



Comhairle Cathrach Chorcaí Cork City Council

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

John Butt,
Director,
Brian O'Kennedy & Associates Ltd,
Shannon House,
Church Road,
Douglas,
Cork
T12PW40.

3rd June 2020

RE:

Section 5 Declaration R574/20 17 Hayfiled, Model Farm Road, Cork.

Dear Sir/Madam,

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

Having regard to:

- Class 3 of Part 1 of the Second Schedule (Exempted Development) of the Planning and Development Regulations 2001 (as amended);
- The fact that the wording of the exemption states 'total area' rather than 'floor area' and also refers to 'any tent, awning shade or other object' means that the total area of the structure exceeds 25 sq.m. when the open covered deck area is taken into consideration. The exempted limit of 25 sq.m. for all such structures is also breached when the covered in area to the side (east) of the house is taken into consideration rather than the internal floor area alone (Condition and Limitation No. 2);

The proposed construction of a garden room to the rear of No 17 Hayfield, Model Farm Road is therefore 'development' and is 'not exempted development'.

Yours Faithfully,

Kerry Bergin

Assistant Staff Officer

Development Management Section

Community, Culture and Placemaking Directorate



Cork City Council
Development
PLANNER'S REPORT Management
Ref. R 574/20 Strategic Planning
and Economic
Development

Application type

SECTION 5 DECLARATION

Question

Whether the construction of a garden room in the rear garden is development

and if so is or is not exempted development.

Location

17 Hayfield, Model Farm Road.

Applicant

Colette Cassidy

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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 in information necessary to enable the authority to make its decision or the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is

"Whether the construction of a garden room in the rear garden is development and if so is or is not exempted development."

3. SITE DESCRIPTION

The subject property comprises a two-storey detached dwelling house in 'Hayfield'— a cul-de-sac located off the Model Farm Road.

The question relates to a single storey garden room which it is proposed to construct to the rear of the dwelling house (see photos attached).

4. PLANNING HISTORY

None recent in relation this site.

<u>02/2640</u>: I requested the estate file for the Hayfield housing estate but was advised that it was destroyed in the 2009 flood at Cork County Council HQ.

5. CURRENT LEGISLATIVE PROVISIONS

5.1 Planning and Development Act, 2000 as amended

Section 2(1),

(a) Where the context so admits, includes the land on, in or under which the structure is situate,"

[&]quot;exempted development" has the meaning specified in section 4.

[&]quot;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, and —

"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, as amended.

Section 4(3),

- A reference in this Act to exempted development shall be construed as a reference to development which is—
- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

5.2 Planning and Development Regulations, 2001 as amended

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 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (a) if the carrying out of such development would:-

(i) "Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"...

(Article 6) Schedule 2, Part 1, Class 3

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 3

Exempted Development — General

mptea Development — General	
Column 1	Column 2
Description of Development	Conditions and Limitations
Development within the curtilage of a	
house	
CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.	 No such structure shall be constructed, erected or placed forward of the front wall of a house. The total area of such structures
	constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
	3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
	4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
	5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
	6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house

6. ASSESSMENT

6.1 Development

The first issue for consideration is whether or not the matter at hand is 'development', which is defined in the Act as comprising two chief components: 'works' and / or 'any material change in the use of any structures or other land'. It is clear that the construction of a garden room comprises 'works', which is defined in section 3(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. As the proposal comprises 'works', it is clearly therefore '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). In my opinion the proposed extension does not come within the scope of section 4(1). The proposed 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).

Restrictions on exemption

As the history file for the overall housing estate is unavailable I cannot state categorically that a condition limiting the construction of rear extensions was not placed on the governing estate planning permission file de-exempting the construction of rear extensions.

Exempted Development Regulations – Second Schedule, Part 1, Class 3. Class 3 Description of Development

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

The proposal in this case is described as a garden room. Part of the garden room consists of an overhanging roof enclosing a seating area which is exposed on the main side to the open air.

