



Comhairle Cathrach Chorcaí Cork City Council

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

Patrick Hickey,
1 Foxwood,
Firmount,
Donoughmore,
Co Cork P32 RF30.

08/02/2021

RE: R594/20– Section 5 Declaration

Property: The Bungalow, Farranlea, Model Farm Road

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, and with regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000
- (b) articles 6 and 6 of the Planning and Development Regulations 2001
- (c) class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001
- (d) class 13 of Part 2 of Schedule 2 to the Planning and Development Regulations 2001

The Planning Authority has concluded that –

- (a) the works constitute development which come within the scope of Section 3(1) of the Planning and Development Act 2000
- (b) the wall and gate come within the scope of Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001
- (c) the mirrors and beacon light are a type of development coming generally within the exempted development provisions of Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001 in that they are devices for the purpose of direction or warning (to drivers) with respect to the land on which it is exhibited,
- (d) there is insufficient information to determine whether the mirrors and beacon light accord with the conditions and limitations attaching to the application of the said Class 13
- (e) the mirrors and beacon light are a means to address the restriction on exemption set out in Article 9(1)(a)(iii) of the Act and as there is insufficient information to make a determination whether these devices are exempted development, the restriction set out in Article 9(1)(a)(iii) would apply
- (f) the restrictions on exemption provided for in Article 9(1)(a)(ii) does not apply as the development does not consist of the formation, laying out or material widening of a means of access to a public road



We are Cork.

The Planning Authority decides that the construction of a 2m wall, with a beacon light and 2 number mirrors attached to the piers, to replace 2.15m high hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear of The Bungalow, Farranlea Park, Model Farm Road, Cork is **development and is not exempted development.**

Yours faithfully,



Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



PLANNING OFFICER'S REPORT		Cork City Council Development Management Communities Culture and Placemaking
Ref. R594 /20		
Application type	Section 5 Declaration	
Description	<i>Whether the construction of a gate and boundary wall to the rear of a house is or is not exempted development.</i>	
Location	The Bungalow, Farranlea, Model Farm Road	
Applicant	John Flaherty	
Date	03.02.2021	
Recommendation	<i>Is development and is not exempted development</i>	

Response to Request for Further Information received on the 08.01.2021.

1. Further Information Requested

A request for further information issued on the 10th November 2020:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.

2. Further Information Provided

The proposal has been amended to include 180 degree mirrors fixed to the right and left piers and the beacon light fixed to the right pier.

3. Assessment

Further information was sought on the sightlines from the entrance due to restriction on exemption Article 9(1)(a)(iii).

The response shows that there is no change to the design of the boundary wall. On the side of the pier, facing onto the gate, 180 degree mirrors will be mounted. On the southern pier facing onto Nursery Lane a beacon light will be installed to indicate to vehicles and pedestrians when the gate is opening.

The A/SEE Urban Roads that the detail satisfactorily addresses the issue raised. The A/SEE has outlined that it cannot be confirmed that the revised proposal would not endanger public safety by reason of traffic hazard or obstruction of road user – there is always a risk presence in any vehicle entrance. However, the applicant has minimised, with the proposals, the severity and also the likelihood of the risk occurring.

Regarding the mirrors and beacon light, I refer to Class 13 of Part 2 of the Planning and Development Regulations 2001, definitions of 'advertisement' in the Planning and Development Act 2000 and RL2914, a section 5 referral determined by An Bord Pleanala.

ABP concluded that a traffic light is a type of development generally coming within the scope of Class 13 "in that it is a device for the purpose of direction or warning (to drivers) with respect to the land on which it is exhibited". The mirrors and beacon light will perform the same function as a traffic light. The condition and limitation for this class is that "no such advertisement shall exceed 0.3 square metres in area."

There are no scaled drawings showing the area of the beacon light and the mirrors in the response. Therefore it is not possible to state whether the mirrors and light come within the scope of Class 13 of Part 2. These are necessary to address the restriction on exemption in Article 9(1)(a)(iii). Without these devices, the restrictions on exemption under Article 9(1)(a)(iii) would apply.

This is a Section 5 Referral and request for clarification and attaching conditions is not possible. Accordingly, the proposal is development and there is insufficient information to state if it is exempted development.

