



Comhairle Cathrach Chorcaí Cork City Council

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

Robert Payne
c/o Cullen Payne Architects
56-58 Drury Street
Dublin D02NP99

23/12/19

**RE: Section 5 Declaration R554/19 Scoil Padraig Naofa,
Mount Oval, Rochestown, Co Cork**

A Chara,

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

having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- *Class 16, Schedule 2, Part 1* of the Planning and Development Regulations 2001 (as amended),

It is concluded that:

- The temporary structures are not required in direct connection with the physical works of the proposed refurbishment/remediation.
- The temporary structures will be used as classrooms which is a separate category of development.

It is therefore considered the proposed three temporary classrooms **Is Development** and is **Not Exempted Development**.

Yours faithfully,

Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

**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

SCUIR PADPAIG MADFA, FOXWOOD, MANTOVA,
ROCHESTOWN, CO CORK T12 HX79

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.

PLEASE SEE ATTACHED SHEET

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

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)

	EXISTING	PROPOSED
(a) Floor area of existing/proposed structure/s	2,668 m ²	264 m 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 checked="" 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)	
N/A	N/A	
_____	_____	
_____	_____	

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		MINISTER FOR EDUCATION AND SKILLS	
Applicants Address	GOVERNMENT BUILDINGS TUWAMORE 40 OFFAULT		
Person/Agent acting on behalf of the Applicant (if any):	Name:	ROBERT PAYNE	
	Address:	CUNOY PAYNE ARCHITECTS 56-58 DRURY STREET DUBLIN D02 NP35	
	Telephone:	01 - 648 7300	
	Fax:	N/A	
	E-mail address:	RPAYNE@CUNOYPAYNE.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 <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	N/A	
If you are not the legal owner, please state the name and address of the owner if available	N/A	

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

Signature: MuA

Date: 13 NOVEMBER 2013

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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

PLANNER'S REPORT		Cork City Council
Ref. R554 /19		Development Management Community, Culture and Place-making
Application type	Section 5 Declaration	
Description	<i>Can these three temporary classrooms be considered as "exempted development: temporary structures and uses" under Class 16, Schedule 2, Part 1 of the Planning and Development Regulations, 2001"?</i>	
Location	Scoil Padraig Naofa, Foxwood, Mountovel, Rochestown, Co. Cork T12HX79	
Applicant	Minister for Education and Skills	
Date	19/12/2019	
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,

55.—(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 the correspondence:

Can these three temporary classrooms be considered as "exempted development: temporary structures and uses" under Class 16, Schedule 2, Part 1 of the Planning and Development Regulations, 2001"?

3. Site Description

The property in question is the grounds of a two-storey primary school located at Mountoval, Rochestown, Cork city. The building is not a protected structure.

4. PLANNING HISTORY

TP 08/4919	Permission granted for the construction of phase one of a 24 no. classroom primary school consisting of a two storey building comprising of 8 no. classrooms, staff and pupil facilities, teaching support rooms, ancillary spaces and all associated site works to include play area, ball courts, paths, internal road with school bus/parents set down area, car parking, perimeter boundary fencing, secure fencing, retaining wall structures and 2 no. vehicular entrances
TP 11/5912	Permission granted for the proposed development of a 2 storey extension onto the existing 8 classroom school comprising of 8 classrooms, staff room, set rooms, library/resource room, sanitary and ancillary accommodation which is linked to the existing school building. Also provision of new canopy over main entrance. Proposed site works to include for an additional 16 no. car parking spaces via re-aligned vehicular access road with improved set down and turning facilities, relocation of 4 no. bicycle racks, 2 no. new junior play areas, landscaped garden areas and boundary treatment. Further site works include retention of existing ramp access to southern boundary and formation of new vehicular turning space with set-down provision in adjoining housing development
TP 14/4055	Permission granted for a timber clad bin store, gross floor area 15sqm., and max height 1.8m, to rear of school



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.