Class 3 Conditions and Limitations

No such structure shall be constructed erected or placed forward of the front wall of a house.

The garden room in question is to be located within the rear garden of the existing dwelling.

2. The total area of such structures constructed, erected or places within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

There is a shed already located in the rear garden. It is presumed this will be removed as it is located in the same area as the proposed garden room. The entire eastern passageway to the east of the house is covered over with a Perspex canopy. This area is some 12sq.m. in length and between 1.5 and 2m in width. This area must be considered along with the area of the garden room structure.

"Gross floor space" is defined in Article 3 of the Planning and Development Regulations 2001 as the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building.

The internal floor area of the garden room measures 6.25m x 4m = 25 sq.m. However I note that the term 'total area' is used in the exemption in Class 3 as opposed to the term 'floor area' which is used in Class 1 (extensions). The term total area is also used in other Classes of Exemption such as in relation heat pumps (Class 2) and advertisements (Part 2) for example. I therefore consider that the use of the term 'total area' is deliberate and different in meaning to the 'floor area' term used in Class 1.

I note in particular that the exemption relates to shades and awnings which do not have an internal floor area but instead cover a total area. I therefore consider that the external area shaded by the roof overhang must also be included in the total area calculation i.e. 5.4m x 6.65m - the entire area covered by the structure -35.91 sq.m. therefore exceeding the limitation of 25 sq.m.

The addition of the covered area to the side of the house in the calculation (approx. 18 sq.m.) also brings this figure to well over 25 sq.m.

3. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

The garden room is to be constructed to the rear, as opposed to the side, of the dwelling house. This restriction, therefore, does not apply.

4. The height of any such structure shall not exceed, in the case of a building with a tiled or slated roof, 4 metres or, in any other case, 3 metres.

The height of the proposed garden room is indicated in the drawings as being between 2.85m and 3m – the ground level is flat and there does not appear to be any substantial difference in level between the garden level and that of the adjoining houses.

5. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such."

The use of the structure is stated in the application formas 'additional domestic space associated with the dwelling for the owner's children to spend time in. There is no intended commercial use intended.' I consider that this would accord with a for a purpose incidental to the enjoyment of the dwelling house.

7. SIMILAR CASE REFERRALS

RL 2420 (2006)

The question here referred to whether a structure in the rear garden at 8 Glenabbey Road, Mount Merrion, Co. Dublin is or is not exempted development. The Board decided the said structure was not exempted development as the structure exceeded 25 square metres in total floor area. In this case, the area as measured externally and a distinction was drawn between internal floor area and

total area – it was noted that the exemption wording did not refer to 'floor area' but rather to total area.'

09.RL.2885 (September 2011)

The question here referred to whether a structure in the rear garden area at 16 Rail Park, Maynooth, Co. Kildare is or is not exempted development.

In this case the Bord Pleanala Inspector concurred with the Local Authority and considered that the correct interpretation of the condition and limitation was to apply it to the external measurements, that is the area of the footprint of the structure. The Board however decided the said structure was exempted development based on internal floor area. I note in this case the area in dispute was only the extent of the external walls.

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state as follows:

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

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.

Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 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 environmental impact assessment is not required.

Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. 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 these European sites. Accordingly it is considered that appropriate assessment is not required.

9. CONCLUSION

As the history file for the overall housing estate is unavailable I cannot state categorically that a condition limiting the construction of rear extensions was not placed on the governing estate planning permission file de-exempting the construction of rear extensions. However even if none existed, I conclude that the presence of the 'open covered deck' means that the total floor area of the structure would exceed the limitation of 25 sq.m. As noted above the exemption applies to total area and also includes references to awnings and shades therefore this area must be included in the total floor area calculation. The presence of the 'covered in' side area also means that some 18 sq.m. of the available 25 sq.m. total exempted area has already been used up.

I therefore conclude that the proposed construction of a garden room to the rear of 17 Hayfield, Model Farm Road is development and is not exempted development.

