



Comhairle Cathrach Chorcaí Cork City Council

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

Fergus O'Sullivan,
c/o Niall O'Sullivan,
28 Sandymount Ave.,
Glasheen,
Cork.

10/03/2023

**RE: Section 5 Declaration R762/23 10 Convent Road Upper,
Blackrock, Cork T12 E3ES.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 16th February 2023, I wish to advise as follows:

The Planning Authority, 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 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018,

The Planning Authority considers that *the construction of an upper floor extension to the rear of the existing dwelling house* at 10 Convent Road Upper, Blackrock, 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, 10th March 2023.

Is mise le meas,

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



We are Cork.

| | |
|------------------|--|
| Application type | SECTION 5 DECLARATION |
| Question | <i>Whether the construction of an upper floor extension to the rear of the dwelling is development or is exempted development.</i> |
| Location | 10 Convent Road Upper, Blackrock, Cork |
| Applicant | Fergus O'Sullivan (owner) |
| Date | 10/03/2023 |
| 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, "repair existing water damaged flat roof and construct new room with toilet/shower over existing water damaged structure with new flat roof".

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:

Whether the construction of an upper floor extension to the rear of the dwelling is development or is exempted development.

3. SITE DESCRIPTION

The subject property is a two-storey mid-terrace dwelling in the Sustainable Residential Neighbourhoods zoning area. The subject site fronts onto Upper Convent Road. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of an upper floor extension over an existing single storey extension to the rear of the existing dwelling which comprises of an area of 20.81m² (as stated in Question 2 of the Application Form).

5. RELEVANT PLANNING HISTORY

None.

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 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 1

Exempted Development — General

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|---|
| <p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 <i>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.</i></p> | <p>1. (a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i></p> <p>(b) <i>Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i></p> <p>(c) <i>Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i></p> |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|---|
| | <p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p> <p>5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of</p> |

| Column 1 Description of Development | Column 2 Conditions and Limitations |
|--|---|
| | <p><i>the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></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’. I consider that the construction of an upper floor extension to the rear of the existing dwelling constitutes ‘works’ as it comprises extension to the main dwelling house. 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 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).

I consider that article 6 and Class 1 applies, as it is an extension of a house by the construction of an extension to the rear of the house.

Having assessed the proposed extension against Class 1 and its conditions and limitations I find as follows:

Condition / Limitation 1

The house, from reviewing planning history, has not been previously extended. The proposed extension is approximately 20.81m² in area and is an upper floor extension. Therefore part (a) of this condition and limitation is satisfied. Part (b) states that for a terraced dwelling the floor area of any extension above ground level shall not exceed 12 square metres. The stated internal floor area, as stated in Question 2 of the Application Form, is 20.81m², which is in excess of the stated floor area of 12 square metres. As the proposed development does not comply with Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 to 2018 as amended it is not considered that an exemption applies. Part (c) does not apply.

Condition / Limitation 2

The house does not appear to have been previously extended therefore this condition/limitation does not apply.

Condition / Limitation 3

No site plan or boundary details are provided, however it would appear that the proposed upper floor extension is proposed directly adjacent to the Western site boundary. As the proposed development does not comply with Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 to 2018 as amended it is not considered that an exemption applies.

Condition / Limitation 4

No elevation or section drawings have been provided. Further information would be required to assess same.

Condition / Limitation 5

Proposal is for upper floor extension only, therefore it is considered that there would be no impacts on existing private open space.

Condition / Limitation 6

No site plans provided. Further information would be required to assess same.

Condition / Limitation 7

No roof plans, site plans or elevations provided. Further information would be required to assess same.

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.**

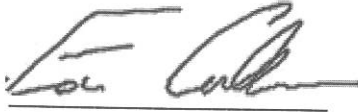
9. RECOMMENDATION

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 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of an upper floor extension to the rear of the existing dwelling house at 10 Convent Road Upper, Blackrock, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

A handwritten signature in black ink, appearing to read 'Eoin Cullinane', written over a horizontal line.

Eoin Cullinane
A/Executive Planner
10/03/2023

**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
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

10 CONVENT RD. UPPER, BLACKROCK CORK T12E 3ES

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.

REPAIR EXISITING WATER DAMAGED FLAT ROOF & CONSTRUCT NEW ROOM WITH TOILET/SHOWER
OVER EXISITNG WATER DAMAGED STRUCTURE WITH NEW FLAT ROOF.