4. RECOMMENDATION

It is recommended that the applicant is advised as follows –

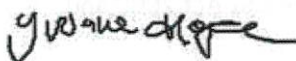
In considering this referral the Planning Authority had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000
- (b) articles 6 and 6 of the Planning and Development Regulations 2001
- (c) class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001
- (d) class 13 of Part 2 of Schedule 2 to the Planning and Development Regulations 2001

The Planning Authority has concluded that –

- (a) the works constitute development which come within the scope of Section 3(1) of the Planning and Development Act 2000
- (b) the wall and gate come within the scope of Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001
- (c) the mirrors and beacon light are a type of development coming generally within the exempted development provisions of Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001 in that they are devices for the purpose of direction or warning (to drivers) with respect to the land on which it is exhibited,
- (d) there is insufficient information to determine whether the mirrors and beacon light accord with the conditions and limitations attaching to the application of the said Class 13
- (e) the mirrors and beacon light are a means to address the restriction on exemption set out in Article 9(1)(a)(iii) of the Act and as there is insufficient information to make a determination whether these devices are exempted development, the restriction set out in Article 9(1)(a)(iii) would apply
- (f) the restrictions on exemption provided for in Article 9(1)(a)(ii) does not apply as the development does not consist of the formation, laying out or material widening of a means of access to a public road

The Planning Authority decides that the construction of a 2m wall, with a beacon light and 2 number mirrors attached to the piers, to replace 2.15m high hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear of The Bungalow, Farranlea Park, Model Farm Road, Cork is development and is not exempted development.



Yvonne Hogan
Area Planner
03.02.2021

PLANNER'S REPORT Ref. R594/20		Cork City Council Development Management Communities Culture and Placemaking
Application type	Section 5 Declaration	
Description	<i>Whether the construction of a gate and boundary wall to the rear of a house is or is not exempted development.</i>	
Location	The Bungalow, Farranlea, Model Farm Road	
Applicant	John Flaherty	
Date	03.02.2021	
Recommendation	<i>Is development and is not exempted development</i>	

Response to Request for Further Information received on the 08.01.2021.

1. Further Information Requested

A request for further information issued on the 10th November 2020:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.

2. Further Information Provided

The proposal has been amended to include 180 degree mirrors fixed to the right and left piers and the beacon light fixed to the right pier.

3. Assessment

Further information was sought on the sightlines from the entrance due to restriction on exemption Article 9(1)(a)(iii).

The response shows that there is no change to the design of the boundary wall. On the side of the pier, facing onto the gate, 180 degree mirrors will be mounted. On the southern pier facing onto Nursery Lane a beacon light will be installed to indicate to vehicles and pedestrians when the gate is opening.

The A/SEE Urban Roads that the detail satisfactorily addresses the issue raised. The A/SEE has outlined that it cannot be confirmed that the revised proposal would not endanger public safety by reason of traffic hazard or obstruction of road user – there is always a risk presence in any vehicle entrance. However, the applicant has minimised, with the proposals, the severity and also the likelihood of the risk occurring.

Regarding the mirrors and beacon light, I refer to Class 13 of Part 2 of the Planning and Development Regulations 2001, definitions of 'advertisement' in the Planning and Development Act 2000 and RL2914, a section 5 referral determined by An Bord Pleanala.

ABP concluded that a traffic light is a type of development generally coming within the scope of Class 13 "in that it is a device for the purpose of direction or warning (to drivers) with respect to the land on which it is exhibited". The mirrors and beacon light will perform the same function as a traffic light. The condition and limitation for this class is that "no such advertisement shall exceed 0.3 square metres in area."

There are no scaled drawings showing the area of the beacon light and the mirrors in the response. Therefore it is not possible to state whether the mirrors and light come within the scope of Class 13 of Part 2. These are necessary to address the restriction on exemption in Article 9(1)(a)(iii). Without these devices, the restrictions on exemption under Article 9(1)(a)(iii) would apply.

This is a Section 5 Referral and request for clarification and attaching conditions is not possible. Accordingly, the proposal is development and there is insufficient information to state if it is exempted development.

