the garage for accommodation purposes and the construction of an extension (to rear of garage). A key issue is whether the extension can be considered a rear extension or if it is a side extension. Given the extension is to the rear of the garage, which prior to conversion was original, I am of the view that the extension can be considered a rear extension where the garage forms of the house and the extension is located to the rear of this. I am satisfied that the extension can therefore be assessed against the exemption criteria of Article 6 of Schedule 2, Part 1, Class 1.

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

Condition / Limitation 1

- a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres*
- b) *Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.*
- c) *Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.*

Assessment

- a) It is likely that the extension and garage conversion were undertaken at the same time (this is not stated by the applicant). The dwelling does not appear to have been extended previously. The stated floor area of the extension (to rear of garage) is 6.53m². The stated area of the garage for change of use is 13.98m². The combined area of the change of use and extension is within the 40m² limit.
- b) No element of the proposal relates to an extension above ground level. This limitation does not apply.
- c) This limitation does not apply.

Condition / Limitation 2

- a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*
- b) *Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*
- c) *Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.*

Assessment

- a) The dwelling does not appear to have been extended previously. The stated floor area of the extension (to rear of garage) is 6.53m². The stated area of the garage for change of use is 13.98m². The combined area of the change of use and extension is within the 40m² limit.
- b) This limitation does not apply.
- c) This limitation does not apply

Condition / Limitation 3

Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Assessment

No element of the proposal is above ground floor level, and this condition does not apply.

Condition / Limitation 4

- a) *Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.*
- b) *Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.*
- c) *The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.*

Assessment

- a) The height of the extension does not exceed the height of the rear wall of the house.
- b) This limitation does not apply.
- c) The height of the highest part of the roof of the extension/ garage conversion does not exceed the height of the roof of the dwelling.

Condition / Limitation 5

The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

Assessment

The extension to the rear of the garage does not reduce the area of private open space to the rear of the house to less than 25m².

Condition / Limitation 6

- a) *Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*
- b) *Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*
- c) *Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 m*

Assessment

- a) The extension to the rear of the garage has glazed sliding doors which are west facing and are well in excess of 1m from the boundary it faces (the applicant’s rear boundary).
- b) This condition/ limitation does not apply.
- c) This condition/ limitation does not apply.

Condition / Limitation 7

The roof of any extension shall not be used as a balcony or roof garden.

Assessment

It does not appear that the roof is proposed to be used as a balcony or roof terrace.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION: Is 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.

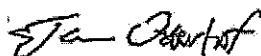
8. RECOMMENDATION

It In view of the above and having regard to –

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

The Planning Authority considers that –

The conversion of the garage to residential use and the construction of a single storey extension (to rear of converted garage) at 139 Silversprings Lawn, Tivoli, Cork **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.**



Jan Oosterhof
Assistant Planner

28/10/2021

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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

24-09-2021

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

139 Silversprings Lawn
Cork T23 Y867

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.

Is the conversion of a garage at 139 Silversprings Lawn, to usage as living space, exempted from planning permission?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Works have been carried out, in 2010. As the extension was 8.47 M2 planning permission was not sought.

The purpose of this application is to confirm that planning permission was not required.

The extension was on the ground floor only.

No works were carried out on the 1st floor.

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	20.51 M2
(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/ <u>previous use</u> (please circle)	Proposed/ <u>existing use</u> (please circle)
Garage	Living room
Yard	Utility room

7. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Declan Healy	
Applicants Address		139 Silversprings Lawn Cork T23 Y867	
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:		
	Fax:		
	E-mail address:		
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: Deek Healy

Date: 21st September 2021

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.

