

Halla na Cathrach
Corcaigh
T12 T997

City Hall
Cork
T12 T997

Niall Skehan

4 Charlotte Place
Glenbrook
Passage West
Cork

15/05/2018

RE: Section 5 Declaration 40 Central Avenue, Bishopstown

Dear Sir/Madam,

I am asked by Mr. Patrick Ledwidge, Director of Services, Strategic Planning & Economic Development to refer to your request for a section 5 Declaration at the above address.

- 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 the reconstruction of the flat roof to a pitched roof **is** development and is **NOT** exempted development.

Yours Faithfully,

Paul Hartnett
Assistant Staff Officer
Strategic Planning & Economic
Development
Cork City Council

PLANNER'S REPORT		Cork City Council Development Management Strategic Planning and Economic Development
Ref. R470 /18		
Application type	Section 5 Declaration	
Description	<i>Whether the replacement of flat roof of garage in the course of conversion of garage, to a pitched roof requires planning permission.</i>	
Location	40 Central Avenue	
Applicant	Niall Skehan (Agent)	
Date	15/05/2018	
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 replacement of flat roof of garage in the course of conversion of garage, to a pitched roof...exempt (sic)?*

3. Site Description

The property in question is a two storey detached dwelling with single storey element to the side in an established residential area of detached dwellings.

4. Planning History

There are no known planning applications on this 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 –

- (a) (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,*
- (a) (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,*

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

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 element constitutes development as it comprises of works which includes construction.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. The agent states that the construction and conversion of the garage to a habitable space, along with an extension to the rear occurred 30 years ago. Therefore it would have come under the 1963 Planning Act.

Under this Act, Section 4 (1) (g) states:

g) 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 such appearance inconsistent with the character of the structure or of neighbouring structures;

While Section 4 (1) (h) states:

(h) development consisting of the use of any structure or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling house as such;

Based on the above, the conversion of the garage to habitable space would appear to be covered under Section 4 (1) (h).

The issue is whether the redevelopment of a flat roof to a pitched roof is exempted development or not. In order to be considered exempted development, such redevelopment would have to be those *which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures.* The majority of dwellings on Central Avenue have attached flat roof-ed garages.

There are dwellings which have single storey extensions/conversions to the side and porches which now have a pitched roof. However, having looked through the database of planning permissions, it appears that those dwellings have the benefit of either planning permission or retention planning permission. (E.g. No.s 7, 22, 30, 39, 50, 53, 54 etc. Central Avenue). These permissions mainly date from 2002 onwards.

If such works occurred 30 years ago, i.e. in 1988, the vast majority, if not all, dwellings would have had a flat roof garage. Even today, the predominant form of side element is a flat roof garage and again, to repeat, those dwellings with pitched roofs to the side or on the porch, have the benefit of planning permission. Therefore, I consider that the reconstruction of the flat roof to a pitched roof in this instance, is not exempted development and requires permission.

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 ‘*Is the replacement of flat roof of garage in the course of conversion of garage, to a pitched roof...exempt (sic)?*’


Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the reconstruction of the flat roof to a pitched roof is development and is not exempted development

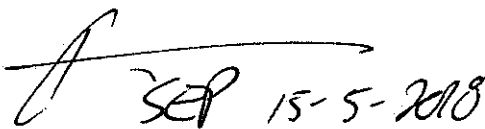
9. RECOMMENDATION

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 the reconstruction of the flat roof to a pitched roof **is** development and is **NOT** exempted development.


Mary Doyle
Executive Planner


SEP 15-5-2018

Niall Skehan & Associates
ENVIRONMENTAL DESIGNERS

4 CHARLOTTE PLACE, GLENBROOK, PASSAGE WEST, Co. CORK.
Ph. 021 4863590 Fax. 021 4841446 Mob. 086 8093908
E mail: niall@niallskehan.com

9th May 2018

The Secretary,
Planning Department,
Cork City Council,
City Hall,
Cork.

