

Comhairle Cathrach Chorcaí Cork City Council

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

25 Glenside,
Newtown,
Annacotty
Limerick

16th December 2019

**RE: Section 5 Declaration R552/19 168 Beech Park,
Ballincollig, Cork**

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

The pedestrian gate along the northern boundary of the property at 168 Beech View, Ballincollig is development and is not exempted development.

Is misa le meas,

Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 522.19

Description: Whether the construction of a pedestrian gate in the side boundary wall is or is not exempted development?

Applicant: Dan Joe McCarthy and Bridget McCarthy

Location: 168 Beech Park

Site inspection: 12.12.2019

SUMMARY OF RECOMMENDATION

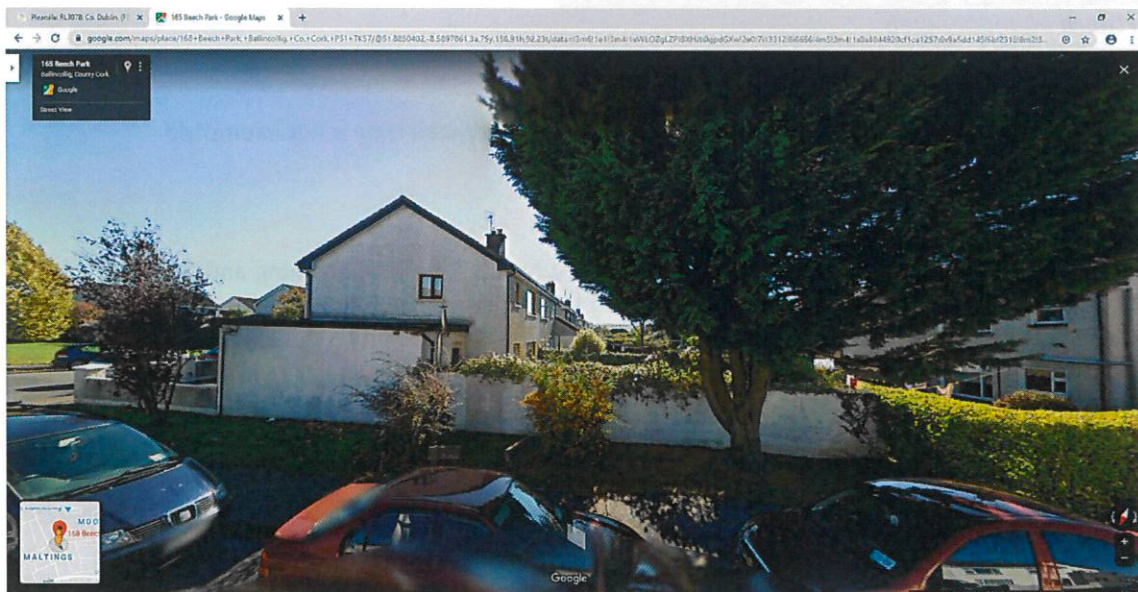
Constitutes development; is not exempted development

Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Site Inspection and Location

The site is located at the Beech View residential estate in Ballincollig. The site is a corner, with a road to the north and to the east of the site. The front elevation of the dwelling faces east. The northern side boundary is the northern elevation of the single storey garage attached to the dwelling and a c.2m boundary wall. Beyond the boundary wall to the north there is a grass verge and a public footpath. An opening has been created in the boundary wall.



Screenshot from Google Streetview – October 2010



View of northern boundary wall, grass margin and footpath



View of northern boundary wall

Subject Development

Whether the construction of a pedestrian gate in the side boundary wall is or is not exempted development?

Sub-threshold EIAR

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an EIAR is not required to be submitted.

Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a

Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

Planning history

On subject site:

None

Nearby sites:

N/A

Planning policy

The site is located within the development boundary of Ballincollig and is zoned 'existing built up area'.

Planning legislation

Planning and Development Act 2000

Section 2 (1) states: -

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined."

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

"public road" has the same meaning as in the Roads Act, 1993

Section 3 (1) states:-

"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 of use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (2) of the Act 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.

