



Comhairle Cathrach Chorcaí Cork City Council

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

Cadogans Strand,
c/o Mulcahy Ralph Architects Ltd.,
Unit 206 Acorn Business Centre,
Mahon Industrial Estate,
Cork.

15/12/2022

**RE: Section 5 Declaration R754/22 Former Station Masters House,
Rochestown Road, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 02nd December 2022, I wish to advise as follows:

The Planning Authority, in view of the above and having regard particularly to:

- Section 3 of the Planning and Development Acts, 2000 – 2011,
- Schedule 2, Part 1, Exempted Development, Change of Use Class 8(a) of the Planning and Development Regulations 2001 (as amended),
- Schedule 2, Part 1, Exempted Development Article 10(1)(d); (as amended),

It is concluded that –

- As the previous use has been abandoned, regard must be had to Article 10 (1)(d),
- The previous use is considered to have been abandoned and the proposed use is therefore a material change of use that requires planning permission. The proposed use is therefore **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, 15th December 2022.

Is mise le meas,

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



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 754/22
Applicant: Christopher Ralphs (Agent)
Location: Former Station Masters House, Rochestown Road, Cork

The question is, whether the change of use from residential and commercial use of the site (sale of railway tickets and tickets for boats) extends to the sale of takeaway hot and cold beverages.

Purpose of Report

1. 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.

2. Site Location

The building is located on the northern side of the Rochestown Road. It sits on an elevated platform that was formerly used as the Rochestown Station and Station Masters residence. The building is not a protected structure. To the west there is the remainder of the platform, and to the east, there are residential dwellings built where the remainder of the platform would have been.

3. 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, **“whether the change of use from residential and commercial use of the site (sale of railway tickets and tickets for boats) extends to the sale of takeaway hot and cold beverages.”**

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 change of use from residential and commercial use of the site (sale of railway tickets and tickets for boats) to the sale of takeaway hot and cold beverages is exempted development.”

4. Planning History

None

TP 07/12280

Incomplete application

TP 07/13357	<p>Planning permission granted for the Demolition of non-period side extension to former Rochestown Railway Station, re-instatement and change of use of existing ticket office to dwelling, construction of two storey extension to include ground floor office, 2 no. one bed apartments and 1 no. two bed apartment, with parking, and ancillary site works.</p> <p>Not implemented.</p>
TP 07/7638	<p>Planning permission refused for the demolition of extension to the former Rochestown Railway Station and re-instatement of same as dining room with single storey extension and basement area for use as bistro/bar/restaurant with balcony area and ancillary facilities, parking and ancillary site development works.</p>
TP 07/6161	Incomplete application
TP 07/12280	Incomplete application

5. Relevant Legislation

Planning & Development Act 2000 (as amended)

Section 3(1) of the Act defines 'development' as the carrying out of works or the making of any 'material change in the use of any structures or other land'. While there is no statutory definition for 'material change' of use, the question of whether a such a change has occurred can be determined by identifying the existing or established use and the subsequent use and determining the different impact such uses would have in planning terms.

Planning and Development Regulations 2001 (as amended)

Article 5 (1) of the Regulations includes the following definition:

"shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,*
- (b) as a post office,*
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*

- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Article 6(1) of the Regulations states as follows:

“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 10 (1) of the Regulations states:

“Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not -

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

Class 14 of Part 1 of the Second Schedule outlines the following exempted development:

‘Development consisting of a change of use

(a) from use for the sale of hot food for consumption off the premises or for the sale or leasing or display for sale or leasing of motor vehicles to use as a shop.

(b) from use as a public house to use as a shop

(c) from use for the direction of funerals as a funeral home as an amusement arcade or as a restaurant to use as a shop, (d) from use to which class 2 of Part 4 of this Schedule applies to use as a shop...’

Part 4 of the Second Schedule includes Exempted Development – Classes of Use, with Class 1 being ‘Use as a shop’.

ASSESSMENT

Assessment under Section 5(1) of the Act is a two-part process. Firstly, it must be determined whether the works in question constitute development. Secondly, it must be determined whether the works constitute exempted development or not.

I consider that the use of the building to provide for a takeaway hot drinks services constitutes "development," having regard to the definition of development set out in Section 3(1) of the Act (which includes "*the making of any material changes in the use of any structures or other land*").

