



Comhairle Cathrach Chorcaí Cork City Council

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

Helen Mullane,
45 Meadowbrook,
Glanmire,
Cork

12th December, 2019

RE: R553/19 – Section 5 Declaration
Property: 45 Meadowbrook, Riverstown, Glanmire, Cork

Dear Sir/Madam,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

In view of the above and having regard to-

- Section 3 of the Planning and Development Act 2000 (as amended), and
- Article 10 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed alteration to the operation hours of the childcare facility as granted under TP07/8924 and amended by TP08/6562 **'IS development'** and **'is NOT exempted development'**.

Yours faithfully,

A/Assistant Staff Officer,
Community, Culture &
Placemaking



We are Cork.

PLANNER'S REPORT		Cork City Council Culture, Community and Placemaking
Ref. R 553/19		
Application type	Section 5 Declaration	
Description	<i>Whether the change of operation hours of permitted childcare facility requires planning permission.</i>	
Location	45 Meadowbrook, Poulacurry North, Riverstown, Glanmire	
Applicant	Helen Mullane	
Date	03/12/2019	
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

The question set out above was drafted based upon the information set out by the applicant in Question 2 of the form. The application form states:

Planning Register No: 078924

I have planning permission to run a childcare service. I am applying to have one of my planning conditions (Condition 5) regularised to reflect hours I am now running my service. At the time of the granting of planning permission, the (condition 5) hours of operation shall be restricted to between the hours of 9.30am-1.00pm Monday to Friday. This has changed and now I am operating my pre-school Monday – Friday and the opening hours are as follows

*Mon – 8.45am – 11.45am
12.30 pm – 2.30pm*

*Tues – 8.45am – 11.45am
12.30 pm – 2.30pm*

Wed – 8.45am – 11.45am

Thurs – 8.45am – 11.45am

Fri – 8.45am – 11.45am

Please note that the actual condition governing the hours of operation on site No. 4, no No. 5 as set out by the applicant.

3. Site Description

The property in question is a two storey semi-detached dwelling / childcare facility with a single storey extension to the side.

4. PLANNING HISTORY

There are two relevant planning applications are associated with the site as follows.

CCC# Ref	Development Description	Key Condition
07/8924	Change of use family room to pre-school classroom	No. 4 – Hours of operation shall be restricted to between the hours of 9:00am and 1:00pm Monday to Friday. Reason: To safeguard the amenities of residential properties
08/6562	Construction of extension to pre-school and double pitch roof to existing pre-school classroom	No. 2 – The proposed development shall comply with the terms and conditions of Planning Permission Ref. No. 07/8924 which governs the overall development of the lands of which the site forms part. Reason: in the interests of the proper development of the site.

Cork County Council Planning Reference

5. LEGISLATIVE PROVISIONS

5.1 The Act

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 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 10 (1)

Development which consists of a change of use within any one of the classes of use 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—

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*

6. ASSESSMENT

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’.

The proposed intensification of use above the hours prescribed in Condition 5 of the parent permission – 07/8924 is, because it contravenes the condition, considered a material change of use and hence is ‘development’ as defined by the Act.

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Article 10(1) and Part 4 of Schedule 2 of *Planning and Development Regulations 2001* (as amended) set out a number of instances where a material change of use of can be deemed to be exempt. Article 10(1)(b) however clearly states that these exemptions do not apply where the change of use would contravene a condition attached to a permission under the Act. The propose alteration to the operating hours of the childcare facility ~~would~~ therefore cannot rely on any exemptions ser out by

Accordingly the proposed material change of use is not considered to be 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. 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 question has been asked *the change of operation hours of permitted childcare facility requires planning permission.*

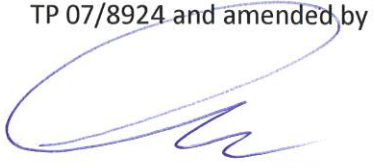
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed change to opening hours is development and is not exempted development

9. RECOMMENDATION

In view of the above and having regard to —

- Section 3 of the Planning and Development Act 2000 (as amended), and
- Article 10 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed alteration to the operation hours of the childcare facility as granted under TP 07/8924 and amended by TP 08/6562 **Is Development** and is **Not Exempted Development**.



