



Comhairle Cathrach Chorcaí

Cork City Council

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

Niche Health Project Cork CLG,
c/o Brian Kelleher,
HSE Building,
Harbour View Road,
Knocknaheeny,
Cork T23 XY16.

28/09/2022

**RE: Section 5 Declaration R735/22 Knocknaheeny/Hollyhill
Community Garden, Hollyville Estate, Harbour View Road,
Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 30th August 2022, I wish to advise as follows:

The Planning Authority, 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 80 of the Planning and Development Regulations 2001 (as amended),

It is concluded that proposed *construction of a garden room in a community garden space* **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, 28th September 2022.

Is mise le meas,

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



We are Cork.

ANNEX'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R 735/22		
Application type	Section 5 Declaration	
Description	<i>Is the construction of a garden room an exempted development in a community garden space?</i>	
Location	Knocknaheeny / Hollyhill Community Garden, Hollyhill Estate, Harbour View Road	
Applicant	C/O Brian Kelleher, Niche Health Project Cork CLG	
Date	28/09/2022	
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 construction of a garden room an exempted development in a community garden space?

The following additional details were also provided on the form submitted:

Proposed garden studio as an additional space in a community garden.

3. Site Description

The subject site is located Hollyhill, to the north of the petrol station on Harbour View Road. Aerial photography indicates that it consists of a number of structures and gardens.

4. Planning History

There is no recent planning history associated with the 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)

The following shall be exempted developments for the purposes of this Act—...

(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity

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**Part 1 of Schedule 2, Class 33**

Development for amenity or recreational purposes

Development consisting of the laying out and use of land –

a) as a park, private open space or ornamental garden,

(b) as a roadside shrine, or

(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated.

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 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act
(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...,
(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...,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

Part 8 - REQUIREMENTS IN RESPECT OF SPECIFIED DEVELOPMENT BY, ON BEHALF OF, OR IN PARTNERSHIP WITH LOCAL AUTHORITIES

Article 80. (1)

Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as “proposed development”, are hereby prescribed for the purposes of section 179 of the Act —

(k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

Article 80. (2)

(c) This Part shall also apply to development which is carried out within the functional area of a local authority that is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

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 placement of a garden room structure on the subject lands constitutes ‘works’ and accordingly constitutes ‘development’.

6.2 Exempted development

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

Section 4(1)(f) of the *Planning and Development Act 2000* (as amended) states that development carried out in partnership with a local authority, pursuant to a contract entered into by the local authority concerned, shall be exempted development. Article 80 of the *Planning and Development Regulations 2001* (as amended) sets out requirements for such developments.

The application form indicates that the subject site is in the ownership of Cork City Council and it the subject of a lease. A letter of consent from the property section of Cork City Council for the undertaking of the works has been provided. The works are however not being carried out by Cork City Council nor has any indication been set out that the works are being undertaken in partnership with the Local Authority. Accordingly this exemption from the requirement for planning permission does not apply to the proposed development.

Class 33, as set out in Part 1 of Schedule 2 in the *Planning and Development Regulations 2001* (as amended), broadly provides an exemption for the laying out and use of land for athletics or sport, where no charge is made for admission.

Whilst no details have been provided regarding the proposed use of the structure I do not consider that the construction of a Garden Studio, as illustrated on the plans provided, can be classed as for athletics or sport. This exemption therefore does not apply to the proposed development.

Following this review of the exempted development provisions as set out in the Act and Regulations I conclude that the proposed development is not 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. CONCLUSION

The following question has been asked

Is the construction of a garden room an exempted development in a community garden space?

This report concludes that the proposal 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, 9 and 80 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed *construction of a garden room in a community garden space* **Is Development** and is **Not Exempted Development**.



Martina Foley
A/Senior Executive Planner

Received via Email
30/8/22 (final version)

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

Lionra/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

Knocknaheeny/Mollyhill Community Garden
Mollyville Estate, HARBOUR VIEW ROAD, CORK.

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 garden room
an exempted development in a community
garden space?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Proposed garden studio as an
additional space in a community
garden.

DEVELOPMENT MANAGEMENT
CCP

3-0 AUG 2022

CORK CITY COUNCIL

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	25 - 35 sqm.
(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)
_____	_____
_____	_____
_____	_____

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		C/O. Brian Kelleher.	
Applicants Address		Niche Health Project Park ClG.	
		MSF Building Harbour View Road Knockreebeg, Park T23 XY16.	
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:	021 4300 135	
	Fax:		
	E-mail address:	brian@nicheonline.ie	
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	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	Lease. Park City Council	
If you are not the legal owner, please state the name and address of the owner if available	Park City Council City Hall, Cork, T12 T997.	

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

Signature: 

Date: 22/8/2022

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, Strategic Planning & Economic Development
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



Comhairle Cathrach Chorcaí
Cork City Council

Corporate Affairs and International Relations Directorate

Brian Kelleher,
Manager,
NICHE Health Project (Cork) CLG
HSE Building,
Harbourview Road,
Knocknaheeny,
Cork.
T23 XY16

4 July 2022

OUR REF: EO6612

Dear Brian,

RE: PROPOSED WORKS TO NICHE COMMUNITY GARDEN

I can confirm that Cork City Council consents to the proposed works to be undertaken to the Community Garden facility (currently leased to NICHE) and funded through the SEEP funding and Slaintecare Healthy Communities initiative, specifically: -

- Installation of a new garden studio measuring approx. 25 sqm to 35 sqm
- Improvements and refurbishments to the existing building, including the removal of an internal wall and the replacement with bi-fold doors.

