

Comhairle Cathrach Chorcaí Cork City Council

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

Bridget O'Donoghue,
48 Liam Healy Road,
Fairhill,
Cork. T23 YE92

18/07/2024

**RE: Section 5 Declaration R858/24 48 Liam Healy Road, Fairhill,
Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 10/07/2024, I wish to advise as follows:

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

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 6 of the Planning and Development Regulations 2001 (as amended).

It is considered that proposed erection of external insulation to the front of property at 48 Liam Healy Road is development **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.

Is mise le meas,

David O'Regan

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



We are Cork.

PLANNER'S REPORT Ref. R858/24		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>External Insulation at the front of property</i>	
Location	48 Liam Healy Road, Fairhill, T23 TE92	
Applicant	Bridget O'Donoghue	
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:

External insulation at the front of property

I note that no details on the type of insulation has been provided.

3. Site Description

The property in question is a two storey terraced home in an established residential area. The dwelling is stepped forward of the adjoining home to the north (46 Liam Healy Road). All of the homes in this terrace have a brick façade. The wall to the side of the dwelling, which is a step in the building line of the terrace, is also finished in the same brick material.

4. Relevant Planning History

None

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

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- (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,*

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 proposed addition of external insulation to the front of the dwelling constitutes development.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The proposed works are not listed within Schedule 2 Part 1 of the Planning and Development regulations 2001 (as amended) which lists Exempted Development. Article 6 therefore does not provide for this type of development.

Section 4(1)(h) of the act does afford some exempted development where the works to the exterior of a structure *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 structure.* The addition of external insulation to this dwelling will render the external appearance of the front façade, and partial side façade, inconsistent with the remainder of the terrace.

I note that the addition of external insulation has been assessed under previous Section 5 applications. In particular the determination for R763/23, which was issued on 20/04/2023, found that this form of development is not exempt in a similar circumstance.

I therefore conclude that the proposed external insulation is classed as 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 external insulation to the front of property at 48 Liam Healy Road is development and whether it is exempted development.

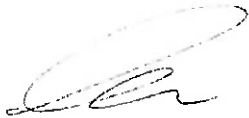
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout is development and is not exempted development

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
- Article 6 of the Planning and Development Regulations 2001 (as amended).

It is considered that proposed erection of external insulation to the front of property at 48 Liam Healy Road is development **Is Development** and is **Not Exempted Development**.



Martina Foley
A/ Senior Executive Planner

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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DEVELOPMENT MANAGEMENT
CCP

10 JUL 2024

CORK CITY COUNCIL

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

1. NAME OF PERSON MAKING THE REQUEST

BRIDGET O' DONOGHUE.

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

48 LIAM HEALY ROAD, FAIRHILL.
CORK T23 YE92.

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.

EXTERNAL INSULATION
AT THE FRONT
OF PROPERTY.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

4. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details:

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:

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 checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) 6ms x 3ms 18sq.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: Bridget O'Donoghue
 Date: 10-7-2024











