

Comhairle Cathrach Chorcaí Cork City Council

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

Ronan Leech
17 Lotamore Park
Mayfield
Cork City

23rd November 2020

RE:*Section 5 Declaration R610-20
17 Lotamore Park, Mayfield, 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 and having regard to —

In view of the above and having regard to —

- Sections 2, 3 and 4 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 development – ‘Attic conversion – is planning retention needed? Or is it exempt’.

– is development and is not exempted development

Kerry Bergin
Assistant Staff Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

Kerry Bergin

From: Helen O'Sullivan
Sent: 19 November 2020 11:56
To: Kerry Bergin
Cc: Michelle Broderick
Subject: Section 5 - R610-20
Attachments: 17 Lotamore Park, Mayfield, Cork City - R610-20.pdf

632	R610/20	20/10/2020	17/11/2020
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	17 Lotamore Park, Mayfield, Cork	Attic Conversic
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Hi Kerry,
Please find attached, Section 5 Report for the above dwelling.
I will leave the hardcopy on your desk next time in office.
Contact details for correspondence to the applicant as follows:


Ronan Leech,
17 Lotamore Park,
Mayfield,
Cork City.

Michelle – can you update your hardcopy as usual to reflect that this is now completed please.

Thanks again all,
Regards,
Helen.

Helen O' Sullivan

A. Planner, Development Management Section,
Community, Culture & Placemaking,
Cork City Council, City Hall, Cork, T12 T997
Email: helen_osullivan@corkcity.ie

	PLANNER'S REPORT Ref. R610/20	Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>Whether planning retention is needed or is it exempt for an attic conversion?</i>	
Location	17 Lotamore Park, Mayfield, Cork city.	
Applicant	Ronan Leech	
Date	19/11/2020	
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

2.1 In framing the question to the planning authority, the applicant states in Q2 of the application form:

'Attic conversion – is planning retention needed? Or is it exempt?'

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 of an attic for habitable use, with a rear window is development, and if so, is it exempted development?

2.2 Under Additional Details the applicant states:

Photographed attached for your perusal include:

Images of construction completed.

Images from construction window to rear of property.

Image of front of premises.

Construction was 2002 and consists of:

¾ WBP used on exterior with membrane as pvc cladding

4" inch cavity with 6' insulation to interior wall of 3/1 WBP

Sheeted with membrane and T&G panels.

Roof is 6’x2’ joists with 3/4’, insulated with torch on felt with 2 layers of felt, roof support includes steel RSJ wall to wall. Flooring joists are 4’ x 2’ with 6’ x 2’ each bolted onto them from exterior walls with ¾ ‘ ply flooring sheets. Solid stair access – 12’ x 2’ stairs with inch thick threads and risers.

3. Site Description

The subject site is a two-storey, semi-detached residential unit located at No. 17 Lotamore Park, Mayfield, Cork City. It forms part of a terrace that fronts onto a green area within the estate.

4. Planning History

There is no known recent planning history associated with the subject site.

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 9 (1)

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

–

(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,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural

conservation area or an area specified as an architectural conservation area in a development plan for the area ... and the development would materially affect the character of the area,

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as 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 –

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned

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 proposal constitutes a ‘material change in the use of any structures’. It is clearly therefore ‘development’ within the meaning of the Act.

‘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 element constitutes development as it comprises of alteration to an existing building.

Conclusion: Is development.

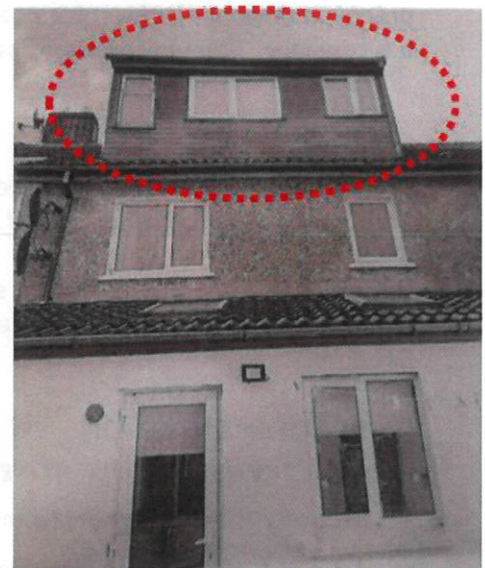
6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Essentially the proposal involves conversion of the attic roof-space for habitable use, including the construction of a large box dormer window at the rear, of a considerable size and scale that has 3 no. window fenestrations. The rear box dormer takes up a considerable proportion of the width of the entire roof face. The rear of the property is visible from Mayfield United sports field.