4. RECOMMENDATION

It is recommended that the applicant is advised as follows –

In considering this referral the Planning Authority had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000
- (b) articles 6 and 6 of the Planning and Development Regulations 2001
- (c) class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001
- (d) class 13 of Part 2 of Schedule 2 to the Planning and Development Regulations 2001

The Planning Authority has concluded that –

- (a) the works constitute development which come within the scope of Section 3(1) of the Planning and Development Act 2000
- (b) the wall and gate come within the scope of Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001
- (c) the mirrors and beacon light are a type of development coming generally within the exempted development provisions of Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001 in that they are devices for the purpose of direction or warning (to drivers) with respect to the land on which it is exhibited,
- (d) there is insufficient information to determine whether the mirrors and beacon light accord with the conditions and limitations attaching to the application of the said Class 13
- (e) the mirrors and beacon light are a means to address the restriction on exemption set out in Article 9(1)(a)(iii) of the Act and as there is insufficient information to make a determination whether these devices are exempted development, the restriction set out in Article 9(1)(a)(iii) would apply
- (f) the restrictions on exemption provided for in Article 9(1)(a)(ii) do not apply as the development does not consist of the formation, laying out or material widening of a means of access to a public road

The Planning Authority decides that the construction of a 2m wall, with a beacon light and 2 number mirrors attached to the piers, to replace 2.15m high hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear of The Bungalow, Farranlea Park, Model Farm Road, Cork is development and is not exempted development.

Yvonne Hogan

Yvonne Hogan
Area Planner
03.02.2021

Yvonne Hogan

From: Valerie Fenton
Sent: Wednesday 20 January 2021 15:58
To: Yvonne Hogan
Subject: RE: Section 5 Rear of The Bungalow, Farranlea Park and along Nursery Lane, Model Farm Road

Yvonne,

Yes the agent was in contact with me.

I am of the opinion that the detail satisfactorily addresses the issue raised.

I would recommend that if applicable for Section 5 and for all future planning applications on Nursery Lane that a special contribution is applied to enable the modification of the vehicle crossover of Nursery Lane/Model Farm Road that ensures pedestrian priority and encourages slower speeds from drivers entering & continuing on Nursery Lane.

It can not be confirmed that the revised proposal would not endanger public safety by reason of traffic hazard or obstruction of road user – there is always a risk presence in any vehicle entrance. However, the applicant has minimised, with the proposals, the severity and also the likelihood of the risk occurring.

Hope this addresses your query.

Kind regards,
Val

Valerie Fenton | A/Senior Executive Engineer | Community, Culture and Placemaking |
Cork City Council, City Hall, Cork, T12 T997 |

☎: +353 21 492 4158 | ✉: valerie_fenton@corkcity.ie 🌐: <http://www.corkcity.ie>

From: Yvonne Hogan
Sent: 20 January 2021 15:21
To: Valerie Fenton
Subject: Section 5 Rear of The Bungalow, Farranlea Park and along Nursery Lane, Model Farm Road

Hi Valerie

The response to this S5 referral for a boundary wall and gate along Nursery Lane has been sent in. I think the agent, Paddy Hickey was in contact with you about it.

Is the detail satisfactory to address the issue raised? Can it be confirmed that the revised proposal would not endanger public safety by reason of traffic hazard or obstruction of road users?

Yvonne



Comhairle Cathrach Chorcaí Cork City Council

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

Patrick Hickey
1 Foxwood
Firmount
Donoughmore
Co. Cork

10 November 2020

RE: R594/20

Property: *The Bungalow, Farranlea Park, Model Farm Road, Cork*

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above-named property, I am asked to request for further information:

FI Request:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 594.20

Description: Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary is or is not exempted development

Applicant: John Flaherty

Location: The Bungalow, Farranlea Park, Model Farm Road, Cork

Site inspection: 07.09.2020

1. 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.

2. Site Inspection and Location

The site is located at Farranlea Park, Model Farm Road. The site backs onto Nursery Lane to the west, and Nursery Lane is north of Model Farm Road. It is the rear boundary of the site where the proposed works are to be carried out. Some of the houses in Farranlea Park have rear access to their properties from Nursery Lane. To the west of Nursery Lane there are 2 no houses with their own access of Nursery Lane. There is an opening along the rear boundary with construction type fencing blocking it off. At the northern end of the opening there is a pillar made of concrete block.

3. Subject Development

~~Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary is or is not exempted development.~~

4. Sub-threshold EIAR

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 EIAR is not required to be submitted.

5. 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.

6. Planning history

On subject site:

E8053 – enforcement file

7. Planning policy

Cork City Development Plan 2015

The site is zoned residential, ZO4.

8. Legislation

Planning and Development Act 2000 as amended

Section 2 (1) states: -

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

“public road” has the same meaning as in the Roads Act, 1993

Section 3 (1) states:-

“In this Act “development” means, except where the context otherwise requires, the carrying out of works on, in over or under land, or the making of any material change of 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 (2) of the Act 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.

