



Comhairle Cathrach Chorcaí Cork City Council

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

Michael McCarthy,
58 Westgate Road,
Bishopstown,
Cork.

14/02/2023

**RE: Section 5 Declaration R757/23 58 Westgate Road, Bishopstown,
Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 20th January 2023, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to:

- Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, 9 and 10 and Part 3 of Schedule 2 of the Planning and Development Regulations 2001 to 2018.

The Planning Authority considers that the proposed *construction of a covered pergola to the side of the house* at 58 Westgate Road, Bishopstown, Cork is **DEVELOPMENT** and is **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, 14th February 2023.

Is mise le meas,

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



We are Cork.

Planner's Report Ref. R757/23		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	Is the construction of the following development and if so, is it exempted development? The construction of a covered pergola to the side of the house?	
Location	58 Westgate Road, Bishopstown	
Applicant	Michael McCarthy	
Date	15 February 2023	
Recommendation	Is Development and Is Exempted Development	

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 construction of the following development and if so, is it exempted development?

1. The construction of a covered pergola to the side of the house?'

Additional Details Regarding Question/ Works/ Development

The applicant states: 'The proposed pergola will be approximately 9m x 2m. It will be 1.5m back from the side entrance gate. It will not be enclosed and will be open at each end. It will be roofed with 'sun tuff' clear- sheeting. The structure will be used for the storage of bicycles and other items incidental to the use and enjoyment of the house.'

3. Site Description

The subject site is located on Westgate Road, Bishopstown. The site comprises a two-storey semi-detached dwelling with front and side single storey extension (converted garage and front porch). Many of the dwellings on Westgate Road include attached garages, many of which have been converted to habitable accommodation/ living space. The immediate neighbour, due south, has a garage adjoining the boundary of the site.

4. Planning History

Subject Site:

None (check physical history map hard copy)

Applications in the vicinity:

Planning Ref. 20/39787 – Permission granted subject to conditions to demolish existing single storey flat roofed extensions on the northeast gable wall and rear wall of existing dwelling and replace with a single storey pitched roof granny flat extension and a single storey pitched roof kitchen / dining and utility room extension to the northeast gable wall and to rear of existing dwelling including ancillary site works at 28 Firgrove Road, Bishopstown, Cork.

Planning Ref. 99/23149 – Permission granted subject to conditions to: a) convert garage to bedroom, and b) replace existing flat roof to garage and porch with new pitched roof at 58 Westgate Road, Bishopstown, Cork.

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 above)

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 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 1 relates to: “The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.”

Schedule 2, Part 1, Class 3**Exempted Development — General**

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

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development.

Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under Section 5.

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.'

The construction of a covered pergola to the side of the house falls within the definition of 'works'. The construction of the covered pergola to the side of the house is an act of construction and falls within the definition of 'works'. Therefore, the proposal constitutes development within the meaning of the Act.

Conclusion: The proposed development is development

6.2 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 both subsections (1) and (2) of Section 4.

Section 4(1)

I am of the view that a minor element of the proposal falls within the scope of section 4(1), being the works proposed to construct a covered pergola of approximately 18m². The covered pergola would be constructed with wooden posts, wooden panel frontage, side panels and suntuf clear sheeting. It is noted that other garages in the estate have been converted into residential use with garages/ sheds constructed to the side up to the side boundary line. I consider these elements come within the scope of section 4(1)(h) where the alterations 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)

It is therefore necessary to consider whether the proposed covered pergola comes 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).

I consider that article 6 and **Class 3** applies, as the proposal relates to the construction of a covered pergola to side of house (attached to converted former garage to habitable room). I am satisfied that the extension can therefore be assessed against the exemption criteria of Article 6 of Schedule 2, Part 1, Class 3.

Having assessed the proposed development against Class 3 and its conditions and limitations I find as follows:

Condition / Limitation 1

No such structure shall be constructed, erected or placed forward of the front wall of a house.

Assessment

This proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

The proposed covered pergola would have an approximate floor area of 18m² and so, this proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

The proposed covered pergola is to the side of the house and does not reduce private rear garden amenity space. This proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

The pergola is not to be covered in tile or slate. This proposal does not conflict with this limitation.

Condition / Limitation 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.

Assessment

This proposal does not conflict with this limitation.

Condition / Limitation 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

Assessment

This proposal does not conflict with this limitation.

Conclusion: Is exempted development.

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. Recommendation

It In view of the above and having regard to –

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9, and 10 and Part 3 of Schedule 2 of the Planning and Development Regulations 2001 to 2018.

The Planning Authority considers that the proposed construction of a covered pergola to the side of the house at 58 Westgate Road, Bishopstown, Cork is **DEVELOPMENT** and is **EXEMPTED DEVELOPMENT**.

Hugh Killen
Planner

13 February 2023



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

58 Westgate Road Bishopstown

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.

By the construction of the following development and if so, is it exempted development?

1. The construction of a covered pergola to the side of the house?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The proposed pergola will be approx 9m x 2m. It will be 1.5m back from the side entrance gate. It will not be enclosed & will be open at each end. It will be roofed with 'Sun tuff' clear slatting. The structure will be used for the storage of bicycles and other items incidental to the use and enjoyment of the house.

3. Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

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	18m 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) _____ _____ _____

8. 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		

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

Signature: M. A. Wastley

Date: 7/01/23

CONTACT DETAILS

10. Applicant:

Name(s)	Michael McCarthy
Address	58 Westgate Rd. Bishopstown 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 checked="" type="checkbox"/> No <input 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.**

- 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.

The Property Registration Authority
An tÚdarás Clárúcháin Maoine



Folio: CK26237L

This map should be read in conjunction with the folio.

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

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(centre-line of parcel(s) edged)

Freehold

Leasehold

SubLeasehold



Burdens (may not all be represented on map)

Right of Way / Wayleave

Turbary

Pipeline

Well

Pump

Septic Tank

Soak Pit

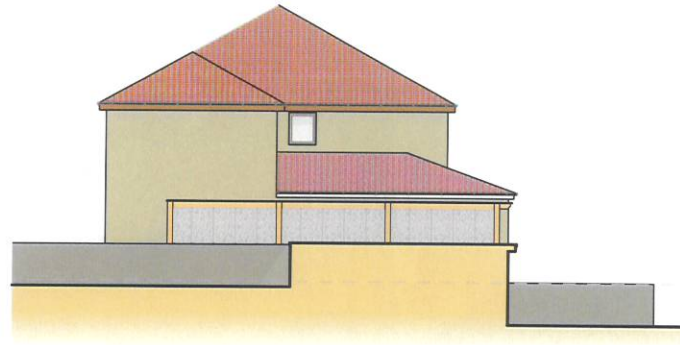
A full list of burdens and their symbology can be found at: www.landdirect.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 85 of the Registration of Title Act, 1964). As Inserted by Section 62 of the Registration of Deed and Title Act 2006.





G.A. E-01 East Elevation
1:100



G.A. E-02 South Elevation
1:100



NOTES
This document and its design content is copyright ©. It shall be read in conjunction with all other associated project information including models, specifications, schedules and related consultancies. Do not scale from documents. All dimensions to be confirmed on site, immediately report any discrepancies, errors or omissions to the Drawing Office. If in doubt ASK.

Construction Risks Maintenance/Working Risks Demolition/Adaptation Risks

In addition to the hazards/risks normally associated with the types of work detailed on this drawing take note of the above and refer to the Designer's Design Risk Assessment document. It is assumed that all works on this drawing will be carried out by competent contractors working, where appropriate, to appropriate risk and method statements.

Safety Health and Environmental Information Box

Rev.	Date	Grid	Comment



Developments Design
VGD Developments & Design
Villa Rosa · The Moor · Lichfield · WS13 8PP
t: 01283 351865 · m: 07757 592104 · e: vgd@btinternet.com

Client
MR. & MRS. MCCARTHY

Job Title
**PROPOSED SIDE ENCLOSURE,
WESTGATE ROAD, CORK**

Drawing Name
SKETCH PROPOSALS 01
Metal Cladding To External Side Of Enclosure

Drawn by **M.F.** Date **24.11.20**
Checked by **M.Mc.** Status **SKETCH**
Drawing Scale **1:100** (at A2)

Drawing No. **20.12-SK.01** Revision



CORK CITY COUNCIL
CITY HALL
CORK

25/01/2023 12:15:50

Receipt No. : PLAN3/0/7824950
***** REPRINT *****

R757 23
Michael McCarthy

EXEMPTION CERTS - FEES 58800	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
R757 23	

Total : 80.00 EUR

Tendered :
Cheque 80.00
225406

Change : 0.00

Issued By : Eoghan Fahy
From : Planning Dept. 3
Vat reg No.0005426M

PLANNING DEVELOPMENT MANAGEMENT

CASHDESK RECEIPT CHECKLIST

Name: MICHAEL MCCARTHY

Amount: €80.00 TP No.: R 757/23.

Description/ Address: 58 WESTGATE ROAD, BISHOPSTOWN

Business Unit	Description
I4110	Copies of Planning Permission <ul style="list-style-type: none">• Copies of Planning Decisions• Copies of Final Grant• General copying• Archive Retrieval• Microfiche
I4114	<ul style="list-style-type: none">• Application Fees
<u>I4116</u>	<ul style="list-style-type: none">• <u>Section 5 applications (Exemption Certs)</u>• Extension of Duration Applications• Planning Searches
I4117	<ul style="list-style-type: none">• Submissions/Objections on Planning Applications
I4118	<ul style="list-style-type: none">• Recouped Enforcement Expenses
I4121	<ul style="list-style-type: none">• Section 254 Licence fees (Fingerpost signs)
I4122	<ul style="list-style-type: none">• SHD Fees (Strategic Housing Developments)
I4124	<ul style="list-style-type: none">• Planning Bond Letters
I4100	<ul style="list-style-type: none">• Outdoor Event Licences

Planning Contributions

TP No. : _____ JDE Account No.: _____

Amount: _____

Signed: Kate Ryan Date: 20/01/23.