Roads Act, 1993

Public Road means a road over which a public right of way exists and the responsibility for the maintenance of which lies with the authority;

"road" includes –

- a. Any street, lane, footpath, square, court, alley or passage,
- b. any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- c. any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road,

Planning and Development Regulations 2001

Article 6(1) of the Regulations states as follows:- "(a) Subject to article 9, development consisting 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 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Restrictions on Exemption - Article 9(1)

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

Schedule 2, Part 1 (Exempted Development General) Class 5 of Part 1 of the Second Schedule to the Regulations states as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	<ol style="list-style-type: none"> 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.

Assessment

The applicants are enquiring about the construction of a pedestrian gate, 1.7m high and 1m length, opening inwards, along the northern boundary wall of their property at 168 Beech Park, Ballincollig. The reasons for the gate are set out in the referral documentation. The precise location of the pedestrian gate has not been set out – it will be along the northern boundary. An opening has been created along the northern boundary wall.

A Section 5 assessment, unlike the assessment of a planning application, is not an assessment of the merits of the development per se. It is an assessment of whether it falls within the narrow confines of the definitions / descriptions governing exemption as set out relevant provisions within the Acts and Regulations.

Having regard to the definitions in the Act, I am satisfied that the erection of the gate structure of 1.8m in height to a gate pier can be construed as “works” as defined and is accordingly development.

The development would not fall within the scope of the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

Specific provision for additional structures and extensions are provided for within the Planning and Development Regulations, 2001 Article 6 of which provides, subject to Article 9, for exemption for development described in Column 1, subject to the limitations and conditions specified in Column 2 of Part 1, Schedule 2 thereof.

Class 5 of Part 1 Schedule 2 of the Planning and Development Regulations, 2001- 2007 provides for exemption for “*The construction, erection or alteration within or bounding the curtilage of a house of a gate, gateway, railing or wooden fence or a wall of brick stone, blocks with decorative finish, other concrete blocks*”

or mass concrete". Under the Conditions and Limitations, there is a restriction to a maximum height to the rear of a house is 2 metres.

The proposed pedestrian gate would come within the scope of Class 5 and does satisfy the conditions no 1. There are no details on the design and finish of the gate – and it is unclear if it would satisfy condition no 3. Condition no 2 is not relevant.

It is also necessary to determine if any of the restrictions set out in Article 9 apply – particularly Article 9(1)(ii).

A number of Section 5 Referrals have been determined by An Bord Pleanála relating to "gate" and "gateway" within the curtilage of a dwelling. The sites in the referrals as set out below were viewed on Google Streetview to get an idea of the context.

Firstly I refer to RL3380 – this relates to the opening of an ope in the rear wall of a garden to provide pedestrian entrance from the public road / pavement and to provide 1.95m high pedestrian timber gate opening into the rear garden of a dwelling. The subject referral was one of 11 no. concurrent referrals made to the Board in respect of a road of terraced houses in a housing estate in Dublin (ref RL 3381 – RL3388 inclusive). All houses had rear boundaries adjoining a residential cul-de-sac. The Board decided that the works were development and not exempted development as follows:

- The works were development per Section 3(1) of PDA, 2000 and came within the exempted development provisions of Part 1 Schedule 2 Class 5 of PDR, 2001
- The works were de-exempted under Article 9(1)(a)(ii) (adjoining road was public road the surfaced carriageway of which exceeded 4 m width).

For these concurrent 11 no Section 5 referrals it is noted that a number of the gates opened onto the grass verge of the public road and others opened onto a footpath.

Another referral is RL3586. The pedestrian entrance opened directly onto a grassed area, in a residential estate in Raheen, Limerick. Having regard to the definition of a "road", it was considered that the grassed area forms part of the public road, and the pedestrian gate was de-exempted by Article 9(1)(a)(ii).

