



Comhairle Cathrach Chorcaí Cork City Council

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

Dave Murphy,
7 Ros Árd,
Upper Glanmire,
Cork. T23 KT52

18/07/2024

**RE: Section 5 Declaration R857/24 7 Ros Árd, Upper Glanmire,
Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 27/06/2024, I wish to advise as follows:

The Planning Authority in view of the above and having regard to –

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed erection of a post and panel PVC fence, of 1.2 metres, within the front right curtilage of 7 Ros Árd, Upper Glanmire **Is Development and Is Not Exempted development.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued.



We are Cork.

Is mise le meas,

David O'Regan

**David O'Regan,
Assistant Staff Officer,
Community, Culture &
Placemaking Directorate**

PLANNER'S REPORT Ref. R857 /24		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>Permission exemption to erect a post and panel PVC within the front right curtilage of 1.2 metres of 7 Ros Ard, Upper Glanmire</i>	
Location	7 Ros Árd, Upper Glanmire, T12 KT54	
Applicant	Dave Murphy	
Date	18/07/2024	
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 Q3 of the application form:

Permission exemption to erect a post and panel PVC within the front right curtilage of 1.2 metres of 7 Ros Ard, Upper Glanmire

Under 'additional details' the following is also provided:

Post and panel fence (PVC) 1.2 metres height of the front right side of the curtilage. Seeking permission to carry out the work exemption to planning.

In the interest of clarity I consider it appropriate to formulate the question to be tested as follows:

Whether the proposed erection of a post and panel PVC fence, of 1.2 metres, within the front right curtilage of 7 Ros Ard, Upper Glanmire is development and, if so, is it exempted development?

3. Site Description

The property in question is a two storey detached dwelling in an established residential area of detached dwellings.

4. Planning History

Permission for the Ros Árd estate was granted, by Cork County Council, under application ref. no. 03/6070 on 10/07/2004. It should be noted that condition no. 49 of this grant of permission states:

Notwithstanding the exempted development provisions of the Planning & Development Regulations 2001, as amended, front boundary walls / fences or any other structures shall not be provided to the front of the sites.

More recently there is an Enforcement File, Cork County Council Ref. No. EF17039, associated with the site. This related to works described as: *Unauthorised erection of a concrete post and panel dividing wall forward of the front building line of dwelling ranging from 4ft 6 to 7 feet in height.* As a result of the resulting enforcement proceedings the wall was removed the file closed.

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(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 9 (1)

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

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(a) (i) if the carrying out of such development (i) would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 5 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.</p>	<p>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</p>

	<p>road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
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6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

6.1 Development

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

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

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

I consider that the erection of the proposed PVC fence constitutes development as it comprises of works.

6.2 Exempted development

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

I note that Class 5 type development, set out in Schedule 2 as controlled by Article 6, includes the construction of a wooden fence subject to some limitations. The proposed boundary is a pvc fence which would does not accord with this exemption.

However even if the material were wooden the exemptions to which Article 6 relate, are further controlled by Article 9 which states that these exemptions do not apply if the development would *contravene a condition attached to a permission under the Act.*

The proposed development would contravene condition no. 49 of the grant of permission for the Ros Árd estate – Ref. No. 03/6070, as it relates to the a fence to the front of the dwelling.

Therefore I conclude that the proposal is development and is not exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

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

7.2 Screening for Appropriate Assessment

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

8. Conclusion

The question has been asked:

Whether the proposed erection of a post and panel PVC fence, of 1.2 metres, within the front right curtilage of 7 Ros Ard, Upper Glanmire is development and, if so, is it exempted development?

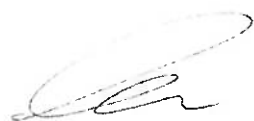
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development, and is not exempted development, as any such construction, to the front of the dwelling, would contravene a condition attached to a governing grant of permission.

9. RECOMMENDATION

In view of the above and having regard to —

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed erection of a post and panel PVC fence, of 1.2 metres, within the front right curtilage of 7 Ros Ard, Upper Glanmire **is development and is not exempted development.**



Martina Foley
A/ Senior Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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Fón/Tel: 021-4924029
Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

DAVE MURPHY .

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

7 ROS AROD UPPER GLANNIE CORK
T23 KT54 .

3. 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.

Permission Exemption to erect a post and Panel, within the front right curtilage of 1.2 metres of 7 ROS and upper Glannie Cork .

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

(PVC).
Post and Panel Fence, 1.2 metre height on the front right side of the curtilage. Seeking permission to carry out the work exemption to planning .

DEVELOPMENT MANAGEMENT
GCR
27 JUL 2024
CORK CITY COUNCIL

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

5. Is this a Protected Structure or within the curtilage of a Protected Structure?

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?

6. Was there previous relevant planning application/s on this site?
 If so please supply details:

NO.

