

Comhairle Cathrach Chorcaí Cork City Council

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

Rosemarie A. Cronin
342 Topsham Road,
Exeter EX2 6HF,
United Kingdom.

02/02/2024

RE: Section 5 Declaration R819/24 Across from 67 Silverdale Avenue, Ballinlough, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 08th January 2024, I wish to advise as follows:

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, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

The Planning Authority considers that –


the construction of either two or three garages on a currently vacant site at a site across from 67 Silverdale Avenue, Ballinlough, Cork **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, 02nd February 2024.

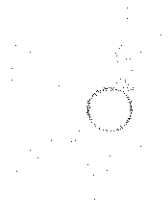


We are Cork.

Is mise le meas,



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



PLANNER'S REPORT

Ref. R 819/24

Cork City Council
Development Management
Strategic Planning and
Economic Development

Application type	SECTION 5 DECLARATION
Question	<i>Is the construction of either two or three garages on a currently vacant site development and, if so, is it exempted development?</i>
Location	Site across from 67 Silverdale Avenue, Ballinlough, Cork
Applicant	Rosemarie A. Cronin (owner)
Date	02/02/2024
Recommendation	Is development and is not exempted development

INTERPRETATION

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 APPLICATION

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

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, *"Do we require planning permission to erect 2 or 2 single storey garages on this small corner site behind the Montessori school. This is small irregular remaining plot of my grandmother's land. It has road access and a gate already in place. There was a garage on this site previously."*

The request further states *"No further question as these will be timber garages on a concrete base and not permanent"*.

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Is the construction of either two or three garages on a currently vacant site development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a small, vacant site in the Sustainable Residential Neighbourhoods zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of up to three no. timber sheds on concrete bases on a vacant site, not within the curtilage of a dwelling.

5. RELEVANT PLANNING HISTORY

TP 20/39099 Permission REFUSED for development of a small single storey 1 bedroom dwelling on infill site at 72 Silverdale Avenue, Ballinlough, Cork.

TP 16/37080 Permission REFUSED for demolition of unauthorized garage and construction of dwelling on infill site at 72 Silverdale Avenue, Ballinlough, Cork.

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).

“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)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) 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, 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.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

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 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 3

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 3</p> <p>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.</p>	<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

<p>Column 1 Description of Development</p>	<p>Column 2 Conditions and Limitations</p>
	<p>structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</p> <p>3. 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.</p> <p>4. 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.</p>
	<p>5. 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.</p> <p>6. 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.</p>

7. ASSESSMENT

7.1 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’.

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. In relation to the proposal, it is clear that the construction of two or three no. garages comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

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).

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

It is therefore necessary to consider whether the proposed works come under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

It is considered that the provision of a shed on a site generally comes under the scope of **article 6 and Class 3**. However, this relates specifically to when such a shed is being proposed within the curtilage of an existing dwelling. In this case, the subject site is a vacant site, not within the curtilage of an existing dwelling. In this regard it is not considered that the proposed development meets this criteria and is therefore not considered to be exempt.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is not exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

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.

8.1 Screening for Environmental Impact Assessment

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.**

8.2 Screening for Appropriate Assessment

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.**

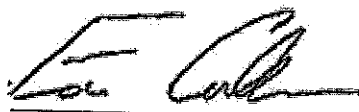
9. RECOMMENDATION

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, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of either two or three garages on a currently vacant site at a site across from 67 Silverdale Avenue, Ballinlough, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**



Eoin Cullinane
A/Senior Executive Planner
02/02/2024

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

Fón/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

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

1. NAME OF PERSON MAKING THE REQUEST

ROSEMARIE A CRONIN

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

ACROSS FROM 67 SILVERDALE AVENUE, BALLINLOUGH CORK

3. 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.

Do we require planning permission to erect 2 or 3 single storey garages on this small corner site behind the Montessori school. This is small irregular remaining plot of my grandmother's land. It has road access and a gate already in place. There was a garage on this site previously.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

No further question as these will be timber garages on a concrete base and not permanent.

4. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

No _____

5. 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?

6. Was there previous relevant planning application/s on this site?

If so please supply details:

There was a large single story garage on this site many years ago.

