



Comhairle Cathrach Chorcaí Cork City Council

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

Mizen Clothing Retail Ltd.,
c/o Ciarán Cronin,
CroCon Engineers,
4 Main Street,
Bantry,
Co. Cork.

16/09/2022

RE: Section 5 Declaration R736/22 39 St. Patrick's Street, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 31st 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
- Article 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that *the construction of a sign and a shutter on the front elevation of 39 Patrick Street, Cork*, (as replacement signage under the subsequent TP 04/28440) and having consideration of no exemption in the regulations for roller shutters, it is considered that the proposal **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, 16th September 2022.

Is mise le meas,

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



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference	R 736/22
Description	Is the construction of a sign and a shutter on the front elevation at 39 Patrick Street, Cork, development and if so, is it exempted development?
Applicant	The North Face
Location	39 Patrick Street, Cork City.

PURPOSE OF REPORT

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

Site Location

The site is located on Patrick Street, at the corner of Marlborough Street. The build was previously Lifestyle Sports.

RELEVANT LEGISLATION

Planning and Development Act 2000 (as amended)

Section 2(1),

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

“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 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.

1.1 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.

Planning and Development Regulations

Under Class 2 of Schedule 2, Part 2 (Exempted Development – Advertisements) of the Planning and Development Regulations 2001 (as amended) the following exemption relates to illuminated advertisements:

Illuminated advertisements exhibited as part of any shop or other window display on business premises and other advertisements affixed to the inside of the glass surface of a window of a business premises or otherwise exhibited through a window of such premises. The total area of any advertisements so exhibited shall not exceed one quarter of the area of the window through which the advertisements are exhibited.

Under Part 2 Article 9 of the Planning and Development Regulations 2001 (as amended) – the following restriction on exemptions is outlined:

Restrictions on exemption.	9.	(1)	Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would— (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
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Sub-threshold EIS

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No3) 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 EIS is not required to be submitted.

Appropriate Assessment

The relevant European sites are the Cork Harbour SPA (Site Code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly, it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

Flood Risk Assessment

The proposed development site is not located within Flood Zones A or B as defined in the *Flood Risk Management Guidelines for planning Authorities 2009*.

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.

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 of new signage and roller shutter.

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

Article 9 (1)

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

(b) (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,

Planning history

TP 04/28440

Condition 2A, B and C of **TP 04/28440** (a subsequent permission on site) for 39 Patrick Street is applicable and states the following:

2 (a) The shopfront fascia signage shall be modified to feature back-lit 'Halo' effect lighting to the lettering in place of the internal illumination proposed. Revised drawings clearly indicating this modification shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development.

(c) Signs shall be restricted to a single fascia sign with good quality sign writing of an acceptable finish.

(d) **No external roller shutters**, awnings, canopies, projecting signs or other signs shall be erected on the premises except with prior grant of planning permission.

Reason: In the interests of the visual amenity of the area.

Conclusion

The question has been asked whether

'The construction of a sign and a shutter on the front elevation at 39 Patrick Street, Cork, is development and if so, is it exempted development'

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed construction of a sign and a shutter on the front elevation at 39 Patrick Street, as submitted, is development and is not exempted development.

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
- Article 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that the construction of a sign and a shutter on the front elevation of 39 Patrick Street, Cork, (as replacement signage under the subsequent TP 04/28440) and having consideration of no exemption in the regulations for roller shutters, it is considered that the proposal **Is Development and is Not Exempted Development.**

Alan Swanwick,
Assistant Planner
15/09/2022

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

DEVELOPMENT MANAGEMENT
CCP

31 AUG 2022

R-Post/E-Mail planning@corkcity.ie

CORK CITY COUNCIL

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

39 Patrick's Street, Cork, T12 XN99

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 sign and a shutter on the front elevation at 39 Patrick's Street, Cork, development and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Please refer to drawing 22086-CRO-X-L00-SK-SE-00001.

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

If so please supply details:

Previous enforcement E7675 (Site occupied by Lifestyle Sports)

4. Is this a Protected Structure or within the curtilage of a Protected Structure?

No

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:

No

6. APPLICATION DETAILS

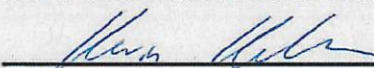
Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	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"/> If yes, please provide floor areas. (sq m) n/a
(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)
-----	-----
-----	-----
-----	-----
n/a	n/a

8. 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	Tenant	
If you are not the legal owner, please state the name and address of the owner if available	Irish Life Assurance plc Irish Life Centre, Lower Abbey Street, Dublin 1	

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

Signature: 

Date: 31/08/2022

CONTACT DETAILS

10. Applicant:

Name(s)	Mizen Clothing Retail Limited
Address	Seafield, Bantry, Co.Cork

11. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	Ciarán Cronin
Address:	CroCon Engineers, 4 Main Street, Bantry, Co. Cork
Telephone:	02750123
E-mail address:	info@crocon.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"/>

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:

<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>The Development Management Section, Community, Culture & Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</p>
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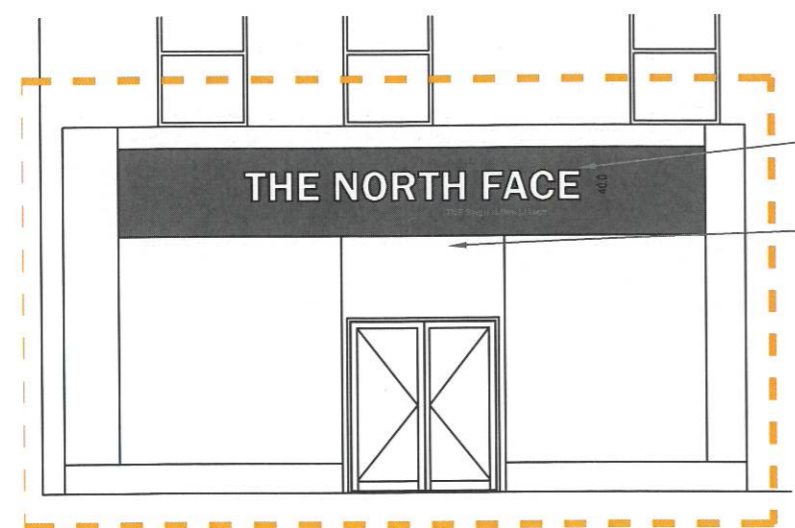
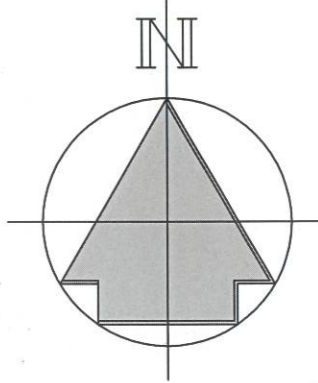
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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.

1 FIRST FLOOR

Notes:
Sign location



Sign (400mm)
Shutter (Recessed when open)

REVISION	DATE	BY	DETAILS
0	08/22	CC	Issue 0

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Drawn By CC
Chkd By CC
Approved By --
DWG Date 25/08/22
Scale 1/100 @A3
Purpose Code P00
Acceptance Code S
Rev. 0
Stage Comment

CroCon Engineers Ltd.
Consulting Engineers
4 Main St., Bantry, Co. Cork
E: info@crocon.ie
Tel: (027) 50123

Project	Originator	Spatial Zone	Level	Info Type	Role	Number
22086	- CRO -	X -	L00 -	SK -	SE -	00001

Client Mizen
Project North Face Retail Unit 39 Patrick Street
Title Signs and shutter