Re: 40 Central Avenue, Bishopstown, Cork.

Dear Sirs,

I applied for a Section 5 declaration in reference to the above property on the 4th of April 2018 (the cheque was cashed on the 10th of April) and to date have not had any correspondence.

I had assumed that the time period for such a decision was 4 working weeks?
A copy of the original cover letter is attached.

Yours faithfully,



NIALL SKEHAN & ASSOCIATES
Enc



Niall Skehan & Associates
ENVIRONMENTAL DESIGNERS

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Ph. 021 4863590 Fax. 021 4841446 Mob. 086 8093908
E-mail: niall@niallskehan.com

4th April 2018

The Secretary,
Planning Department,
Cork City Council,
City Hall,
Cork.

Re: 40 Central Avenue, Bishopstown, Cork.

Dear Sirs,

My client, the estate of Nora Riordan, wish to ask the councils position with regard to the works carried out some 30 years ago to convert the adjoining garage to the existing dwelling to a habitable space under "exempted Development". This work is around 11 sq/m meter's internally (the w.c. & utility was part of the original construction) with a rear extension comprising a further internal floor area of 11 sq/m approximately. The primary issue is that the existing flat roof was replaced with a pitched tiled roof although there are many examples of this type of flat roof replacement works being undertaken to many of the adjoining and nearby garages such the my client suggests that the works are consistent with the character of the area.

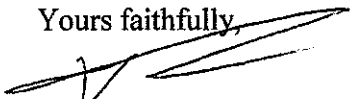
My clients suggest that the works would fall under Section 4.1. h of the planning and development act and wish the Council to assess the same and conclude that the said roof works do not require planning permission.

the development consisting of the carrying on 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

Please find attached 1/1000 site plan along with existing plans.

Please find attached fee of €80 and I look forward to your favourable decision, however should you have any queries please do not hesitate to contact me.

