

Comhairle Cathrach Chorcaí Cork City Council

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

Joseph & Marian Browne

2 Blackthorne Drive

Killeens

Cork

14/10/2020

**RE: Section 5 Declaration R587/20 2 Blackthorne Drive,
Blackstone Bridge, Killeens**

Dear Mr & Mrs. Browne

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise, having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 of the Planning and Development Regulations 2001 to 2018

The Planning Authority considers that —

The removal of one of the two chimneys at the Western end of the front elevation, at No. 2 Blackthorn Drive, Blackstone Bridge, Killeens, Cork City, **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT**

Yours sincerely

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.



PLANNER'S REPORT
Ref. R 587/20

Cork City Council
Development
Management
Community, Culture
and Placemaking

Application type	SECTION 5 DECLARATION
Question	<i>Is the removal of a chimney development, and if so, is it exempted development?</i>
Location	No. 2 Blackthorn Drive, Blackstone Bridge, Killeens, Cork City. T23VY68
Applicant	Joseph & Marian Browne (owners)
Date	12/10/2020

Recommendation: Is development, and is 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 applicants' question to the Planning Authority is as follows:

Is the removal of a chimney development, and if so, is it exempted development?

While the intention of the request is clear, it is entirely reasonable to consider the question before the Planning Authority as being:

Is the removal of one of the two chimneys at the Western end of the front elevation considered to be development, and if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a two-storey detached dwelling, and is one of a number of detached dwellings located at a cul-de-sac at Blackstone Bridge at Lower Killeens, Cork City. It is located within the development boundary.

4. DESCRIPTION OF THE DEVELOPMENT

The development relates to the demolition of 1 no. chimney at the front facade. There exists 2 no. chimneys, and the applicant has indicated within the application it is the Western chimney proposed for demolition, when viewed from the front of the dwelling.

The chimneys are located in the centre of the roof, and have stacks that are quite tall as a result in order to breach the ridge height of the dwelling.

5. RELEVANT PLANNING HISTORY

This area was part of the administrative area of Cork County Council until 31st May 2019. All application details below relate to applications lodged with Cork County Council.

Cork County Council

Ref: 07/6225

Permission granted for a change of plan to dwelling house.

Cork County Council

Ref: 09/4774

Permission granted for alterations and addition of first floor windows to front elevation of dwelling and erection of a porch.

6. LEGISLATIVE PROVISIONS

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.*

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.

7. ASSESSMENT

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’. The demolition of the as-constructed chimney at the Western end of the roof of the dwelling clearly constitutes ‘works’, which is defined in Section 3(1) of the Act as including ‘any act or operation of construction,

excavation, demolition, extension, alteration, repair or renewal', and it is clearly therefore 'development' within the meaning of the Act.

CONCLUSION:
Is development.

7.1 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 (1) of section 4**, i.e. the Regulations, and not subsection (2).

Section 4(1)

Section 4(1)(h) of the Planning and Development Regulations relates to:

"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"

In my opinion, the demolition of the Western chimney comes within the scope of section 4(1), as it consists of minor works.

Section 4(2)

I do not consider that the proposal comes within the scope of section 4(2) of the Act.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is 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 of the Planning and Development Regulations 2001 to 2018

The Planning Authority considers that —

The removal of one of the two chimneys at the Western end of the front elevation, at No. 2 Blackthorn Drive, Blackstone Bridge, Killeens, Cork City, **IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.**

Helen O'Sullivan

Helen O' Sullivan
Assistant Planner
6/10/2020.

Helen
Can you do a short
rpt on this? If ok.
Thanks

MU

25/09/20

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

2 BLACKTHORN DRIVE, BLACKSTONE BRIDGE,
KILLEENS, CORK T23VY68

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 removal of a chimney at 2, Blackthorn Drive, Blackstone Bridge, Killeens, Cork ~~T23VY68~~ T23VY68 development and if so, is it Exempted development.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Chimney to be removed is highlighted X in yellow on front elevation drawing enclosed. When the chimney is removed the area will be slated in keeping with the rest of the roof.

See attached maps & front elevation drawing.

Comhairle Cathrach Chorcaí
Cork City Council

03-07-2020

Strategic Planning & Economic
Development Directorate

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

If so please supply details:

NO

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? NOT sure if relevant.

If so please supply details:

See planning application numbers 075245 and 094774

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	
(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)
_____	_____
_____	_____
_____	_____

8. 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		

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

Signature: Joseph Browne Marian Browne

Date: 01/07/2020

- 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.