Planning and Development Regulations 2001 as amended

Article 6(1) of the Regulations states as follows:- “(a) ~~Subject to article 9, development consisting 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 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Restrictions on Exemption - Article 9(1)

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(xi) obstruct any public right of way,

Schedule 2, Part 1 (Exempted Development General) Class 5 of Part 1 of the Second Schedule to the Regulations states as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	<ol style="list-style-type: none"> 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.

9. Assessment

The question before the Planning Authority is –

‘Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary’.

The existing rear boundary comprises of a hedge, a 2m high existing block work pier, and a 2.5m wide opening which is described as existing vehicular entrance. The entrance is closed off by construction type fencing.

The existing block work pier is to be removed for the increase in width of the entrance by 1m. The existing hedge is to be removed. The proposed new boundary is a 2m high wall with smooth plaster finish and concrete capping with 4 no pillars and a 3.5m wide, 1.8m high steel and timber gate.

The referral includes photographs of other entrances and boundary treatments along Nursery Lane. ~~The assessment is based on the planning legislation and not the planning merits of the proposal.~~

Is or is not development?

I consider that by the definition of section 2 (1) of the Act, the construction of a wall and erection of a gate along the rear boundary of a property comprises “works”. The “works” comprise “development” according to the definition in section 3 (1), being works carried out on land.

Having regard to the definitions set out in the Act, the removal of the hedge is not considered to be development.

Therefore, the question to be determined in this referral is whether such works are exempted development

Is or is not exempted development?

The width of the entrance is to be widened from 2.5m to 3.5m and this will necessitate the removal of the existing block pier.

The wall and gate for the entrance are to be situated along the western/rear boundary of the house. It is within the curtilage of the house. Class 5 of Part 1 of Schedule 2 to the Planning and Development

Regulations, 2001, is the appropriate Class under which to consider this question as this Class refers to wall and gate within or bounding the curtilages of a house.

Condition and limitation

1. *The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*

Assessment –

The height of the wall is 2m, and it is located to the rear of the house. The gate has a height of 1.8m.

The proposed rear boundary has 4 no piers with a height of 2.15m. The piers will be capped and plastered. The class and the conditions and limitations do not specifically include or refer to piers associated with walls and gates.

An issue is the height of the piers. I note for Section 5 referral determined by An Bord Pleanála (ref 305105) the Inspector considered that a pier (associated with a wall of 1.2m high to the front of a house) being 2.1m high (from ground level to the apex of the pyramidal concrete capping stone) would not be exempted development under Class 5 to Part 1 of Schedule 2 to the Regulations, and was not exempted development. The Board in its Order considered that the boundary wall, came within the requirements for exempted development in the legislation.

(NOTE: The ABP Order for this referral states that the boundary wall the development, involving the construction of a front boundary wall bounding the curtilage of the house on site, would come within the scope of Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. Class 5 to Part 1 of Schedule 2 to the Regulations refers to development within the curtilage of a house, whereas Class 11 refers to sundry works other than within or bounding the curtilage of a house. It appears there is a mix-up in the Order and this has been queried with ABP. I have been informed that a response will issue in due course. Of note is that no issue was raised regarding the height of the pier(s). The height restriction in Class 11 is also 2m.)

2. *Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered*

The drawings show that the wall will be capped and that the western face of the wall which would be visible from Nursery Lane will be plastered. The condition does not set out any criteria on design/finish for gates.

3. *No such structure shall be a metal palisade or other security fence.*

The structures (wall and gate) are not metal palisade or other security fence.

The wall and gate would fall within the scope of Class 5 in terms of both its description of development and its limitations and conditions.

Restrictions on exemption

A number of restrictions on exemption are set out in Article 9.

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

The S5 Referral has stated that the works are to replace an existing vehicular entrance to the rear boundary. The proposal relates to a means of access onto Nursery Lane. I have examined the City Council's Roads Portal and Nursery Lane is not deemed to be a public road. Accordingly, this restriction does not apply.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

This was referred to the A/SEE Urban Roads & Street Design (Planning) and it has been outlined that the development would be acceptable subject to adequate sightlines being achieved for drivers exiting the proposed development access. There is no detail on the sightlines with the application. It is recommended a request for further information issues to address this.

(xi) obstruct any public right of way,

There is a solicitor's letter on the file detailing a right of way from the public road to the rear of the premises. There is nothing to suggest that the proposed development would obstruct any public right of way.

10. Recommendation

It is recommended that a request for further information issues:

FI Request:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.