Yours faithfully,



NIALL SKEHAN & ASSOCIATES

Enc

Niall Skehan & Associates

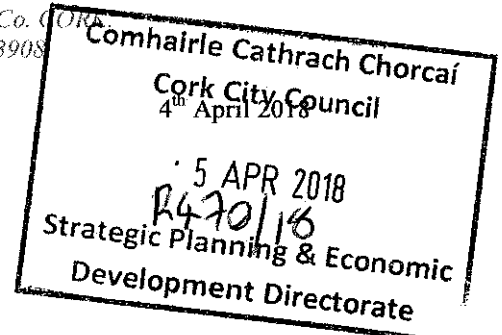
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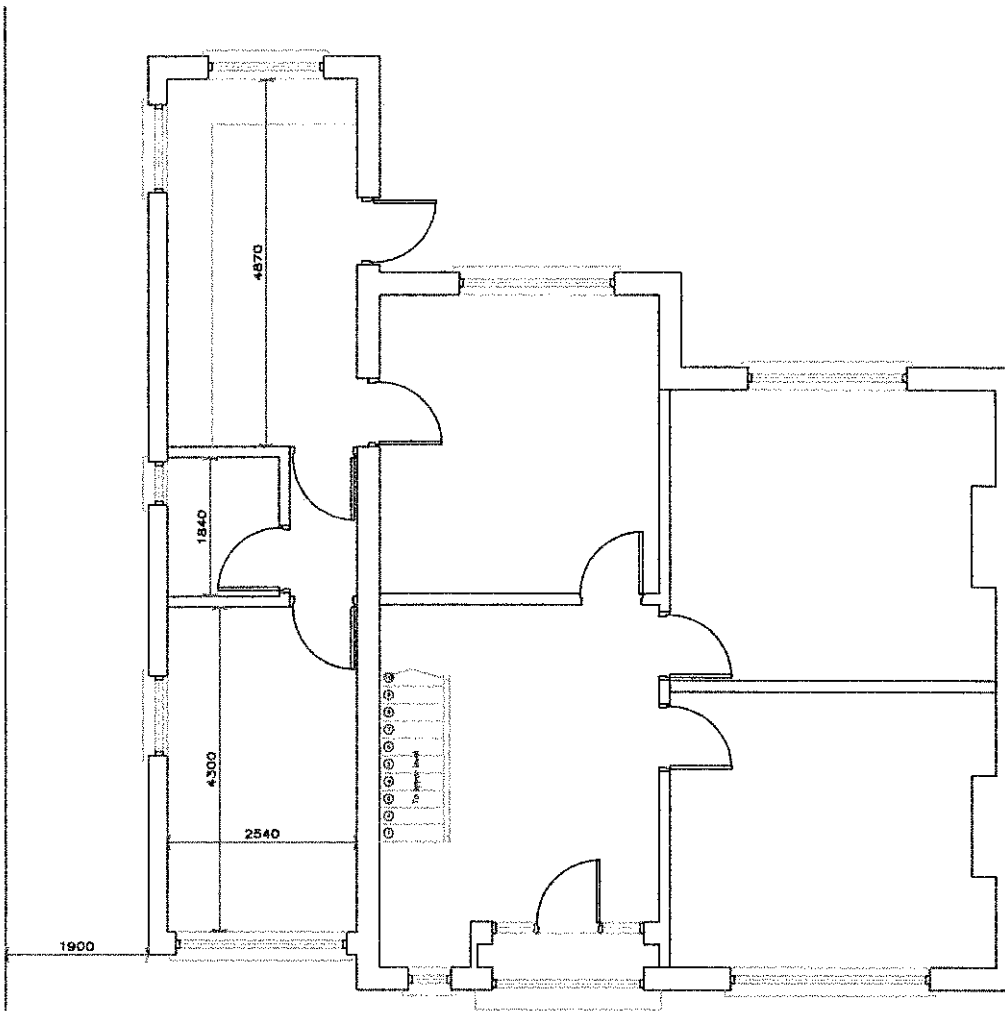

NIALL SKEHAN & ASSOCIATES

Enc

Kevin,
Section 5 for report
Due 04/05/18
Paul



View property on the right with similar re-roofing to the nearby dwelling to the left.



ground floor



Front elevation

Niall Skehan & Associates		4 Charlotte Place, Glenbrook, Passage West, Co. Cork		Tel +353 (21) 486 3590 Mob +353 (86) 809 3908			
CLIENT Nora Riordan	DRAWING Existing Plans & elevations			CAD REF: Niall/18/Riordan			
PROJECT pitched roof				PROJ. NO.	STATUS	DWG. NO.	ISSUE
SITE 40 Central Ave, Bishopstown	SCALE 1:100	PROJECT ARCHITECT NS	SK18-03		PLA	02	1
E-mail: niall@niallskehan.com							