S.SO. Please advise the applicants agent as follows:

Having regard to:

- Class 3 of Part 1 of the Second Schedule (Exempted Development) of the Planning and Development Regulations 2001 (as amended);
- The fact that the wording of the exemption states 'total area' rather than 'floor area' and also refers to 'any tent, awning shade or other object' means that the total area of the structure exceeds 25 sq.m. when the open covered deck area is taken into consideration. The exempted limit of 25 sq.m. for all such structures is also breached when the covered in area to the side (east) of the house is taken into consideration rather than the internal floor area alone (Condition and Limitation No. 2);

The proposed construction of a garden room to the rear of No 17 Hayfield, Model Farm Road is therefore 'development' and is 'not exempted development'.

Evelyn Mitchell, SENIOR EXECUTIVE PLANNER 25.09.2019



CORK CITY COUNCIL CITY HALL CORK

28/04/2020 13:38:45

Receipt No.: PLAN3/0/7820567

***** REPRINT *****

R 574 20 Brian O'Kennedy

EXEMPTION CERTS - FEES 58800 80.00 GOODS 80.00 VAT Exempt/Non-vatable R 574 20 Brina O'Kennedy

Total: 80.00 EUR

Tendered:

Cheque 80.00

502919

Change: 0.00

Issued By : Eoghan Fahy From : Planning Dept. 3 Vat reg No.0005426M



CORK CITY COUNCIL CITY HALL CORK

28/04/2020 13:38:45

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COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924762

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

PLEASE STATE THE SPECIFIC OUESTION FOR WHICH A DECLARATION IS SOLIGHT.

17, Hayfield, Model Farm Road, Carrigrohane, Cork. T12 Y96V

2. QUESTION/ DECLARATION DETAILS

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.
The reference relates to a question as to whether the construction of a garden room for domestic purposed
(i.e. games), is or is not exempted development.
ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT: (Use additional sheets if required).
Garden Rooms of Beech Vista Garden Centre, Coldwinters, Ashbourne Road, Finglas, Dublin 11, D11HC7V
are to provide model number Ultimate 24 in the rear garden at the address provided.
The intended use is additional domestic space associated with the dwelling for the owners children to spend time in.
There is no intended commercial use intended.

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? X 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 should b	the following if applicable. Note: Floor areas ar se indicated in square meters (sq. M)	re measure	d from the inside	of the external walls and	
	a) Floor area of existing/proposed structure/s		206sqm Existing Dwelling. 25 sqm (Garden		
(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)?		is g those	Yes No No If yes, please provide floor areas. (sq m)		
	If concerning a change of use of land and				
	ng/ previous use (please circle)	Proposed/ 	existing use (pl	ease circle) 	
8. LEGA	AL INTEREST				
legal i	e tick appropriate box to show applicant's nterest in the land or structure	A. Owr	ner 🗸	B. Other	
	e legal interest is 'Other', please state				
If you	are not the land/structure in question are not the legal owner, please state the and address of the owner if available				
9. I / We confirm that the information contained in the application is true and accurate: Signature:					
Date: _	And Confession				

CONTACT DETAILS

10. Applicant:

Name(s)	Colette Cassidy
Address	17 Hayfield, Model Farm Road, Carrigrohane, Cork

11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	John Butt MRIAI			
Address:	c/o Brian O'Kennedy & Associates Engineers + Architects			
	Shannon House, Church Road, Douglas, Cork			
Telephone:	0877663548			
E-mail address:	johnb@bok.ie			
	dence be sent to the above address? r is 'No', all correspondence will be sent to the Applicant's			

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

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.

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.

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The map objects are only accurate to the resolution at which they were captured.
Output scale is not indicative of data capture scale. Further information is available at: http://www.osi.ie; search 'Capture Resolution' 30 91 bl 27 13 13 **OUTPUT SCALE: 1:1,000** Carrigrohane 8 Ruacháin Planning Pack Map Carraig 24 metres 52 8 3> Feet 100 30 20 09 10 22 20 E 561415 571299

Ordn. Osi Survey

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