

# Comhairle Cathrach Chorcaí Cork City Council

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

James & Betty Cremin,  
c/o Maighread Creasey,  
67 Fernwood.,  
Doughcloyne,  
Cork T12 Y9VC

24/05/2022

**RE: Section 5 Declaration R712/22 81 Meadowgrove Estate,  
Blackrock, 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 Planning Authority, in view of the above and having regard to —

- Section 2(1), 3(1) and 4 (1)(h) of the Planning and Development Act 2000 (as amended)
- the particulars received by the Planning Authority on 27.04.2022.
- the planning history of the site
- the pattern of development in the area

The Planning Authority considers that the replacement of a garage door with a window on the front elevation of the dwelling at 81 Meadowgrove Estate, Blackrock, Cork **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.**

Is mise le meas,

Kate Magner  
Development Management Section  
Community, Culture and Placemaking Directorate  
Cork City Council



We are Cork.

Application type	<b>SECTION 5 DECLARATION</b>
Question	<i>Is the change from the existing Garage Door to a Window at 81 Meadowgrove Estate, Blackrock, Cork exempt from planning permission?</i>
Location	81 Meadowgrove Est, Blackrock, Cork
Applicant	James and Betty Cremin (owners) c/o Maighread Creasey
Date	24/05/2022
Recommendation	<b>Is development and is exempted development</b>

### INTERPRETATION

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 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 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

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, "Is the change from the existing Garage Door to a Window at 81 Meadowgrove Estate, Blackrock, Cork exempt from planning permission?"

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

*Whether the replacement of garage door with window is development or is exempted development.*

#### 3. SITE DESCRIPTION

The subject property is a two storey detached dwelling in the Residential, Local Services and Institutional Uses zoning area. The area is predominantly residential in nature.

#### 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the replacement of garage door with window.

#### 5. RELEVANT PLANNING HISTORY

None on subject property

77 Meadowgrove Estate:

TP 16/36981 - full planning permission to convert existing garage to a living room with new windows, construction of a first floor extension over the garage together with minor alterations to elevations, roofs and all ancillary works. Planning permission granted.

## 6. LEGISLATIVE PROVISIONS

### 6.1 Planning and Development Act, 2000 as amended

#### **Section 2(1)**

*“exempted development” has the meaning specified in section 4.*

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
  - (i) the interior of the structure,*
  - (ii) the land lying within the curtilage of the structure,*
  - (iii) any other structures lying within that curtilage and their interiors, and*
  - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

*“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)**

*4.(1) The following shall be exempted developments for the purposes of this Act—*

*...*

*(h) 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, 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.

**Section 5(1)**

See section 1 of this report.

**7. ASSESSMENT**

**7.1 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’.

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. I consider that the proposal constitutes development as it comprises alteration of an existing garage door to a window on a dwelling house to comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

**CONCLUSION**  
**Is development**

**7.2 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 elements of the proposal come within **both subsections (1) and (2) of section 4.**

**Section 4(1)**

In my opinion this proposal comes within the scope of section 4(1), being the works proposed to the existing front garage door to replace it with a window of similar style and finish to that of the existing ground floor windows.

The issue here is whether this alteration to part of the front of the dwelling materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures?

A site visit took place on the 19<sup>th</sup> May 2022. The houses in the street and estate have been modified over the years through conversions of garages, front porches and extensions.

Having regard to the location and size of the proposed window, and the existing character of the house and street, I would not consider that the replacement of the garage door with a window materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

I consider that this would come under the scope of section 4(1)(h). In this regard I would consider the replacement of a garage door to a window is to be exempted development for the purposes of Section 4(1)(h) of the Planning and Development Act 2000.

**Restrictions on exemption**

I do not consider that any apply in this instance.

**CONCLUSION**

**Is exempted development**

**8. ENVIRONMENTAL ASSESSMENT**

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

*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.*

**8.1 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.**

**8.2 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. RECOMMENDATION

It is recommended that the applicant is advised as follows: -

Having regard to:

- Section 2(1), 3(1) and 4 (1)(h) of the Planning and Development Act 2000 (as amended)
- the particulars received by the Planning Authority on 27.04.2022.
- the planning history of the site
- the pattern of development in the area

The Planning Authority considers that the replacement of a garage door with a window on the front elevation of the dwelling at 81 Meadowgrove Estate, Blackrock, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

I concur with the Report and Recommendation of the Area Planner.



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Lucy Teehan  
Senior Executive Planner  
24/5/2022

**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**

81 Meadowgrove Est, Blackrock, 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 change from the existing Garage Door to a Window at 81 Meadowgrove Estate, Blackrock, Cork exempt from planning permission?*

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

We are in the process of updating the internal downstairs room, which is inside the existing garage door, to a bedroom and wet room for James Cremin. The existing living space is not suitable for his needs. We would like to make the existing garage door, which is a metal structure into a window so that he will be able to view into the park from this new room.

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

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- 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? YES**

If so please supply details:

The existing dwelling was extended in the 1986 and received full planning permission at the time.