APPROX SIZE OF NEW ROOM/AREA IS 224 SQ FT/20.81 SQ. M

NO GARDEN/BACKYARD AREA WILL BE LOST DUE TO REPAIRS/IMPROVMENETS.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

DEVELOPMENT MANAGEMENT
CCP
16 FEB 2023
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 | 83.6 SQ. M/20.81 SQ. M |
| (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) NOT SURE _____ |
| (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): | | FERGUS O'SULLIVAN | |
| Applicants Address | | [REDACTED] | |
| Person/Agent acting on behalf of the Applicant (if any): | Name: | NIALL O'SULLIVAN | |
| | Address: | 28 SANDYMOUNT AVE. GLASHEEN, CORK | |
| | Telephone: | [REDACTED] | |
| | Fax: | | |
| | E-mail address: | [REDACTED] [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 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 <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 | | |

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

Signature: _____



Date: 14.2.2023

.....

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:

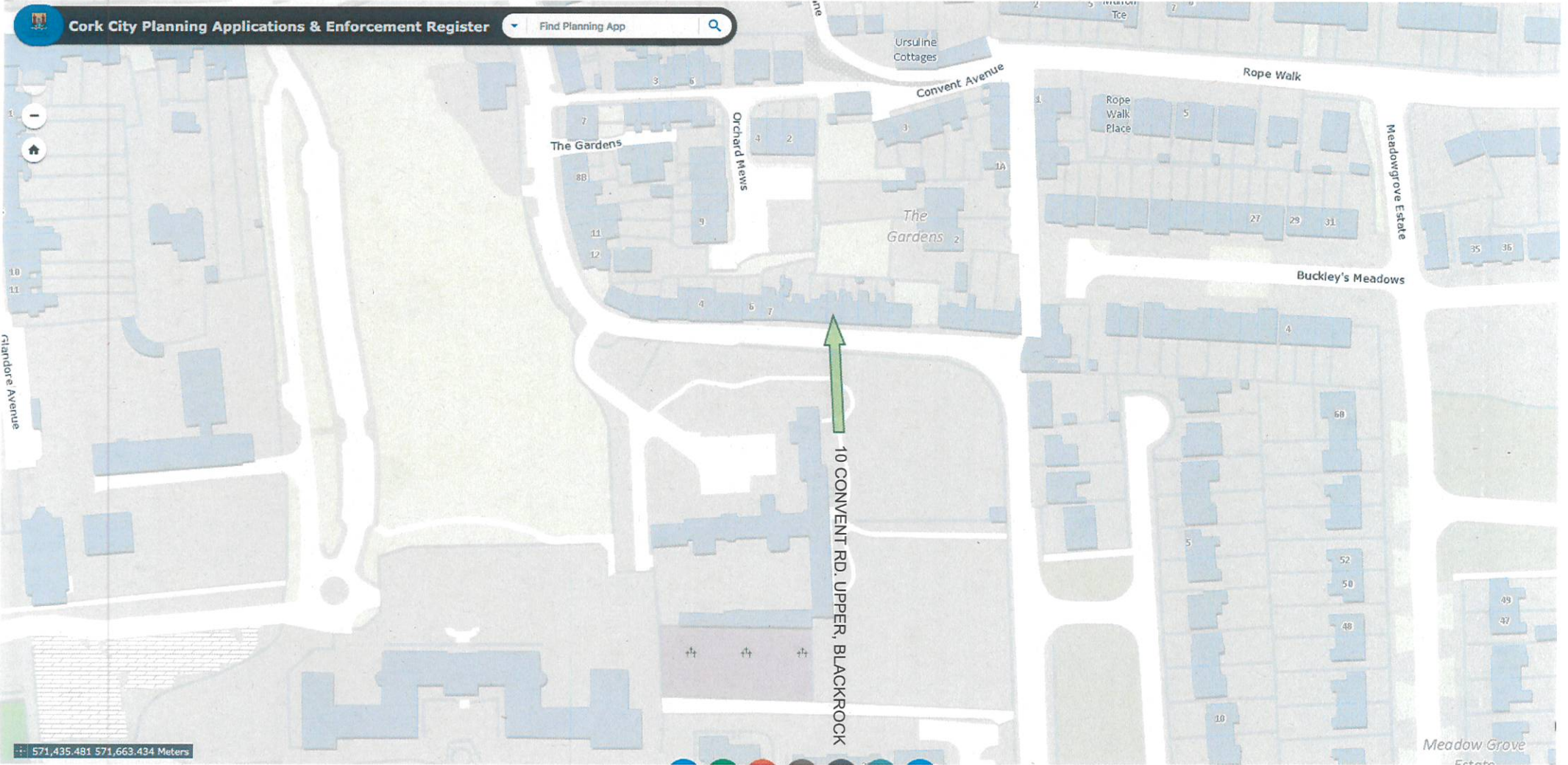
The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- 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



10 CONVENT RD. UPPER, BLACKROCK

The Gardens

The Gardens 2

Convent Avenue

Rope Walk

Buckley's Meadows

Meadowgrove Estate

Meadow Grove Estate

Riandore Avenue

571,435.481 571,663.434 Meters

10 COVENT ROAD

