



Comhairle Cathrach Chorcaí Cork City Council

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

Daragh Gosnell
11 Arbour Court,
Grange,
Douglas,
Cork
T12 Y8P8

21st July 2021

RE: R668/21 – Section 5 Declaration
Property: 11 Arbour Court, Grange, Douglas

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise 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),
- Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that the construction of a pedestrian access gate in an existing rear boundary wall **Is Development** and is **Exempted Development**.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

PLANNER'S REPORT Ref. R 668/21		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Whether the construction of a pedestrian access gate in an existing brick boundary wall to the rear of 11 Arbour Court, Grange, is development; and if so, is it exempted development?</i>	
Location	11 Arbour Court (backing onto Dosel Drive)	
Applicant	Daragh Gosnell	
Date	17/06/2021	
Recommendation	<i>Is Development and Is 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:

Whether the construction of a pedestrian access gate in an existing brick boundary wall to the rear of 11 Arbour Court, Grange, is development; and if so, is it exempted development?

3. Site Description

The property in question is a two-storey dwelling (bungalow type dwelling with raised roof accommodating bedrooms at first floor level) in an established residential area. It is bounded to the rear by a brick wall on which the applicant has placed wooden pallet fencing to increase its height. There is an existing wooden door with glazing in this rear wall which adjoins the Dosel Road (the rear of the property in question).

4. Planning History

One planning application is attached to this site:

This is summarised as follows:

Planning Ref:	Details
18/04149 Cork County Council	Permission granted for extensions and alterations to No. 11 Arbour Court. Works include the raising of the roof, 5 no. roof lights, 1 st floor bedroom, conversion of existing front window to a bay window, new porch, additional high level window and conversion of existing car-port to a bedroom.

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

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: ‘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 installation of the gate in question constitutes development as it comprises of works which includes both demolition (gap in existing wall) & construction.

6.2 Exempted development

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

Class 5 of Part 1 of Schedule 2 *Exempted Development* of the Planning and Development Regulations 2001 (as amended) states:

	Conditions/Limitations
<p>CLASS 5</p> <p>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</p> <p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>

There are no conditions under the existing Planning Permission 18/4149 relating to boundary treatments. The installation of a gate in the boundary wall does not contravene same.

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 construction of a pedestrian access gate in an existing brick boundary wall to the rear of 11 Arbour Court, Grange, is development; and if so, is it exempted development?

The question before the planning authority relates specifically to the installation of the “gate” (0.9m x 2m) high. The issue of the additional wooden pallets on top of the existing wall does not fall under the remit of the current assessment.

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 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),
- Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that the construction of a pedestrian access gate in an existing rear boundary wall **Is Development** and is **Exempted Development**.

Mary Doyle
Executive Planner
17/06/2021

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: 021-4924564/4321

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

11 Arbour Court,
Grange,
Douglas,
Cork,
T12 Y8P8

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 construction of a pedestrian access gate, in an existing brick boundary wall, to the rear of 11 Arbour Court, Grange, development, and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- See PRAI map, Folio CK16962F, with location of gate marked with a black 'X' and highlighted in green.
- The opening in the brick wall is 900mm wide and the gate is 2000mm high. The gate opens inwards onto the property.
- The gate gives access to a different estate, namely the street named Dosel Drive within the Grange Heights estate. Arbour Court and Grange Heights share the same entrance on to the Grange Rd. and Arbour Court cannot be accessed by car without driving onto Dosel Drive.
- There is a strip of landscaped public ground running the length of Dosel Drive, across from the row of houses on that road. The rear boundary of a number of houses in Arbour Court also back onto this land. The gate opens onto this green space. There is 5.5m between the boundary wall and the roadside kerb. The road on Dosel Drive is very wide with cars typically being able to park on both the side with the houses and the side adjoining the green space while still allowing two cars pass comfortably on the road.

- See attached images from Google Street View showing boundary wall, as seen from Doseil Drive with gate marked in blue 'X' (Images 1 and 2) and Google Maps Aerial view of property with gate also marked on this with a blue 'X'

3. 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? N/A

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? N/A

4. Was there previous relevant planning application/s on this site? N/A
If so please supply details:

5. 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"/> N/A 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) N/A	Proposed/existing use (please circle) N/A

6. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):	Daragh Gosnell
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Applicants Address	11 Arbour Court, Grange, Douglas, Cork, T12 Y8P8	
Person/Agent acting on behalf of the Applicant (if any):	Name:	As above
	Address:	As above
	Telephone:	[REDACTED]
	Fax:	N/A
	E-mail address:	[REDACTED]
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"/> N/A 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
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

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

Signature: _____

Dorothy Gosnell

Date: 25th May 2021

ADVISORY NOTES:

<p>The application must be accompanied by the required fee of €80</p> <p>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.</p> <p>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.</p> <p><i>The application should be sent to the following address:</i></p> <p style="text-align: center;">The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</p>
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- 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.