Fig. 1: Rear of No. 17 Lotamore Park, Mayfield, Cork City (applicant’s submitted photograph).

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) states:

“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;

I consider that while the conversion of the attic affects the interior of the structure only, that the large rear box dormer window as constructed materially affects the external appearance of the structure. As such, it renders it inconsistent with neighbouring structures. While located to the rear, it is nonetheless visible from a public location, and the extents of its prominent bulk impacts materially on the dwelling, see Fig. 1.

Section 4(1)(h) of the Act sets out a limited exemption for development to the exterior of buildings. The measure used is whether the development / works *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.*

Accordingly, I do not consider that the box dormer falls within the above limited exemption. I conclude that the addition of a bulky rear box dormer window, which forms part of the attic conversion, is a material change of the dwelling, and therefore 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 change of use of an attic for habitable use, with a rear window 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**

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
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed development – *putting a velux window in the front roof of my house, which is facing onto the road* – **is development and is not exempted development**

Helen O'Sullivan

Helen O' Sullivan
Assistant Planner
18/11/2020.

20-10-2020

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

17 LOTANORE PARK
MAYFIELD
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.

ATTIC CONVERSION - IS PLANNING PERMISSION NEEDED?
OR IS IT EXEMPT.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

PHOTOGRAPHS ATTACHED FOR YOUR PERUSAL INCLUDE:

IMAGES OF CONSTRUCTION COMPLETED

IMAGES FROM CONSTRUCTION WINDOW TO REAR OF PROPERTY

IMAGE OF FRONT OF PREMISES.

CONSTRUCTION WAS 2002 AND CONSISTS OF:-

3/4" WBP USED ON EXTERIOR WITH MEMBRANE AND PVC CLADDING
4" INCH CAVITY WITH 6" INSULATION TO INTERIOR WALL OF 3/4" WBP
SHEETED WITH MEMBRANE AND T&G PANELS.

ROOF IS 6x2" JOISTS WITH 3/4" WBP, INSULATED AND T&G ON FELT
WITH 2 LAYERS OF FELT, ROOF SUPPORT INCLUDES STEEL RSS WALL
TO WALL. FLOORING JOISTS ARE 4x2" WITH 6x2" COACH BOLTED
ONTO THEM FROM EXTERIOR WALLS TO INTERIOR BLOCK WALLS WITH
3/4" PLY FLOORING SHEETS. SOLID STAIR ACCESS - 12" x 2" STAIRS WITH
1 INCH THICK TREADS AND RISERS.

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

No

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? No

If so please supply details:

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	<u>20m²</u>
(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) <u>4.5m²</u>
(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)
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-----	-----
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8. 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		

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

Signature: 

Date: 16/10/2020

- 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.



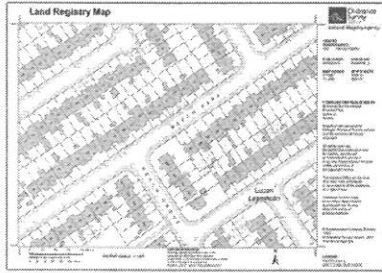
Land Registry Compliant Map

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The Property Registration Authority (formerly Land Registry) accepts Ordnance Survey Ireland Land Registry maps, with Irish Transverse Mercator (ITM) co-ordinates shown on the upper right corner and the lower left corner [Read more...](#)



Street Map ^

571221,573717 (ITM) Scale 1:1000 © Ordnance Survey Ireland

Details

A Land Registry Compliant Map is an extract (A4 or A3 size) of the most up to date mapping detail for the defined Area of Interest. The data is supplied as a PDF.

The purpose of an OSi Land Registry Compliant Map is

- o To provide a map of the Area-of-Interest for submission to the Property Registration Authority in support of a Land Registry application.
- o To provide a map of the Area-of-Interest, for submission to the Property Registration Authority for the purpose of buying or selling land.

English | Gaeilge

17 LOTAMORE PARK

MAYFIELD

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T23 Y2N7