7. 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	Each garage 18 m ²
(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)
(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	A. Owner yes	B. Other
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 of the owner if available

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

Signature: Rosemarie Cronin _____

Date: _____ 8th Jan 2023 _____

CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

9. Applicant:

Name(s)	[Redacted]
Address	

10. Person/Agent acting

Name(s):	[Redacted]	
Address:		
Telephone:		
E-mail address:		
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes <input type="checkbox"/>

11. Owner Details (if the applicant above is not the legal owner):

Name(s)	
Address	

12. ADDITIONAL CONTACT DETAILS

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.**

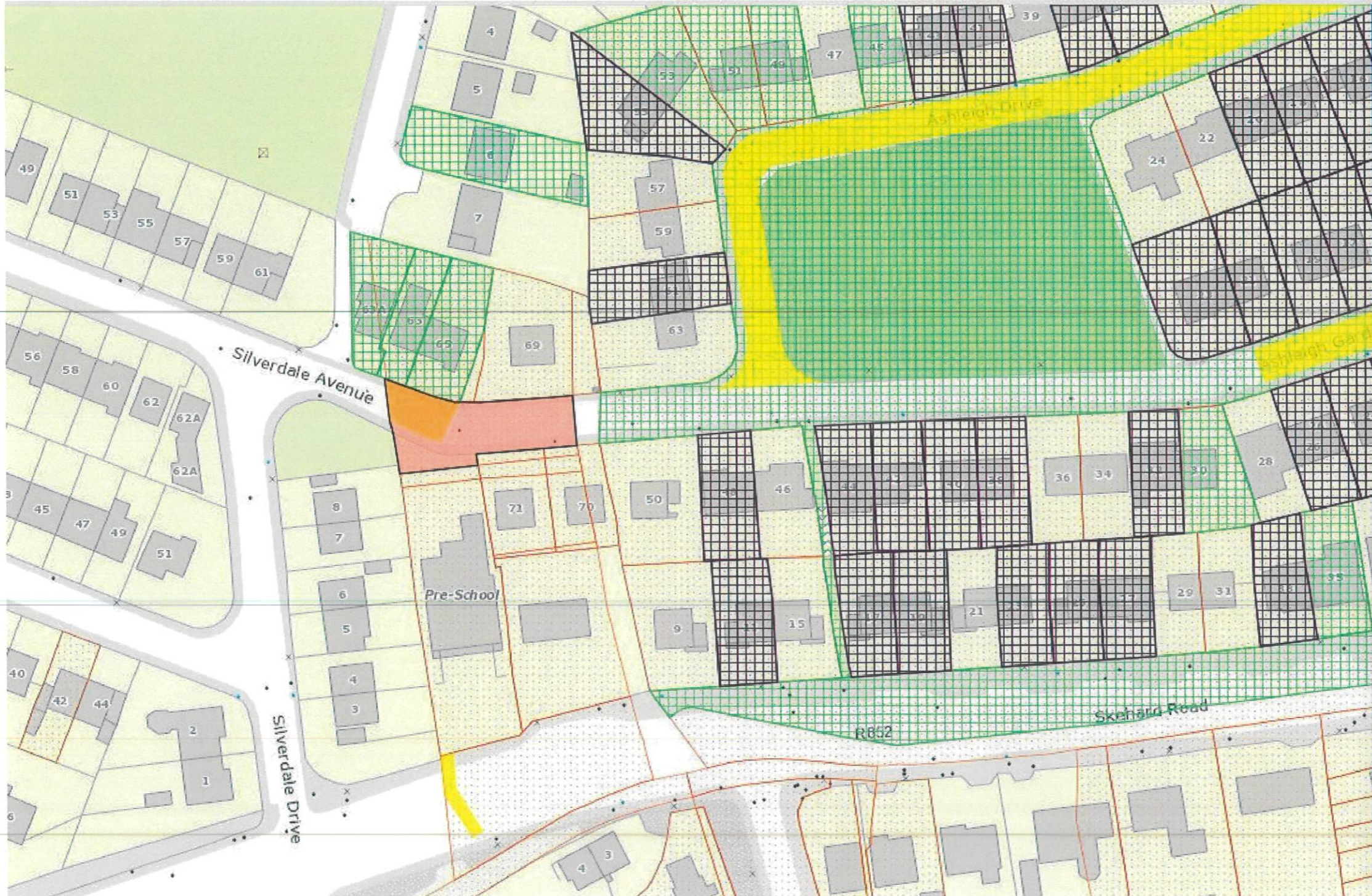
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks 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 protection 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.



Property Details

> Back

Folio Number	CK163964F
Title Level	Freehold
Plan Number	DT86N
Property Number	1
Area of selected plans	Not available.
Number of Plans on this folio:	1
Address	Not Available

Add to Basket

Create Alert

*PRA Boundaries and Plan Area **are not conclusive**. See [Section 62\(2\) of Registration of Title Act 2006](#) and [Rule 8\(3\) of the Land Registration Rules 2012](#).