Yvonne Hogan
A/Executive Planner
06.11.2020



Comhairle Cathrach Chorcaí Cork City Council

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

Patrick Hickey
1 Foxwood
Firmount
Donoughmore
Co. Cork

10 November 2020

RE: R594/20

Property: The Bungalow, Farranlea Park, Model Farm Road, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above-named property, I am asked to request for further information:

FI Request:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 594.20

Description: Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary is or is not exempted development

Applicant: John Flaherty

Location: The Bungalow, Farranlea Park, Model Farm Road, Cork

Site inspection: 07.09.2020

1. 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.

2. Site Inspection and Location

The site is located at Farranlea Park, Model Farm Road. The site backs onto Nursery Lane to the west, and Nursery Lane is north of Model Farm Road. It is the rear boundary of the site where the proposed works are to be carried out. Some of the houses in Farranlea Park have rear access to their properties from Nursery Lane. To the west of Nursery Lane there are 2 no houses with their own access of Nursery Lane. There is an opening along the rear boundary with construction type fencing blocking it off. At the northern end of the opening there is a pillar made of concrete block.

3. Subject Development

~~Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary is or is not exempted development.~~

4. Sub-threshold EIAR

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 EIAR is not required to be submitted.

5. 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.

6. Planning history

On subject site:

E8053 – enforcement file

7. Planning policy

Cork City Development Plan 2015

The site is zoned residential, ZO4.

8. Legislation

Planning and Development Act 2000 as amended

Section 2 (1) states: -

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

“public road” has the same meaning as in the Roads Act, 1993

Section 3 (1) states:-

“In this Act “development” means, except where the context otherwise requires, the carrying out of works on, in over or under land, or the making of any material change of 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 (2) of the Act 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.

Planning and Development Regulations 2001 as amended

Article 6(1) of the Regulations states as follows:- “(a) Subject to article 9, development consisting 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 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Restrictions on Exemption - Article 9(1)

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(xi) obstruct any public right of way,

Schedule 2, Part 1 (Exempted Development General) Class 5 of Part 1 of the Second Schedule to the Regulations states as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	<ol style="list-style-type: none"> 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.

9. Assessment

The question before the Planning Authority is –

‘Whether the construction of a 2m wall to replace a 2.15 hedge with a 1.8m high sliding gate to replace existing vehicular entrance to the rear boundary’.

The existing rear boundary comprises of a hedge, a 2m high existing block work pier, and a 2.5m wide opening which is described as existing vehicular entrance. The entrance is closed off by construction type fencing.

The existing block work pier is to be removed for the increase in width of the entrance by 1m. The existing hedge is to be removed. The proposed new boundary is a 2m high wall with smooth plaster finish and concrete capping with 4 no pillars and a 3.5m wide, 1.8m high steel and timber gate.

The referral includes photographs of other entrances and boundary treatments along Nursery Lane. ~~The assessment is based on the planning legislation and not the planning merits of the proposal.~~

Is or is not development?

I consider that by the definition of section 2 (1) of the Act, the construction of a wall and erection of a gate along the rear boundary of a property comprises “works”. The “works” comprise “development” according to the definition in section 3 (1), being works carried out on land.

Having regard to the definitions set out in the Act, the removal of the hedge is not considered to be development.

Therefore, the question to be determined in this referral is whether such works are exempted development

Is or is not exempted development?

The width of the entrance is to be widened from 2.5m to 3.5m and this will necessitate the removal of the existing block pier.

The wall and gate for the entrance are to be situated along the western/rear boundary of the house. It is within the curtilage of the house. Class 5 of Part 1 of Schedule 2 to the Planning and Development

Regulations, 2001, is the appropriate Class under which to consider this question as this Class refers to wall and gate within or bounding the curtilages of a house.

Condition and limitation

1. *The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*

Assessment –

The height of the wall is 2m, and it is located to the rear of the house. The gate has a height of 1.8m.

The proposed rear boundary has 4 no piers with a height of 2.15m. The piers will be capped and plastered. The class and the conditions and limitations do not specifically include or refer to piers associated with walls and gates.

An issue is the height of the piers. I note for Section 5 referral determined by An Bord Pleanala (ref 305105) the Inspector considered that a pier (associated with a wall of 1.2m high to the to the front of a house) being 2.1m high (from ground level to the apex of the pyramidal concrete capping stone) would not be exempted development under Class 5 to Part 1 of Schedule 2 to the Regulations, and was not exempted development. The Board in its Order considered that the boundary wall, came within the requirements for exempted development in the legislation.