Martina Foley
Executive Planner

Agreed MLW
12/12/19

**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

Cork City Council
15 NOV 2019
Strategic Planning & Economic
Development Directorate

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

45, MEADOWBROOK POULACURRY NORTH RIVERSTOWN GLANMIRE

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.

PLANNING REGISTER NO : 078924

CONDITION 5

I have planning permission to run a childcare service. I am applying to have one of my planning conditions (Condition 5) regularised to reflect how I am now running my service. At the time of the granting of planning

cont/

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

permission, the (condition 5) hours of operation shall be restricted to between hours of 9.00am - 1.00pm Monday to Friday. This has changed and now I am operating my pre-school - Monday - Friday and the opening hours are as follows

Mon - 8.45^{am} - 11.45^{am}

12.30^{pm} - 2.30^{pm}

Tues - 8.45^{am} - 11.45^{am}

12.30^{pm} - 2.30^{pm}

Wed - 8.45^{am} - 11.45^{am}

Thurs - 8.45^{am} - 11.45^{am}

Friday - 8.45^{am} - 11.45^{am}

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		
(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):		Helen Mollane	
Applicants Address	45 Meadowbrook Glanmire Co. Cork		
Person/Agent acting on behalf of the Applicant (if any):	Name:		
	Address:		
	Telephone:		
	Fax:		
	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"/>

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		

6.1 / We confirm that the information contained in the application is true and accurate:

Signature: Helen Mullane

Date: 13/11/19

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.

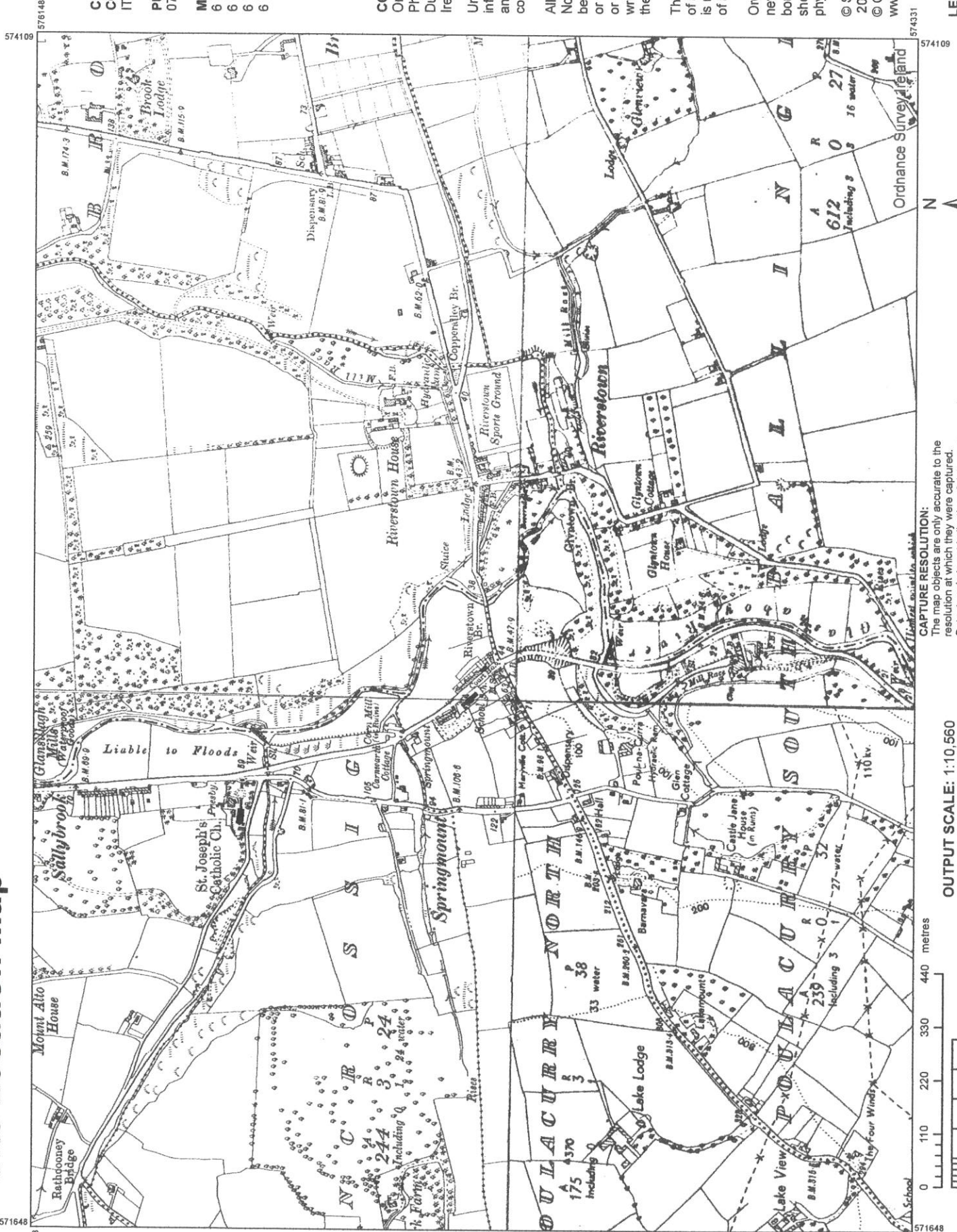
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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

