



Comhairle Cathrach Chorcaí Cork City Council

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

Catherine & John Burke,
195 An Caislean View,
Ballincollig,
Cork.

13/09/2022

**RE: Section 5 Declaration R733/22 195 An Caislean View,
Ballincollig, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 24th August 2022, I wish to advise as follows:

The Planning Authority in considering this referral, had regard particularly to:

- (a) Section 4, Planning and Development Act, 2000, as amended
- (b) Articles 6 and 9, Planning and Development Regulations, 2001, as amended
- (c) Class 3, Schedule 2, Part 1, Planning and Development Regulations, 2001, and
- (d) The nature of the use.

The Planning Authority has concluded that:

- (a) the placing of a log cabin in the curtilage of the house constitutes development within the meaning of section 3 of the 2000 Act, as amended, and
- (b) the log cabin would not come within the scope of Class 3 of Part 1 of the Second Schedule of the Planning and Development Regulations 2001, as amended, as the use is for human habitation and it would not comply with condition and limitation number 6, to which this class is subject and would, therefore, not be exempted development.

The Planning Authority decides that *the log cabin to be used for habitable purposes* **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT** at 195 An Caislean View, Ballincollig, Cork.



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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, 13th September 2022.

Is mise le meas,

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



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SECTION 5 DECLARATION – PLANNER'S REPORT

File Reference: R733.22
Description: Whether the placing of a log cabin for habitable purposes is or is not exempted development?
Applicant: John Burke and Catherine Burke
Location: 195 An Caislean View, Ballincollig
Site inspection: N/A

1. Purpose of Report

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 site is located at 195 An Caislean View, Ballincollig, and on the site there is a semi-detached dwelling.

3. The Question before the Planning Authority

Whether the placing of a log cabin for habitable purposes is or is not exempted development?

4. Planning history

None recent

5. Planning legislation

5.1 Planning and Development Act, 2000 as amended

Section 2(1),

"exempted development" has the meaning specified in section 4.

"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, 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.

5.2 Planning and Development Regulations, 2001 as amended

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,

Article 9 sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including

(a) if the carrying out of such development would:-

(i) "Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act"...

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 3 relates to "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure".

Schedule 2, Part 1, Class 1

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
Development within the curtilage of a house CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.	<ol style="list-style-type: none">1. No such structure shall be constructed, erected or placed forward of the front wall of a house.2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

	<ol style="list-style-type: none"> 3. <i>The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</i> 4. <i>The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</i> 5. <i>The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</i> 6. <i>The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</i>
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6. Assessment

The application comprises of an application form. There is no site layout plan and no plans of the log cabin. It is stated that the height of the log cabin is 2.45m and the size is 4m x 3m and it will be located in the back garden. The structure will be used for accommodation for the applicant's daughter (additional space is required).

The structure will be supplied by Log Houses Ireland. The structure would be fully insulated, with electricity, heating, windows and doors.

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'.

As noted above Section 3 (1) of the Planning and Development Act states that: 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.

The proposal is a structure and will involve the carrying out works. As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION — is development

6.2 Exempted Development

The next issue for consideration is whether the extension is or is not exempted development.

Class 3 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 as amended is for *'the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure'* within the curtilage of a house. This is subject to a number of conditions and limitations, all of which need to be satisfactorily complied with.

The proposed use for the log cabin is for sleeping accommodation and liveable space. It is therefore for human habitation. The proposed log cabin would not comply with condition and limitation no 6 of Class 3.

There is insufficient information to determine if the log cabin would satisfy the other conditions and limitations in Class 3 – for example conditions and limitations nos 2 and 3.

As the proposal does not satisfy condition and limitation no 6, the log cabin for habitable purposes is not exempted development. There is no merit in seeking further information for conditions and limitations nos 2 and 3.

CONCLUSION — is not exempted development

6.3 Environmental Assessment & Restrictions on Exemption

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

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.

In terms of Article 9, there is insufficient information to determine if any of the restrictions would apply.

7. Recommendation

It is recommended that the applicant is advised as follows:

The Planning Authority in considering this referral, had regard particularly to:

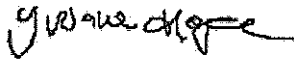
- (a) Section 4, Planning and Development Act, 2000, as amended
- (b) Articles 6 and 9, Planning and Development Regulations, 2001, as amended
- (c) Class 3, Schedule 2, Part 1, Planning and Development Regulations, 2001, and
- (d) The nature of the use.

The Planning Authority has concluded that:

- (a) the placing of a log cabin in the curtilage of the house constitutes development within the meaning of section 3 of the 2000 Act, as amended, and

- (b) the log cabin would not come within the scope of Class 3 of Part 1 of the Second Schedule of the Planning and Development Regulations 2001, as amended, as the use is for human habitation and it would not comply with condition and limitation number 6, to which this class is subject and would, therefore, not be exempted development.

The Planning Authority decides that the log cabin to be used for habitable purposes is development and is not exempted development at 195 An Caislean View, Ballincollig, Cork.



Yvonne Hogan, A/SEP, 08.09.2022

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

195 an Caisteán Ballycollig, Cork
P31R299

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.

We wish to place a log Cabin 3 meters by 4 meters in our ~~base~~ side wall of our back garden. intended use of Structure is ~~space~~ space ~~for~~ for our daughter who is now ~~years~~ years old and needs some room of her own

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

we are hoping to use Log houses Ireland to do the work the Cabin would be fully insulated and heating provided by electric heating. pvc windows and doors and structures full height would be 2.45 meters

Use structure would measure 4 meters x 3 meters height 2.45 meters IF you need any future information please call on ~~_____~~ Catherine

SECTION 2 DECLARATION APPLICATION FORM

1. NAME - ADDRESS OF THE DEVELOPER (PLEASE PRINT FULL NAME AND ADDRESS)

2. QUESTION/DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION WITH WHICH A DECLARATION IS SOUGHT

[REDACTED]

ADDITIONAL DETAILS REGARDING QUESTION/WORKS/DEVELOPMENT:

[REDACTED]

CORK CITY COUNCIL
24 AUG 2022
CCP
DEVELOPMENT MANAGEMENT

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?

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?

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>4m x 3m</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 type="checkbox"/> No <input checked="" 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)
<u>NO</u>	<u>for use for first extra over night sleeping room</u>

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input type="checkbox"/>	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	<u>back garden</u>	
If you are not the legal owner, please state the name and address of the owner if available	<u>Cork City Council</u>	

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

Signature: J. Busk, Catherine Busk

Date: 22/8/22

CONTACT DETAILS

10. Applicant:

Name(s)	CATHERINE JOHN BURKE
Address	19.5 AN CAISLEAN VIEW BALLINCOLLIG CORK

11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	
Address:	 ----- ----- -----
Telephone:	
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 type="checkbox"/> No <input checked="" type="checkbox"/>

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

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, Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.**