Planning Pack Map



National Mapping Agency

CENTRE COORDINATES:
ITM 564243.570095

PUBLISHED: 04/04/2018

ORDER NO.: 50002536_1

MAP SERIES: 1:1,000
6382-21
1:1,000
6427-01

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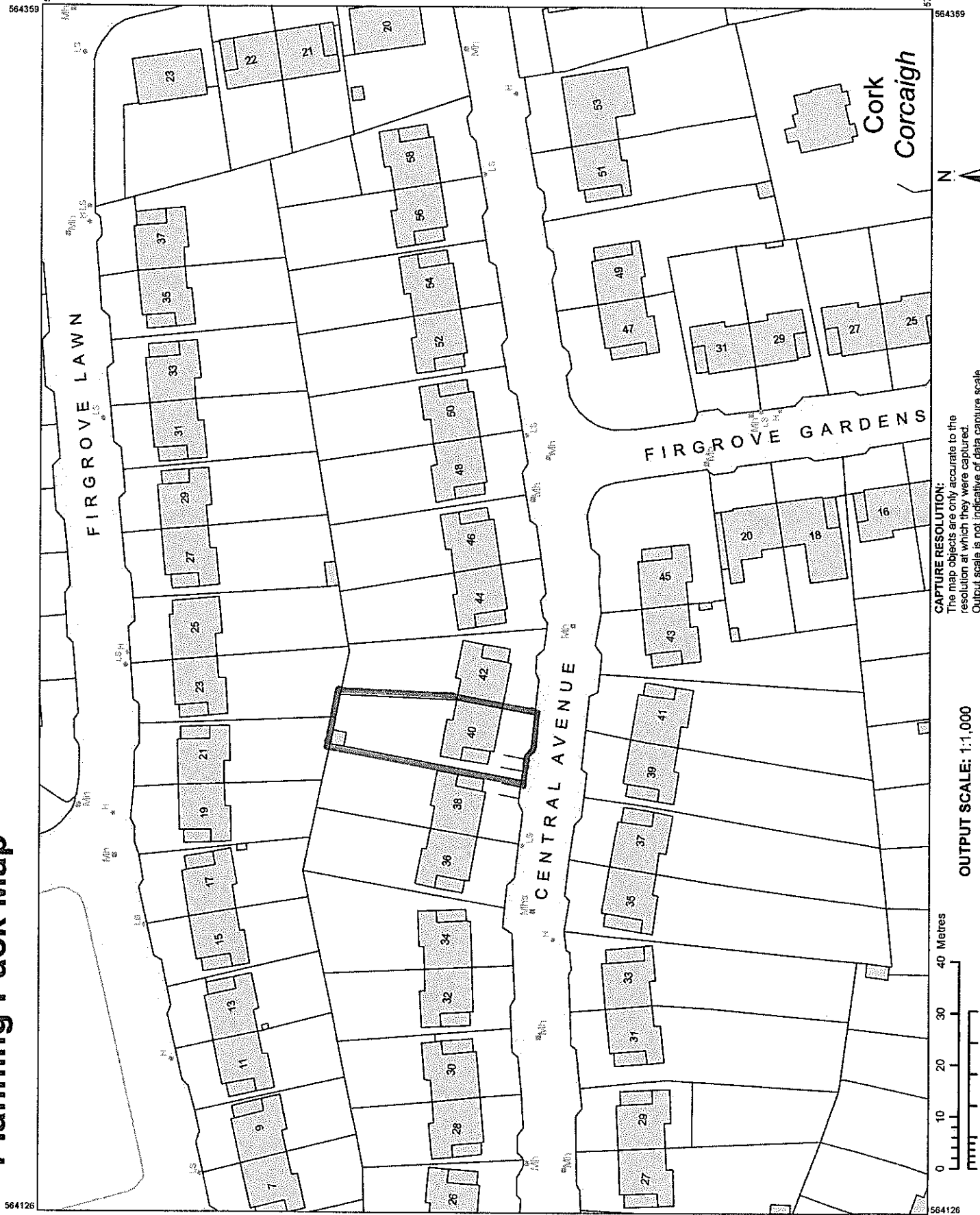
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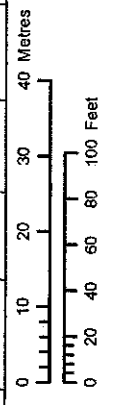
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<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



564359 570081 570009 564126

**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

40 CENTRAL AVENUE,
BISHOPSTOWN T12 XAX6

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 replacement of flat roof of garage, in the course of conversion of garage, with a pitch roof development

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

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	28.67 sq. m
(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) _____
(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)
_____	_____
_____	_____
_____	_____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	ESTATE OF NOBA ROLDAN	
Applicants Address	40 Central Avenue Bishopsdown Conk	
Person/Agent acting on behalf of the Applicant (if any):	Name:	→ Mr STEPHAN & ps... ..
	Address:	↳ CHARLOTTE Place Glenbrook, Passage with C Park
	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 <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: 

Date: 28th MARCH 2018

