



Comhairle Cathrach Chorcaí Cork City Council

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

Paul O'Brien
Chora Design Studio
54 presentation Road
Gurranebraher
Cork

20/08/2019

RE: Section 5 Declaration R530/19 Hillcrest Killeens

A Chara,

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

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 creation of a new entrance and connection to adjoining lands **Is Development** and is **Not Exempted Development**.

It is considered that proposed creation of a new entrance **Is Development** and is **Not Exempted Development** and that the proposed connection from Site 1 to Site 2 **Is Development** and is **Not Exempted Development**.

Yours faithfully,

Paul Hartnett
Assistant Staff Officer
Development Management Section



We are Cork.

**Community, Culture and Placemaking Directorate
Cork City Council**

PLANNER'S REPORT Ref. R530/19		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	<i>Is the proposed partial demolition of the south boundary wall (at site 1 as per attached drawings) and installation of new gate and fence considered exempted development?</i> <i>Is the proposed creation of a new site entrance from site 1 onto site 2 (as per attached drawings) considered exempted development?</i>	
Location	Hillcrest, Killeens	
Applicant	Helen O'Mahony	
Agent	Paul O'Brien (Chora Design Studio)	
Date	19/08/2019	
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

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

Is the proposed partial demolition of the south boundary wall (at site 1 as per attached drawings) and installation of new gate and fence considered exempted development?

Is the proposed creation of a new site entrance from site 1 onto site 2 (as per attached drawings) considered exempted development?

3. Site Description

The lands in question are in to separate parts.

Site 1, as indicted on the drawings submitted as part of the application, is in the ownership of the applicant and is where she currently resides. There is a second dwelling located immediately north of Site 1, this appears to be in separate ownership.

Site 2, is a larger agricultural parcel of lands, in the ownership of the applicant's brother. This extends from the roadside eastward. Access to the site is from an existing shared entrance to the north of the dwelling that adjoins Site 1. Site 2 also extends almost to the roadside to the south of Site 1.

4. Planning History

There are no recent planning permissions associated with the subject site. Cork County Council Permission Reg. No. 10/4559 relates to the dwelling to the north Site 1 and to the south of the existing access point to Site 2.

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(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 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 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 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would – ...

(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

6. ASSESSMENT

5.1 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: ‘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 development constitutes development as it comprises of works which includes: demolition of an existing wall, the creation of a new entranceway / gate, earthworks and the removal of a hedge.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development.

While there are exemptions relating to the creation of gateways set out under Article 6 in Part 1 of Schedule 2 of the *Planning and Development Regulations 2001* (as amended) they do not apply to the new gate onto the public road proposed in the first part of this query.

The proposal would form a new access to a public road where the carriageway is wider than 4m and therefore Article 9 (a)(ii) applies. Planning permission would therefore be required for the creation of a new access from the Rathpeacon Road.

Regarding the second query - *the proposed creation of a new site entrance from site 1 onto site 2* – this will be considered separately. Based on the plans submitted, this includes two elements; works on Site 1 to provide level access and the removal of a portion of the existing hedge that forms a boundary between Site 1 and Site 2.

Works on site to provide level access and the removal of a hedge could be described as landscaping works. Landscaping works are often exempt if they are be in accordance with Class 6, as set out in Part 1 of Schedule 2 of the *Planning and Development Regulations 2001* (as amended). It is noted that the spirit of Class 6, which relates to works within the curtilage of a house only, does not allow works to facilitate vehicular access to adjoining properties which are in effect a separate planning unit.

These elements, as detailed in Drawing No. DEC_03, are not considered to be exempt as they do not accord with Class 6 as set out in Part 1 of Schedule 2 of the *Planning and Development Regulations 2001* (as amended) or any other class of exemption set out therein.

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 following questions have been asked:

Is the proposed partial demolition of the south boundary wall (at site 1 as per attached drawings) and installation of new gate and fence considered exempted development?