## 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)

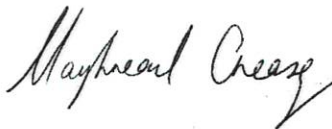
(a) Floor area of existing/proposed structure/s	NO CHANGE TO FLOOR AREA
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(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) _____ _____ _____

## 8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	<b>B. Other – X</b>
Where legal interest is 'Other', please state your interest in the land/structure in question	I am the owners daughter and asking for clarification on their behalf	
If you are not the legal owner, please state the name and address of the owner if available		

9. I confirm that the information contained in the application is true and accurate:

Signature:



Date: 25/04/22



## Kate Magner

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**From:** planning  
**Sent:** Wednesday 27 April 2022 08:32  
**To:** Kate Magner [REDACTED]  
**Subject:** FW: Query in relation to if Planning permission is required  
**Attachments:** Section 5 Declaration Application Form.2020 - 81 Meadowgrove Est.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Kate,

Please see Section 5 application attached.

Kind Regards,

Áine

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**From:** Cremin, Maighread [REDACTED]  
**Sent:** Tuesday 26 April 2022 16:00  
**To:** planning <planning@corkcity.ie>  
**Cc:** Betty Cremin [REDACTED]  
**Subject:** RE: Query in relation to if Planning permission is required

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Hi Áine

Thanks for coming back to me. See attached the form I have filled out on behalf of my parents

Regards

Maighread

**Maighréad Cremin**  
[REDACTED]

*Maighread Cremin*  
[REDACTED]  
Tel: +353 86 807485  
[REDACTED]  
[REDACTED]  
[REDACTED]

Think before you print!

**From:** planning <[planning@corkcity.ie](mailto:planning@corkcity.ie)>  
**Sent:** Friday 1 April 2022 13:07  
**To:** Cremin, Maighread <[maighread.cremin@musgrave.ie](mailto:maighread.cremin@musgrave.ie)>  
**Subject:** RE: Query in relation to if Planning permission is required

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Hi Maighread,

We would advise that you apply for a Section 5 on this to confirm if it is exempt or not. I have attached the relevant form.

Kind Regards,

Áine

**From:** Cremin, Maighread <[maighread.cremin@musgrave.ie](mailto:maighread.cremin@musgrave.ie)>  
**Sent:** Friday 1 April 2022 09:16  
**To:** planning <[planning@corkcity.ie](mailto:planning@corkcity.ie)>  
**Cc:** Betty Cremin <[mandibettycremin@gmail.com](mailto:mandibettycremin@gmail.com)>  
**Subject:** Query in relation to if Planning permission is required

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To whom it may concern,

I am contacting you on behalf of James and Betty Cremin Cc'd on this email. I received your email from Carol in the Grants department.

They are in the process of applying for a HD (Adaption Grant) HD/2021/2393 to convert their downstairs garage into a bedroom and wet room for medical purposes,

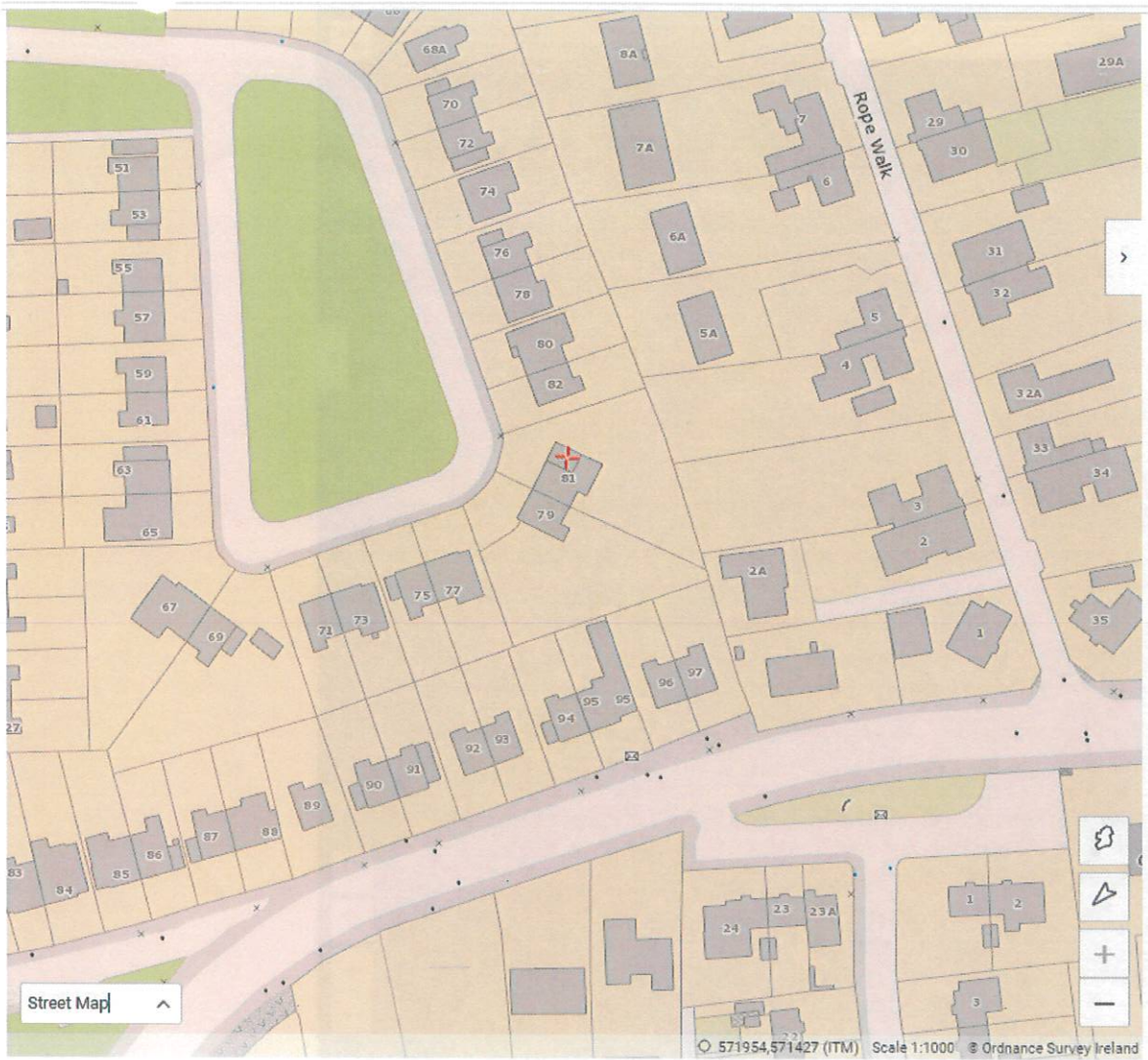
We understand that they will not require planning for the conversion however we would like to seek guidance to understand if they require planning to change the existing garage door to a window in the front of the house.