Consideration of the existing use

A site visit has been carried out and it is noted that the subject structure is vacant and undergoing refurbishment. A review of images from the preceding 13 years shows that the structure has been consistently vacant and in a state of dereliction. It is understood that the rail line and passenger services were withdrawn in 1932 and so it can reasonably be assumed that ticket sales also ceased at this point.

The applicant has asserted in their question to the authority that there is an established use from which they are seeking a change. However, from what has been observed on site, and the length of time which the structure has been vacant, it is reasonable to conclude that any previous use has been abandoned and the current use of the structure is 'nil'.

I would draw attention to the statement by Hederman J. in the Supreme Court in the case of Dublin C.C. v Tallaght Block Company (1985) I.L.R.M. 512 as follows:

"where a previous use of land has not been merely suspended for a temporary and determined period, but has ceased for a considerable time with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use."

It is considered that any previous use of the subject structure has been abandoned and as such the existing structure has a 'nil' use, from which there are no exempted development provisions as set out in the regulations.

Consideration of the proposed use

In the interests of clarity, the previous known use would have been as a ticket office with ancillary residential accommodation above. The selling of tickets for travel would have come under the definition of a 'shop' as defined in the regulations. I consider that the proposed use of the structure to sell takeaway hot beverages would constitute a material change of use which is not provided for within the meaning of "sale of retail goods" as defined under Article 5 (1) (a) and that as such would constitute a material change of use that is not exempted development.

However, as it is clear that the previous use has been abandoned, the resumption of that use or any use would require planning permission.

Therefore the use of the structure for the sale of takeaway hot and cold beverages is a material change of use that requires planning permission and this change of use is not provided for in the exemption under Class 8 of Schedule 2, Part 4 of the Planning and Development Regulations, 2001.

It is therefore concluded that the proposed change of use 'is development' and 'is not exempted development.'

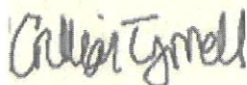
5. CONCLUSION

Having regard particularly to:

- (a) Section 3 of the Planning and Development Acts, 2000 – 2011
- (b) Schedule 2, Part 1, Exempted Development, Change of Use Class 8(a) of the Planning and Development Regulations 2001 (as amended);
- (c) Schedule 2, Part 1, Exempted Development Article 10 (1) (d)

It is concluded that:

- As the previous use has been abandoned, regard must be had to Article 10 (1) (d),
- The previous use is considered to have been abandoned and the proposed use is therefore a material change of use that requires planning permission. The proposed use is therefore 'development' and 'is not exempted development'.



Gillian Tyrrell
Assistant Planner
13.12.2022

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

Former Station Masters House, Rochestown Road, 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.

Does the established residential and commercial use of the site (sale of railway tickets and tickets for boats) extend to the sale of take away hot and cold beverages.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

It is anticipated that a prospective planning application will be made in the future for the extension of the existing building and associated site works for the provision of enhanced facilities.

DEVELOPMENT MANAGEMENT

CCP

02 DEC 2022

CORK CITY COUNCIL

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	102 sqm
(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) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ <u>previous use</u> (please circle) Former Station Masters house (incl ticket office) for Cork, Blackrock and Passage Railway, laterly Southern Railways	<u>Proposed/ex</u> isting use (please circle) Outlet for take away hot/cold drinks at ground floor level and residential at first floor level.

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Cadogans Strand
Applicants Address	Library House, 18 Dyke Parade, Cork	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Mulcahy Ralphps Architects Ltd
	Address:	Unit 206 Acorn Business Centre Mahon Industrial Estate, Cork
	Telephone:	026 8366722
	Fax:	
	E-mail address:	_____
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes <input type="checkbox"/> No <input checked="" 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 <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 and address of the owner if available		

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

Signature:  Christopher Ralphs (Agent)

Date: 01/12/2022

.....