All as per specification submitted to Cork City Council.

Please do not hesitate to contact me should you require any further information.

Yours sincerely,


Nuala Stewart
Administrative Officer

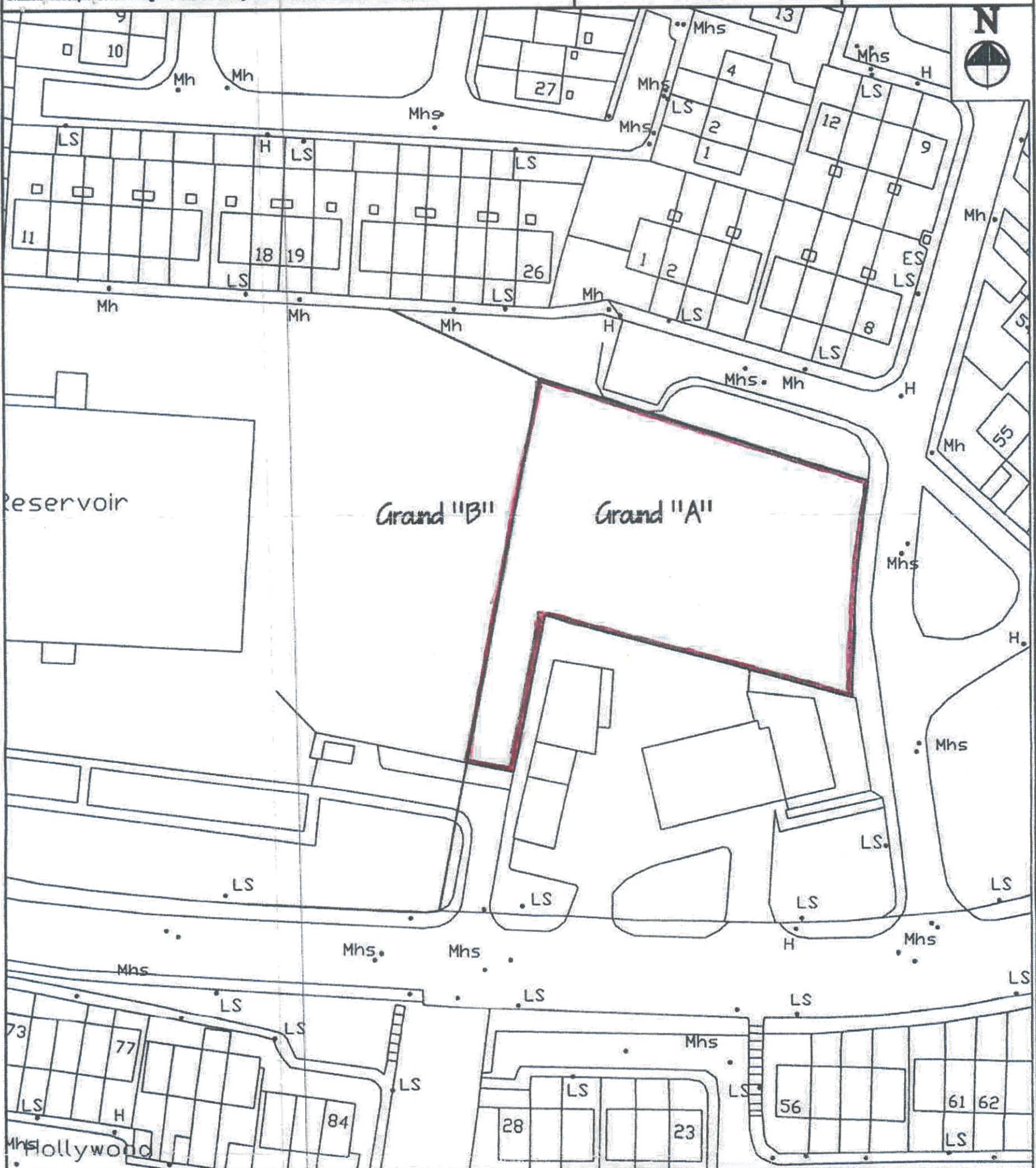




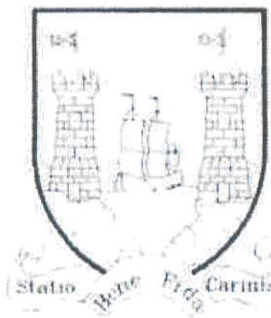
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SITE BOUNDARY

Computer Generated Map



Cork City Council, Property Section



Corporate Affairs Directorate
 Floor 3, New Civic Offices,
 Anlasca Street,
 Cork.
 Tel: (021) 4966222
 Fax: (021) 4924550

Drawing Title

**Ground at Hollyville,
 Harbour View Road,
 Knocknaheeny**

File Ref	Date	Scale
	03/02/	1:1000
Drawn	Checked	OS Map Ref
DMcC		6362-02 & 07

Filepath
 G:\DMcC\3D11\DWG\Map\os\osmap\Hollyville Ground".dwg