Surveyed 1982-1997
 Revised 2004
 Levelled 1983

Urban/Rural Place Map



74830

11M CENTRE PT COCORDS
 565270, 574477

DESCRIPTION

MAP SHEET 15

1:1000
 6337-13
 1:2500
 6337-A, 6337-G



Produced by National Map Services,
 The Ordnance Survey,
 27/28 Wychington Street,
 Carrigrohane, Co. Cork
 Ordnance Survey Ireland, Survey Station,
 Phoenix Park, Dublin 8.

Seoimeas idirghníomhaíochta idir státair
 Suidéarthaic, Deiseal Éireann agus
 Rialtas na hÍbheirne
 Under a joint arrangement between the Govt.



LAND REGISTRY
 Clártham na Talún
 Scheme Map
 52005CK001472 G
 Approved for Registration Purposes

Warning
 This scheme map must not be changed.
 Any change to the layout of the scheme must be made
 by way of a new application for approval.

SIGNED: *Clifford G. Moore*
 Date: 17.2.2005



SITES AT BLACKSTONE
 BRIDGE, KILLENS, CO. CORK
 NUMBERED 1 TO 10 AND
 OUTLINED IN RED AS SHOWN
Bob O'Donnell ENG. HIE 1
 15.07.2005

Scale: 1:2,500
 Scale: 1:2,500

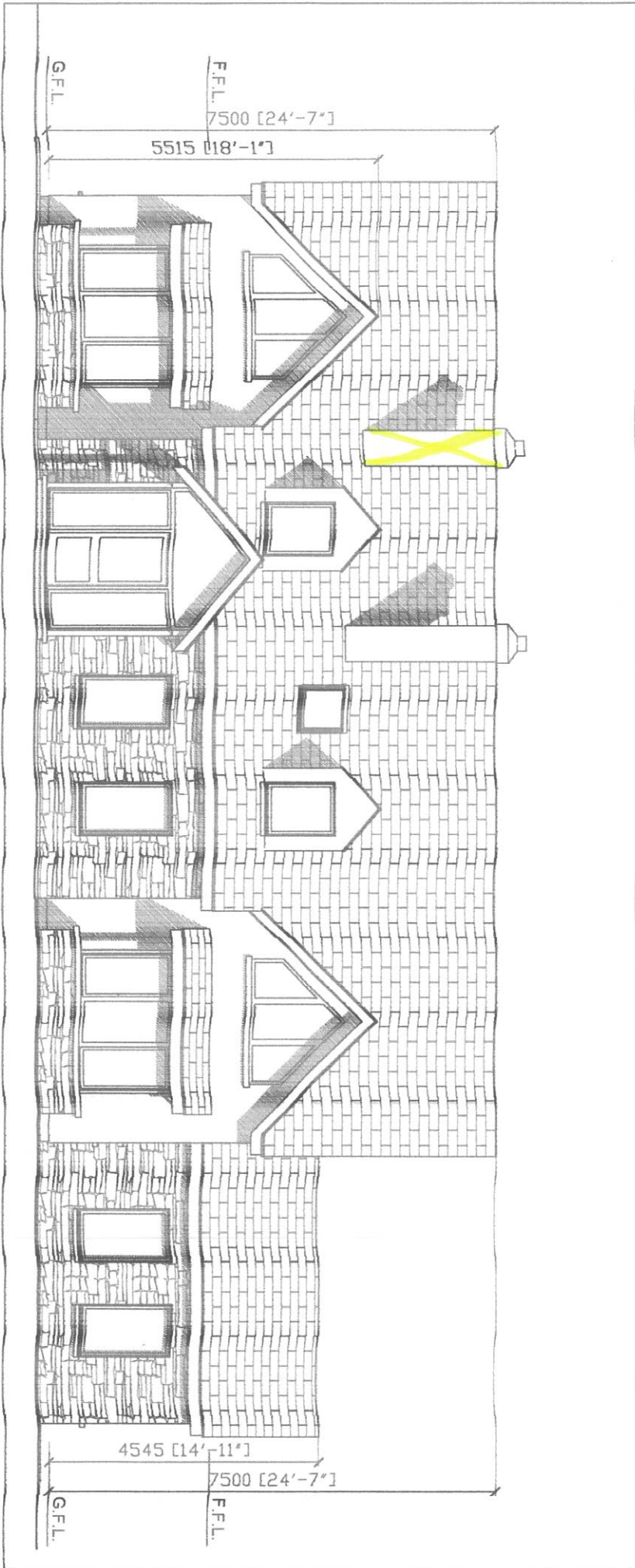


Plot Ref. No
 Plot Date 06



Note : All levels related to original survey
 Benchmarks on site may not have cover
 cover frames

SITE X
 NOTICE



Front Elevation

scale 1 : 100