Image 1 – Section 5 Declaration for garden gate for 11 Arbour Court, Grange
Google Maps Street View - From Dospel Drive of boundary Wall. Travelling North to South
Gate position marked with Blue X
Distance of 5.5m from wall to kerb at 90 degrees shown in red

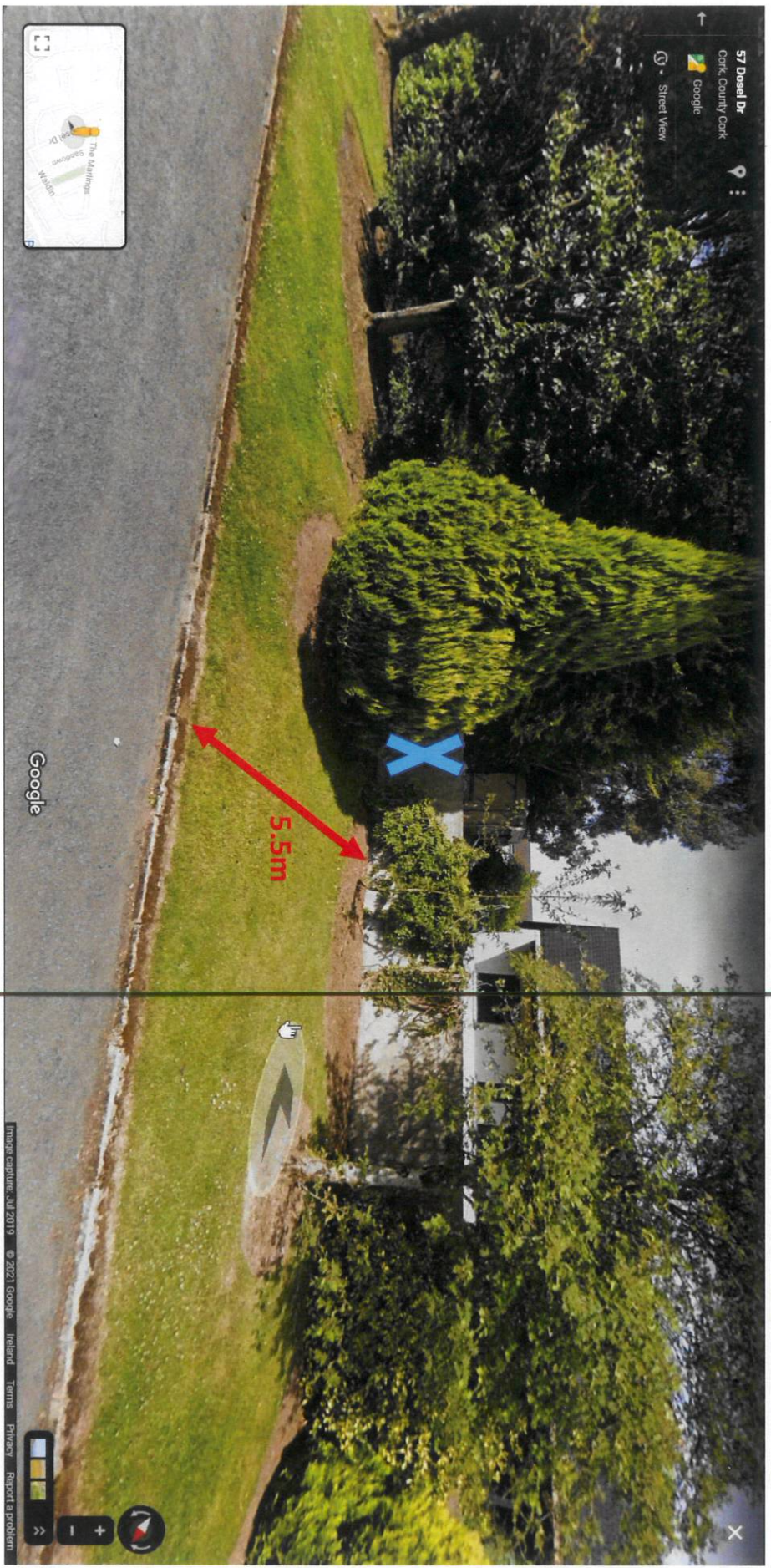


Image 3 – Section 5 Declaration for garden gate for 11 Arbour Court, Grange
Google Maps Aerial View
Site Boundary marked in Red
Gate position marked with Blue X



Image 2 – Section 5 Declaration for garden gate for 11 Arbour Court, Grange
Google Maps Street View - From Dosel Drive of boundary Wall. Travelling South to North
Gate position marked with Blue X
Sewer inspection manhole for numbers 11 and 6 Arbour Court marked with Red X