(NOTE: The ABP Order for this referral states that the boundary wall the development, involving the construction of a front boundary wall bounding the curtilage of the house on site, would come within the scope of Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. Class 5 to Part 1 of Schedule 2 to the Regulations refers to development within the curtilage of a house, whereas Class 11 refers to sundry works other than within or bounding the curtilage of a house. It appears there is a mix-up in the Order and this has been queried with ABP. I have been informed that a response will issue in due course. Of note is that no issue was raised regarding the height of the pier(s). The height restriction in Class 11 is also 2m.)

2. *Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered*

The drawings show that the wall will be capped and that the western face of the wall which would be visible from Nursery Lane will be plastered. The condition does not set out any criteria on design/finish for gates.

3. *No such structure shall be a metal palisade or other security fence.*

The structures (wall and gate) are not metal palisade or other security fence.

The wall and gate would fall within the scope of Class 5 in terms of both its description of development and its limitations and conditions.

Restrictions on exemption

A number of restrictions on exemption are set out in Article 9.

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

The S5 Referral has stated that the works are to replace an existing vehicular entrance to the rear boundary. The proposal relates to a means of access onto Nursery Lane. I have examined the City Council's Roads Portal and Nursery Lane is not deemed to be a public road. Accordingly, this restriction does not apply.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

This was referred to the A/SEE Urban Roads & Street Design (Planning) and it has been outlined that the development would be acceptable subject to adequate sightlines being achieved for drivers exiting the proposed development access. There is no detail on the sightlines with the application. It is recommended a request for further information issues to address this.

(xi) obstruct any public right of way,

There is a solicitor's letter on the file detailing a right of way from the public road to the rear of the premises. There is nothing to suggest that the proposed development would obstruct any public right of way.

10. Recommendation

It is recommended that a request for further information issues:

FI Request:

There is no detail on whether adequate sightlines can be achieved for drivers exiting the proposed development access. You are requested to demonstrate adequate sightlines appropriate for the actual speed of Nursery Lane on a scaled site layout plan. You are advised that Table 4.2 from Design Manual for Urban Roads and Streets indicates forward visibility distances and correspond to the required visibility splay for the design speed of the major arm.



Yvonne Hogan
A/Executive Planner
06.11.2020

**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

The Bungalow, Farranlea Park, Model Farm Road, Cork City. T12 V0Y6.

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 2m high blockwork wall to replace a 2.150mm high hedge with a 1.8m high sliding gate to replace an existing vehicular entrance to the rear boundary of the above property exempted development.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

The owner and his family of the above property has been using this existing rear vehicular entrance for the last 50 years now and would like to construct two 2m high solid walls to either side of the opening and install a sliding gate to provide security to the rear boundary of the property. This existing vehicular entrance leads on to Nursery Lane which has a low volume of traffic and also serves many other vehicular entrances and car garages to their rear boundary walls which are no less than 2m high.

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	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

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		Mr. John Flaherty
Applicants Address	[REDACTED]	
Person/Agent acting on behalf of the Applicant (if any):	Name:	Patrick Hickey
	Address:	[REDACTED]
	Telephone:	[REDACTED]
	Fax:	N/A
	E-mail address:	[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
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: 

Date: 10/08/2020

.....

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

STRICTLY PRIVATE AND CONFIDENTIAL

John Gerard Flaherty
The Bungalow,
15 Farranlea Park
Model Farm Road
Cork

Our Ref: EWC/GK/FLJ002001

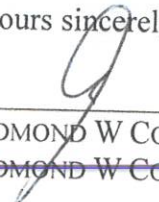
Date: 24th July, 2020

**Re: Anne Veronica (otherwise Ronnie) O' Halloran John Gerard Flaherty
& Margaret Mary Flaherty as Legal Personal Representatives in the
Estate of Eileen Flaherty Deceased –to- You
Premises: The Bungalow, 15 Farranlea Park Model Farm Road**

Dear John,

I confirm that the original Lease has been lodged in the Land Registry for registration purposes. However, the extent of the Right of Way is from the public road to the rear of your premises. I have highlighted the area in orange and should you have any further questions or queries please do not hesitate to contact me.

Yours sincerely


EDMOND W COGAN
EDMOND W COGAN SOLICITORS

E-mail: eddiecogan@edmondcogan.ie
E-mail: gerkerins@edmondcogan.ie

Please reply by e-mail where possible.