View Basket

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Folio Number	CK101747F
Title Level	Freehold
Plan Number	1560
Property Number	2
Area of selected plans	Not available.
Number of Plans on this folio:	1
Address	Not Available

Add to Basket

Create Alert

The following Applications are Pending on Folio

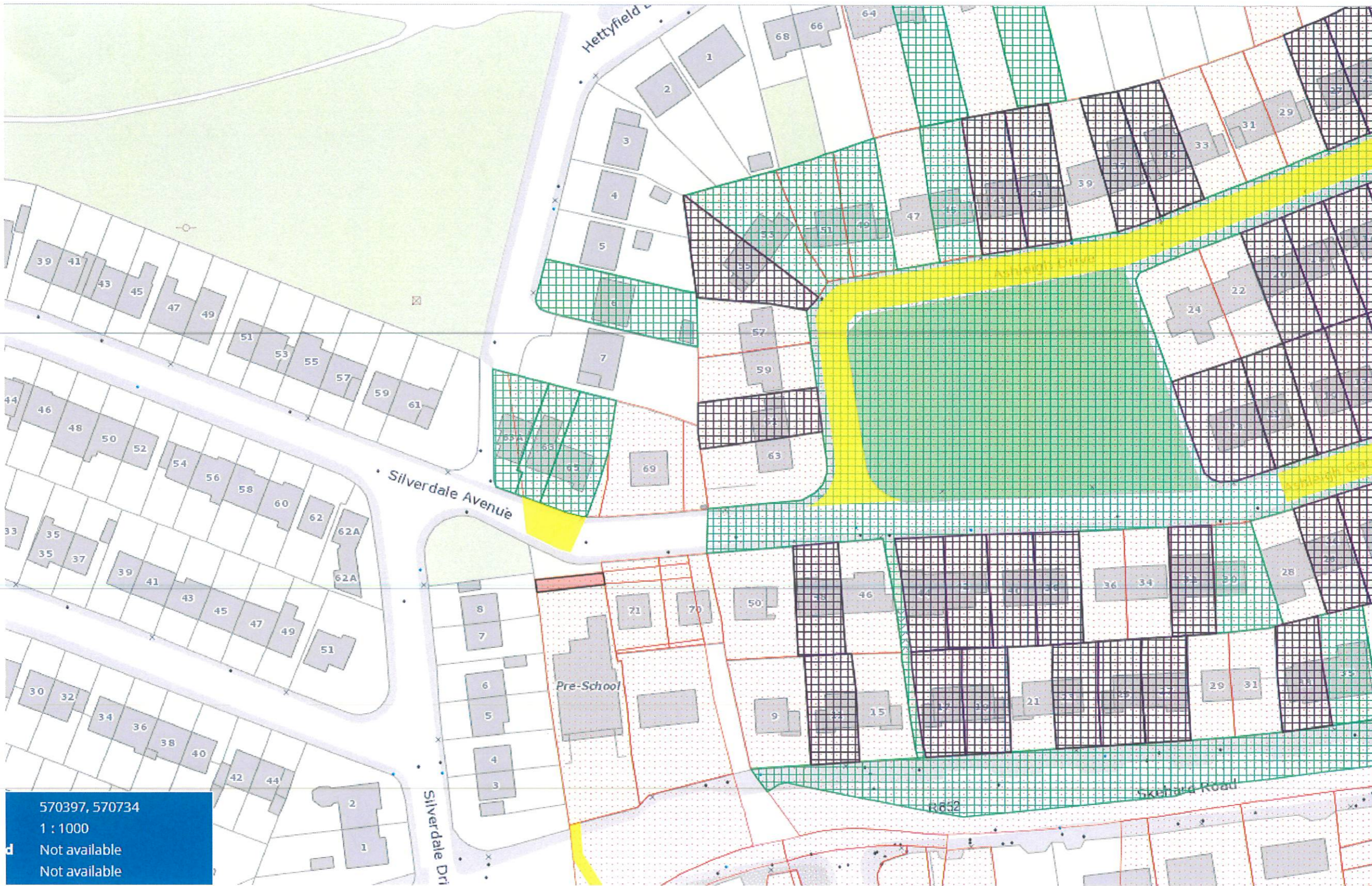
Q2020LR008713B For Further Attention

*PRA Boundaries and Plan Area are not conclusive. See Section 62(2) of Registration of Title Act 2006 and Rule of the Land Registration Rules 2012.

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