Site Location Map



CENTRE COORDINATES:
 ITM 572879,575240

PUBLISHED:
 07/11/2019

ORDER NO.:
 50093018_1

MAP SERIES:
 6 Inch Raster
 6 Inch Raster
 6 Inch Raster
 6 Inch Raster

MAP SHEETS:
 CK063
 CK064
 CK074
 CK075

COMPILED AND PUBLISHED BY:
 Ordnance Survey Ireland,
 Phoenix Park,
 Dublin 8,
 Ireland.

Unauthorised reproduction
 infringes Ordnance Survey Ireland
 and Government of Ireland
 copyright.

All rights reserved.
 No part of this publication may
 be copied, reproduced
 or transmitted in any form
 or by any means without the prior
 written permission of
 the copyright owners.

The representation on this map
 of a road, track or footpath
 is not evidence of the existence
 of a right of way.

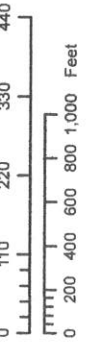
Ordnance Survey maps
 never show legal property
 boundaries, nor do they
 show ownership of
 physical features.

© Suirbhéireacht Ordanáis Éireann,
 2019
 © Ordnance Survey Ireland, 2019
 www.osi.ie/copyright



CAPTURE RESOLUTION:
 The map objects are only accurate to the
 resolution at which they were captured.
 Output scale is not indicative of data capture scale.
 Further information is available at:
<http://www.osi.ie>; search 'Capture Resolution'

OUTPUT SCALE: 1:10,560



LEGEND:
<http://www.osi.ie>;
 search 'Large Scale Legend'

Planning Pack Map



National Mapping Agency

CENTRE COORDINATES:
ITM 572879,575240

PUBLISHED: 07/11/2019
ORDER NO.: 50093018_1

MAP SERIES: 1:2,500
MAP SHEETS: 6339-A

COMPILED AND PUBLISHED BY:
Ordnance Survey Ireland,
Phoenix Park,
Dublin 8,
Ireland.

Unauthorised reproduction
infringes Ordnance Survey Ireland
and Government of Ireland
copyright.

All rights reserved.
No part of this publication may
be copied, reproduced
or transmitted in any form
or by any means without the prior
written permission of
the copyright owners.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Ordnance Survey maps
never show legal property
boundaries, nor do they
show ownership of
physical features.

© Suirbhéireacht Ordnáis Éireann,
2019
© Ordnance Survey Ireland, 2019
[www.osi.ie/copyright](http://www.osi.ie)

LEGEND:

<http://www.osi.ie>
search | area | scale | legend



CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
<http://www.osi.ie/search/PlanningPack.html>

OUTPUT SCALE: 1:1,000