Finally I refer to referral 302804. For this referral, the pedestrian gate was located approximately 45m from the public road, across an area of public open space which would not be considered as a road margin for the purposes of defining a road. It was decided that the pedestrian gate did not fall within the restriction set out in Article 9(1)(a)(ii). It was determined that the pedestrian gate is development and exempted development.

The Area Engineer has confirmed that the roads in Beech View estate are public roads. The width of the road to the north exceeds 4m.

A road as defined in the Roads Act 1993 includes the margin and this would include grass verges. The Roads Act, 1993, in defining a public road clearly states a footpath and margin are included as part of the road.

I am of the opinion that this Section 5 referral is very similar to RL3380 and RL3586.

The pedestrian gate along the northern site boundary of 168 Beech Park will be the formation of a means of access to the public road. Having regard to the nature of the works, the definition of 'road', that the road width exceeds 4m, it is considered that the pedestrian gate is de-exempted by Article 9(1)(a)(ii).

Recommendation

Overall and having regard to the information on the file and the relevant legislation I would consider that the opening of a pedestrian gate along the side boundary wall may come within the scope of Class 5, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) however it would be de-exempted by the provisions of Article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001, (as amended).

I recommend that the applicants are as advised as follows:

The pedestrian gate along the northern boundary of the property at 168 Beech View, Ballincollig is development and is not exempted development.



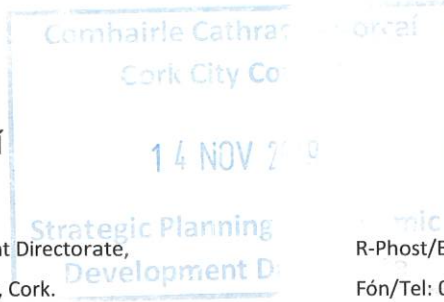
Yvonne Hogan
Assistant Planner

12.12.2019

Agreed G. Minnie (SEP) 16.12.2019.

**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

168 Beech Park, Ballincollig, 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.

Is the construction of a Pedestrian Garden Gate (1.7 metres in height and 1 metre in length, opening inwards) at 168 Beech Park, Ballincollig development and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Please see overleaf

Additional Details Regarding Question/Works/Development:

The location of the proposed pedestrian garden gate is in the right boundary wall at the back of the house. This boundary wall is owned by my parents. There is a small section of grass outside the boundary wall (approx. 3 feet). Outside this is a footpath and then the road coming into the estate.

The only access to the back garden is through the house itself. As can be seen from the map, other houses in a similar position in the estate have paths around their house on one side that allows access to the back. For example, the house directly behind 168 has a path with a hedge as boundary. The two houses across from 168 also have a path inside their boundary wall leading to the back.

The garden gate would not be used regularly – only on occasion, for example filling of the house oil tank which is in the corner on far left of the garden or bringing something into the back garden that would be difficult through the house itself. In addition, my father has reduced mobility (Parkinson's and Arthritis) so it may be beneficial to my parents to have an additional exit from the back of the house if exit from the front was not feasible in an exceptional circumstance.

Please consider the application at your earliest convenience.

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	N/A
(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) N/A
(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)
N/A	N/A

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		DAN Joe & Bridget McCarthy	
Applicants Address		168 Beech Park, Ballincollig, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Noreen McCarthy (Daughter)	
	Address:	25 Glenside, Newtown, Annacotty, KINERICK	
	Telephone:	087 7750769	
	Fax:	-	
	E-mail address:	noreenmccarthy10@gmail.com	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other
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: Den Joe McLooney

Noonan McLooney

Date: 13/11/19

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

OSi PLACE Map

559524

559291



CENTRE COORDINATES:
ITM 559408,570469

PUBLISHED:
08/11/2019

ORDER NO.:
50093175_1

MAP SERIES:
1:1,000

MAP SHEETS:
6360-25

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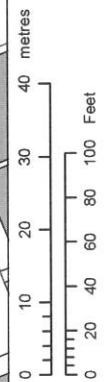
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OUTPUT SCALE: 1:1,000



LEGEND:
<http://www.osi.ie>;
search 'Large Scale Legend'

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