The existing door can be seen in the below.

I would appreciate if you could respond and let us know.

Regards

Maighread





Can you please come back to me and let me know if there is anything that can be done to move this process along

Regards

Maighread

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**From:** Kate Magner <kate\_magner@corkcity.ie>  
**Sent:** Wednesday 27 April 2022 09:23  
**To:** Cremin, Maighread [redacted]  
**Cc:** [redacted]  
**Subject:** FW: Query in relation to if Planning permission is required

**Kate Magner**

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**From:** Cremin, Maighread [REDACTED]  
**Sent:** Wednesday 27 April 2022 13:57  
**To:** Kate Magner  
**Cc:** [REDACTED]  
**Subject:** RE: Query in relation to if Planning permission is required

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Hi Kate

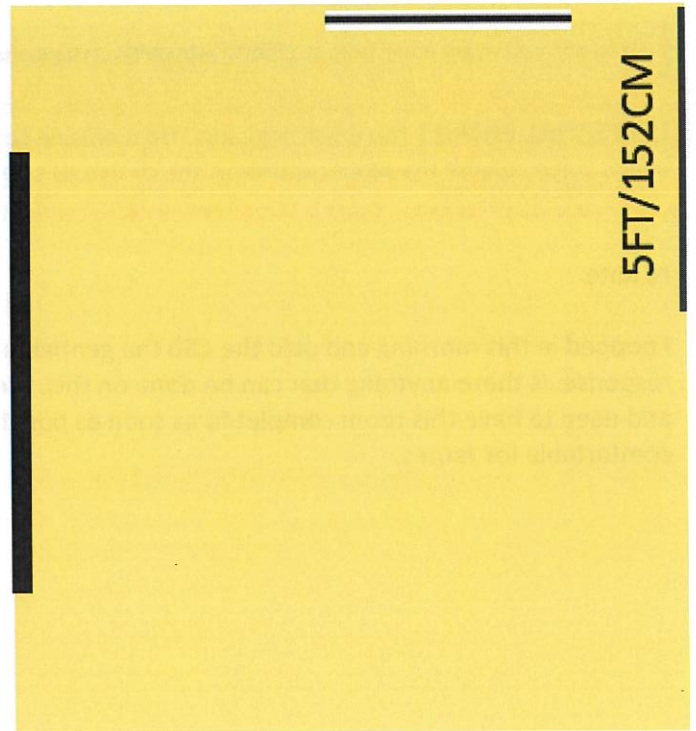
I popped in this morning and paid the €80 the gentleman on the desk said it would take 4 to 5 weeks to get a response. Is there anything that can be done on this. We have just been given the grant to begin the internal work and need to have this room completed as soon as possible to make the living accommodation more suitable and comfortable for James.

Below is the drawing which was submitted as part of the grant application



**BACK DOOR TO BE REPLACED**  
**4FT/ 121.92CM**

**GARAGE DOOR**  
**TO BE REPLACED BY**  
**WINDOW**  
←→  
**200CM High**  
**221CM Wide**



**5FT/152CM**

←→  
**17FT 5"**  
**525CM**

Below is a street map of the estate with a red mark on 81 Meadowgrove Est.



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