



# Comhairle Cathrach Chorcaí Cork City Council

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

Patrick Hanley,  
2 Alma Villa's,  
Gardiner Hill,  
Cork.

22/05/2024

**RE: Section 5 Declaration R849/24 Glanmire Industrial Estate,  
Glanmire, Cork.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 07/05/2024, 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 of the Planning and Development Act 2000 (as amended), and
- Article 10(1) and Schedule 2, Part 4 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that –

*the change of use from the previously established laboratory use to physiotherapy clinic, gym and office* at The Former Eurofins Exova Building, Glanmire Industrial Estate, Glanmire, Cork T45 R863 **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.



**We are Cork.**

Is mise le meas,

David O'Regan

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

<b>PLANNER'S REPORT</b> <b>Ref. R849/24</b>		Cork City Council Culture, Community and Placemaking
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Can the premises be used as a physiotherapy clinic, gym and office with current planning/ zoning.</i>	
<b>Location</b>	Glanmire Industrial Estate, Glanmire, T45 R863	
<b>Applicant</b>	Patrick Hanley	
<b>Date</b>	22/05/2024	
<b>Recommendation</b>	<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 Q2 of the application form:

*Can the premises be used as a physiotherapy clinic, gym and office with current planning/ zoning.*

The intention of the request is clear, and it is reasonable to consider the question before the planning authority as being:

*Whether the change of use of the former Eurofins Exova Ltd building from the previously established laboratory use to physiotherapy clinic, gym and office is or is not development and is or is not exempted development.*

### 3. SITE DESCRIPTION

The subject site comprises a single storey building within the Glanmire Industrial Estate. The unit is currently vacant having previously been occupied by Eurofins Exova Ltd (laboratory and office accommodation). It is unclear how long the unit has been vacant.

### 4. PLANNING HISTORY

#### Recent Planning Applications

07/7145 – Permission granted for new signage on the front elevation of the premises.

A review of historic planning files indicates that established use on the site was a laboratory with ancillary office space. Permission was granted under planning ref. 98/1359 for an extension to the existing laboratory.

Permission was granted for an extension and covered walkway to rear of the 'Consult-Us Laboratory' premises under planning ref. 02/4956.

I am satisfied that the permitted/ established use on the site is a laboratory.

## 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, except where the context otherwise requires, "development" means, -*

- a) The carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land, or*
- b) Development within the meaning of Part XXI.*

#### 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)(a),

*The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—*

- i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*
- ii) The development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

#### Section 4(2)(b)

*Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.*

#### Section 4(2)(c)

*Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.*

#### Section 5(1),

*(See section 1 of this report)*

**Section 57(1)**

Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

- (a) the structure, or
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

**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)(a)**

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,
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (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,
- (xi) obstruct any public right of way,
- (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 or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan 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 –

- (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 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.

Schedule 2, Part 4, Article 10 sets out the Exempted Development – Classes of Use.

**6. ASSESSMENT**

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development. Matters pertaining to the acceptability of

the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

### **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: *‘(a) the carrying out of any works in, on, over or under land or the making of any material change in the use of any land or structures situated on land, or (b) Development within the meaning of Part XXI.’*

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 *‘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.’*

No drawings (floor plans) have been submitted with this section application, but it is assumed that the proposed change of use will require the carrying out of internal works (amendments to the internal layout of the unit etc.). The extent/ nature of works is something that could be clarified through a request for further information. There are exemptions for alterations to structures under Section 4(1)(h) of the Act. However, additional information would be required in relation to the extent of works proposed.

The permitted/ previously established use on the site was a laboratory with associated offices. The proposed use is a physiotherapy clinic, gym and office. The extent to which the gym and office is ancillary to the physiotherapy clinic element is unclear. This could be clarified through a request for further information. In any event, it is considered that the change of use is material in nature having regard to the difference between a laboratory and a physiotherapy clinic.

There are some material considerations arising from the change of use at the subject site such as hours of operation, visitor turnover, car and cycle parking requirements, impact on local road network, intensification of use of the site etc. These are matters that would be assessed as part of a planning application and it would be inappropriate to make a determination on such matters through the course of a section 5 declaration.

The proposal involves the carrying out of works and constitutes a material change of use. The proposal therefore constitutes development.

#### **CONCLUSION:**

- **Change of use and associated works constitutes development.**

### **6.2 Exempted development**

The next issue for consideration is whether or not the matter at hand is exempted development. The applicant is relying on the exemption set out by Article 10(6) of the *Planning and Development Regulations 2001* (as amended).

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).

Article 10(1) of the Regulations relates to changes of use. The established use and proposed use fall under different classes of use and the Article 10(1) exemption does not apply. There are no exemptions in the Act or Regulations that would apply to the proposed change of use. As such it is concluded that the change of use from laboratory to physiotherapy clinic, gym and office is not exempted development.

**CONCLUSION:**

- Is not exempted.

**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.

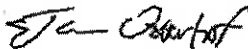
**8. RECOMMENDATION**

In view of the above and having regard to –

- Section 2(1), 3(1) and 4 of the Planning and Development Act 2000 (as amended), and
- Article 10(1) and Schedule 2, Part 4 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that –

*the change of use from the previously established laboratory use to physiotherapy clinic, gym and office at The Former Eurofins Exova Building, Glanmire Industrial Estate, Glanmire, Cork T45 R863 IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.*



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Jan Oosterhof  
A/ Executive Planner  
22/05/2024

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Melissa Walsh  
Senior Executive Planner  
22/05/2024

**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](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924029  
Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

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

- **NAME OF PERSON MAKING THE REQUEST** Patirk Hanley

- **POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT :**  
**GLANMIRE INDUSTRIAL ESTATE, GLANMIRE, CORK T45 R863**

- **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.*

Can this premises be used as a physiotherapy clinic , gym and office with the current planning / zoning ?

THanks

DEVELOPMENT MANAGEMENT  
CCP  
07 MAY 2024  
CORK CITY COUNCIL



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

*(Use additional sheets if required).*

- ~~Are you aware of any enforcement proceedings connected to this site?~~

*If so please supply details:*

NO

- ~~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?

- ~~Was there previous relevant planning application/s on this site? No~~

*If so please supply details:*

- **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	516
(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)?	<ul style="list-style-type: none"><li>• No</li></ul> 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)

**7. LEGAL INTEREST**

Please tick appropriate box to show applicant's legal interest in the land or structure	<input type="checkbox"/> A.	<input checked="" type="checkbox"/> B. Other
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Where legal interest is 'Other', please state your interest in the land/structure in question	Prospective Buyer
If you are not the legal owner, please state the name of the owner if available	LISNEY Auctioneers : CORK 1 South Mall, Cork, T12 CCN3 Tel: +353 21 427 5079 Email: <a href="mailto:cork@lisney.com">cork@lisney.com</a>

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

Signature: 

Date: 20/4/24

#### **ADVISORY NOTES:**

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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.**

Please email [planning@corkcity.ie](mailto:planning@corkcity.ie) with any queries.

- 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**

**"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>**

**We request that you read these as they contain important information about how we process personal data.**

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

\* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

(a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,

(b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,

(c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,

(d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,

(e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,

(f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,

(g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,

(h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,

(i) plans and drawings shall indicate the name and address of the person by whom they were prepared.

2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.

3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.