Is the proposed creation of a new site entrance from site 1 onto site 2 (as per attached drawings) considered exempted development?

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that:

- a) the *proposed partial demolition of the south boundary wall (at site 1 as per attached drawings) and installation of new gate and fence* is development and is not exempted development,

and that:

- b) the *proposed creation of a new site entrance from site 1 onto site 2 (as per attached drawings)* 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 creation of a new entrance and connection to adjoining lands **Is Development** and is **Not Exempted Development**.

It is considered that proposed creation of a new entrance **Is Development** and is **Not Exempted Development** and that the proposed connection from Site 1 to Site 2 **Is Development** and is **Not Exempted Development**.

Martina Foley
Executive Planner

Agreed Melisse Walsh
SEP 19/08/19

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

HILLCREST, KILLEENS, CORK, T23 DD58

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 PROPOSED PARTIAL DEMOLITION OF THE SOUTH BOUNDARY WALL (AT SITE 1 AS PER ATTACHED DRAWINGS) AND INSTALLATION OF NEW GATE AND FENCE CONSIDERED EXEMPTED DEVELOPMENT?

IS THE PROPOSED CREATION OF A NEW SITE ENTRANCE FROM SITE 1 INTO SITE 2 (AS PER ATTACHED DRAWINGS) CONSIDERED EXEMPTED DEVELOPMENT?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

SITE 2 IS OWNED BY THE APPLICANTS BROTHER. HE HAS GIVEN PERMISSION TO ANOTHER PARTY TO USE THE LAND FOR 2 HORSES. THE THIRD PARTY CURRENTLY PARKS THEIR HORSEBOX ON THE ROAD OUTSIDE SITE 1 AND WALKS THE HORSES TO AN EXISTING RIGHT OF WAY ENTRANCE INTO SITE 2 WHICH IS TO THE WEST SIDE OF THE SITE. THE POSITION OF THIS ENTRANCE ON THE STRETCH OF ROAD IS SOMEWHAT CHALLENGING AND A CONCERN REGARDING APPROACHING TRAFFIC. THE PROPOSAL TO CREATE AN ALTERNATIVE SITE ENTRANCE TO SITE 2 ACCESSED THROUGH SITE 1 IS TO ADDRESS THESE ISSUES.

THE CLIENT IS SUBMITTING THIS DECLARATION FOLLOWING A DISCUSSION WITH THE RECEPTIONIST AT THE PLANNING DESK ON 20TH JUNE. SHE ATTEMPTED TO DISCUSS THE ISSUE WITH VALERIE FENTON WHO WAS UNAVAILABLE. IT IS UNDERSTOOD THIS ADVICE WAS SUGGESTED BY A PLANNER ON THAT DAY FOLLOWING DISCUSSIONS WITH THE RECEPTIONIST.

Comhairle Cathrach Chorcaí
Cork City Council

25 JUL 2019

Strategic Planning & Economic
Development Directorate

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	N/A
(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) N/A
(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)
N/A	N/A

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		HELEN O'MAHONY
Applicants Address	HILLCREST, KILLEENS, CORK	
Person/Agent acting on behalf of the Applicant (if any):	Name:	PAUL O'BRIEN
	Address:	CHORA DESIGN STUDIO 54 PRESENTATION ROAD GURRANEBRAHER CORK
	Telephone:	
	Fax:	
	E-mail address:	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner X	B. Other X
Where legal interest is 'Other', please state your interest in the land/structure in question	THE APPLICANT IS THE OWNER OF SITE 1 BUT THE OWNER OF SITE 2 IS THE APPLICANTS BROTHER	
If you are not the legal owner, please state the name and address of the owner if available	(OWNER OF SITE 2) KIERAN O'MAHONY, 53 CEDAR ROAD, PALM COVE, QUEENSLAND 4879, AUSTRALIA	

5.1 / We confirm that the information contained in the application is true and accurate:

Signature: _____

Palor

Date: _____

24th July 2019

.....

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