7. 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		
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
		If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:		
Existing/ previous use (please circle)	Proposed/existing use (please circle)	

7. 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 of the owner if available		

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

Signature: [Handwritten Signature]

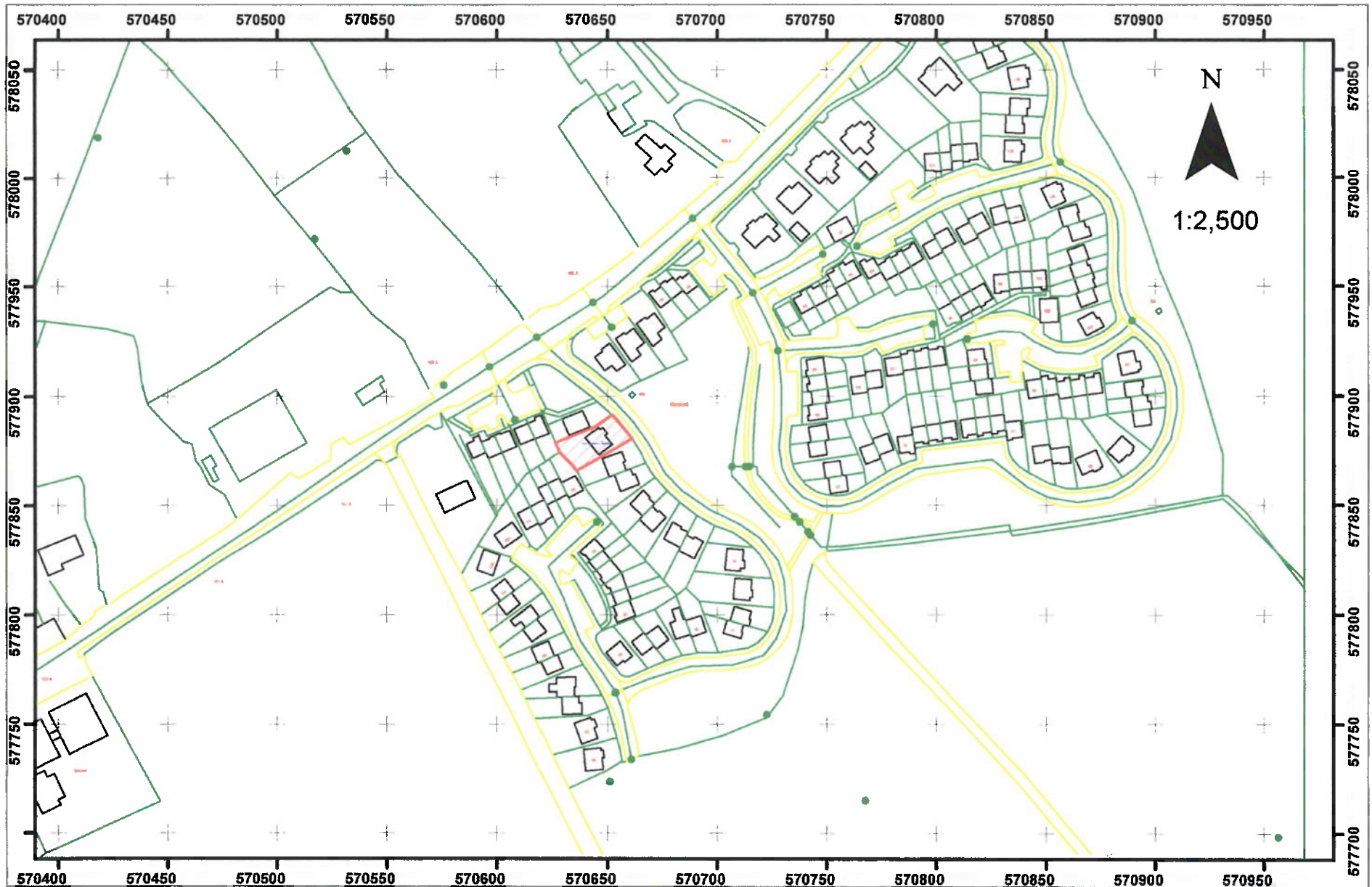
Date: 27-6-24

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

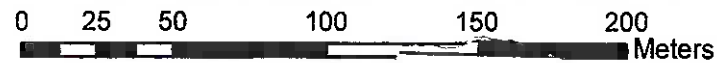
- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

PRAI Boundary Map for 7 Ard Ross, Upper Glanmire, Cork.



1:2,500

Osi Map Invoice and Copyright: INVOICE NO: 50021876



Coordinate System: IREN95 Irish Transverse Mercator
Projection: Transverse Mercator
Datum: IREN95
False Easting: 600,000.0000
False Northing: 750,000.0000
Central Meridian: -8.0000
Scale Factor: 0.9998
Latitude Of Origin: 53.5000

Date: 05/09/2018

Author: Paudie Barry HDip GIS of Baseline Surveys Ltd



PHOTOGRAPH NO. 1