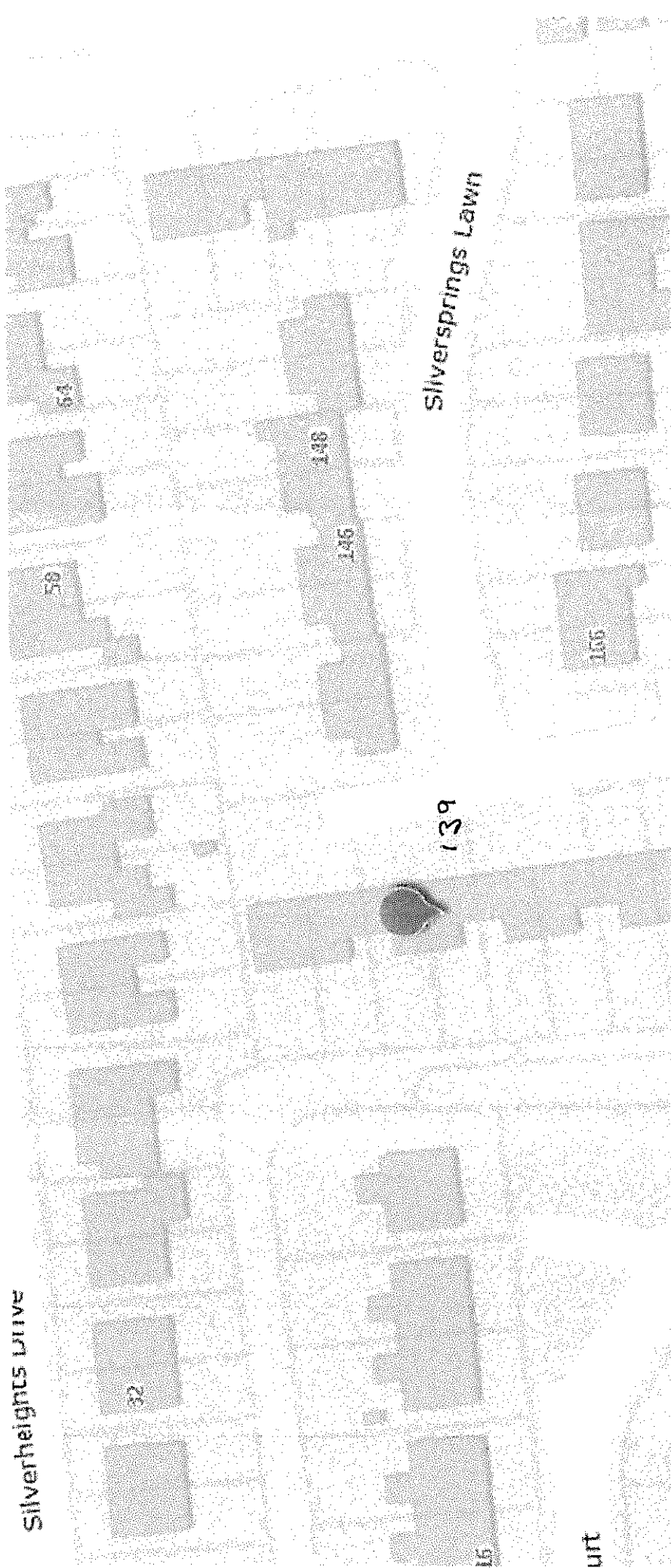
The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking 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.