“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

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 or ‘the making of any material change in the use of any structures or other land’

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

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 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

Class 16 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>The erection, construction, or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.</i></p>	<p><i>Such structure, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.</i></p>

Class 17 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>The erection, construction, or placing on land on, in, over or under which, or on land adjoining works which, development consisting of works (other than mining) is being or is about to be carried out, pursuant to any permission, consent, approval or confirmation under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.</i></p>	<p><i>Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent or confirmation granted under the Act or any other enactment.</i></p>

Class 20B	
<p><i>The erection on land on which development consisting of the construction of a school is to be carried out pursuant to a permission or outline permission under the Act of temporary on-site school structures</i></p>	<ol style="list-style-type: none"> <i>1. No structure shall be erected for a period exceeding 5 years.</i> <i>2. The gross area of such structures shall not exceed 50% of the gross floor area of the school to be constructed pursuant to the permission under the</i>

	<p>Act.</p> <p>3. No such structure shall be above the ground floor.</p> <p>4. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.</p>
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6. Planning assessment

6.1 Correspondence with the S5 application states that remediation works are to be carried out to the school building and will take place during the school term over 18 weeks. The temporary classrooms will only be on site for the period of works. Works to the main school buildings include removal of the internal plasterboard linings and finishes to the external walls rendering the areas in which works are being undertaken for educational use. The three proposed structures are single storey, and are to be located on the existing hard-surfaced playground in front of the school. The proximity of the temporary classrooms is stated to be the least disruptive option for the students.

A) "Is or is not Development"

The construction of the classrooms will involve works, as defined, and hence constitutes development within the meaning of the Act.

B) "Is or is not Exempted Development"

The question posed to the Planning Authority is the following:

Can these three temporary classrooms be considered as "exempted development: temporary structures and uses" under Class 16, Schedule 2, Part 1 of the Planning and Development Regulations, 2001"?

This will be assessed as follows. The question specifies a particular article of the regulations (Class 16). However, in the interest of clarity, I will also examine the relevance of Class 20(b) and Class 20 (c) because it directly references temporary works/uses in a school context.

6.2 Class 16

<u>Breakdown of Class 16</u>	<u>Application to stated question -</u>
<i>The erection, construction, or placing on land on, in, over or under which, or on land</i>	Works will involve the erection, construction or placing on land
<i>adjoining which,</i>	There is no definition of "adjoining". However, in this case it can be argued favourably. It is

	stated in the correspondence submitted with the application that the temporary structures will be located on the existing school yard. This is proximate to the school building.
<i>development consisting of works (other than mining)</i>	Works – removal of plastering/rendering of interior/exterior walls.
<i>is being or is about to be, carried out</i>	There is no definition of “about to”. I would interpret this as meaning commencing during time of construction works. At time of site inspection (17/12/2019), no temporary structures had been erected.
<i>pursuant to a permission under the Act</i>	I cannot find a definition of “pursuant” in the planning act or regulations. The Collins dictionary defines “pursuant” as “done in consequence or performance of anything”. I surmise meaning is “in accordance with”. This is not applicable as no planning permission is sought for the proposed works to the school building.
<i>or as exempted development</i>	Based on information submitted, works could be considered exempt. Works will be repair and renewal – removal of internal plasterboard linings and finishes to the external walls and subsequent rendering.
<i>of structures, works, plant or machinery</i>	Works will involve structures
<i>needed temporarily</i>	They will be temporary as per correspondence received
<i>in connection with that development during the period in which it is being carried out.</i>	These structures are <u>not</u> connected to the building works.

Class 16 relates to temporary structures, plant/machinery and other works that are required to be provided in the context of construction works, and are required in connection with those construction works.

The works are removal of plaster and rendering of external/internal walls to the existing school building. My understanding is that the structures/works/plant or machinery are what are required to facilitate construction works – storage for plant/machinery for the duration of the works being carried out. These temporary structures are not needed in connection with these development works.

It is stated in the question that the temporary structures will be used as classroom use. This is a separate category of development which merits a different consideration of planning issues and is not covered under this exemption.

For the purposes of clarity, there is another category of exemption which was introduced to the regulations in 2008.

Class 20B - The erection on land on which development consisting of the construction of a school is to be carried out pursuant to a permission or outline permission under the Act of temporary on-site school structures.(subject to restrictions).

This exemption is not applicable in this case as it relates to the construction of a school which is to be carried out pursuant to a permission or outline permission. This is not the case as it relates to refurbishment works at an existing school. (Class 20C relates to the temporary use of other buildings).

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
- *Class 16, Schedule 2, Part 1* of the Planning and Development Regulations 2001 (as amended),

It is concluded that:

- The temporary structures are not required in direct connection with the physical works of the proposed refurbishment/remediation.
- The temporary structures will be used as classrooms which is a separate category of development.

It is therefore considered the proposed three temporary classrooms **Is Development** and is **Not Exempted Development**.


Michelle Delaney
Executive Planner

*Agreed.
SEP.
19/12/2019.*