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

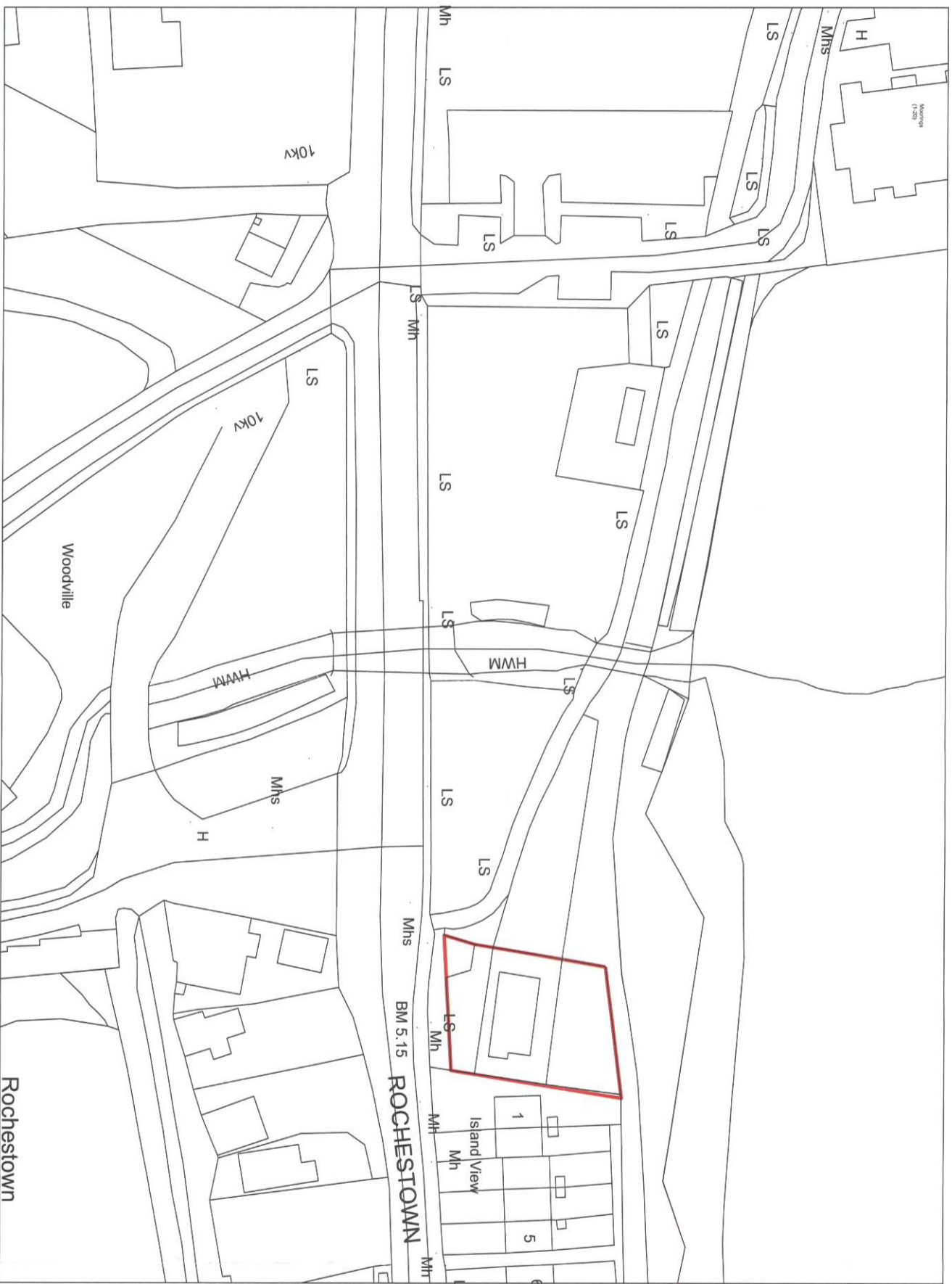


SITE AREA: 0.072 Ha

O.S. REFERENCE:
6429-A

X,Y = 573057,569517

— SITE BOUNDARY



SITE LOCATION MAP

1:1000 @ A3

Read dimensions only, do not scale.
Read with attention relevant drawings, specifications,
and all other relevant documents.
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This drawing or design may not be reproduced without permission.

PROPOSED DEVELOPMENT
AT ROCHESTOWN ROAD

FOR CAOOGAN'S STRAND LTD

SITE LOCATION MAP

Rev. 00

SKETCH

Mulcahy Ralphs Architects
Unit 206, Acorn Business Centre, Cork
Web: www.mulcahyralphsarchitects.com
Scale 1:1000 Date 06.02.19 Dwg 19007|01|2060|00