MAP 7

Silverheights Drive



Sliversprings Lawn

139

32

50

63

143

145

156

16

urt

MAP 2



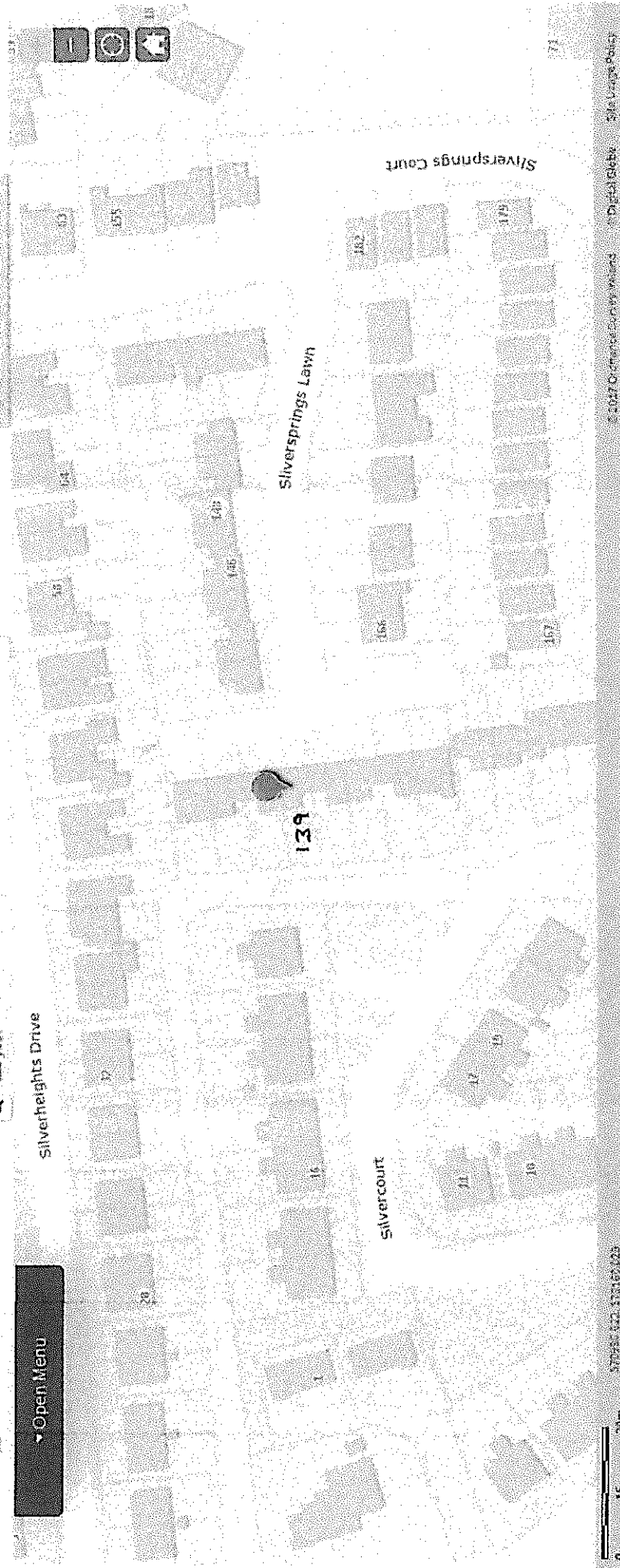
Open Menu

Q 1237667

Silverheights Drive

Home About Gallery Catalogue Help/FAQ Fullscreen

GeoHive Map



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BEFORE WORKS

PHOTO 2007



PHOTO 1

AFTER WORKS

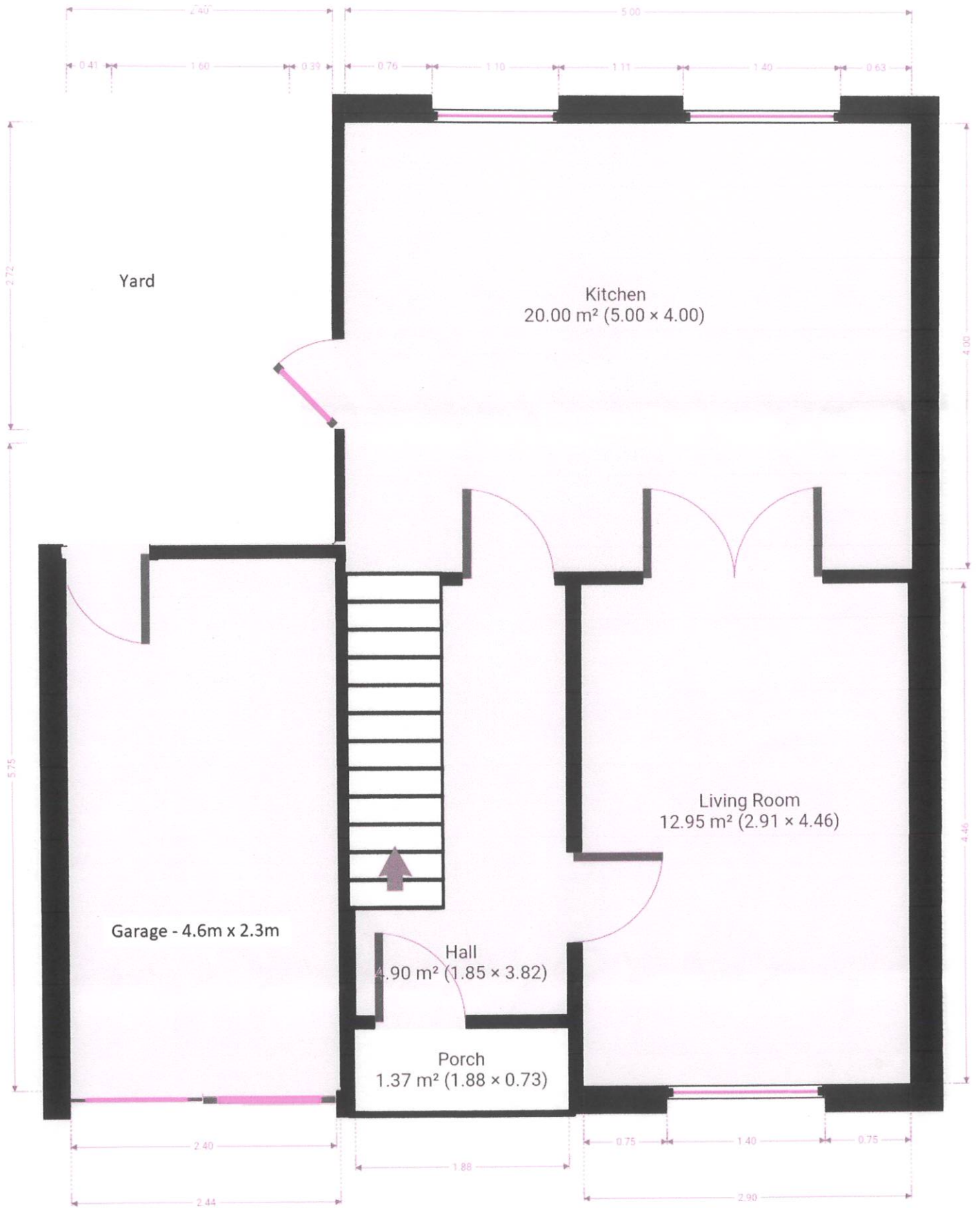
PHOTO 2021



PHOTO 2

Before Conversion

PLAN 1



AFTER CONVERSION

PLAN 2

