



Comhairle Cathrach Chorcaí Cork City Council

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

Richard & Eileen Sherlock,
11 Chapel Gate,
Ballyvolane,
Cork City

24th November 2020

RE:*Section 5 Declaration R615/20
No. 11 Chapel Gate, Ballyvolane, Cork*

Dear Sir/Madam,

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

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


That it is considered the proposed development – *Whether the conversion of a garage for habitable use is development, and if so, is it exempted development?* - **is development and is exempted development**

Kind Regards,

Kerry Bergin
*Assistant Staff Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council*



We are Cork.

		PLANNER'S REPORT Ref. R610/20	Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration		
Description	<i>Whether the conversion of a garage for habitable use is development, and if so, is it exempted development?</i>		
Location	No. 11 Chapel Gate, Ballyvolane, Cork City.		
Applicant	Richard and Eileen Sherlock (tenants)		
Date	20/11/2020		
Recommendation	<i>Is Development and Is 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

2.1 In framing the question to the Planning Authority, the applicant states in Q2 of the application form:

'Can I convert my garage for domestic use'.

In my opinion, the intention of the request is clear, and that it is entirely reasonable to consider the question before the Planning Authority as being:

Whether the conversion of a garage for habitable use is development, and if so, is it exempted development?

3. Site Description

The subject property is a two-storey semi-detached unit, with a single storey side wing, and is located at a cul-de-sac within the estate, in a line of similar two-storey semi-detached residential units.

4. Planning History

There is no known recent planning history associated with the subject site.

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.

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),

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 5(1),

(See section 1 of this report)

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 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area ... and the development would materially affect the character of the area,

Article 10 (1)

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

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned

6. ASSESSMENT

6.1 Development

The first issue for consideration is the response the applicants gave to Q.5 of the Section 5 application form, whereby they defined their legal interest as being tenants. No supporting documentation was attached to the application form giving consent from the owner to proceed with this application. The

owner in this case Cork City Council. I sought clarification from the Housing Dept. and received confirmation from the Senior Staff Officer on 19/11/2020, to proceed with the subject application (letter to tenants / applicants from 21/11/2019 from the Housing Dept. in reference to same was forwarded to me, and has been recorded).

The second 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’. It is clear that the proposal constitutes a ‘material change in the use of any structures’. It is clearly therefore ‘development’ within the meaning of the Act.

‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’.

I consider that the proposed element constitutes development as it comprises of alteration to an existing building.

Conclusion: Is development.

6.2 Exempted development

The third issue for consideration is whether or not the matter at hand is exempted development. Essentially the proposal relates to works carried out (circa 2009), whereby the applicants converted an existing garage for habitable use, and a garage fold-up door was replaced with a window fenestration. The following pertains:

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) states:

“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(1)(h) of the Act sets out a limited exemption for development to the exterior of buildings. The measure used is whether the development / works *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.*

Accordingly, I consider that the change of use of the garage to habitable and the alteration of a garage door to a window falls within the above limited exemption, and would not be a material change of the dwelling.

Conclusion: Is 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. 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 the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. CONCLUSION

The question has been asked *whether the conversion of a garage for habitable use is development, and if so, is it exempted development?*

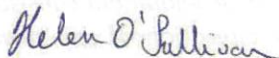
Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that the proposed altered layout **is development and is exempted development**

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, and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that proposed development – *putting a velux window in the front roof of my house, which is facing onto the road* – **is development and is exempted development**



Helen O' Sullivan

Assistant Planner

19/11/2020.

28 OCT 2020

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

11 CHAPEL GATE
BALLYVOLANE
CORK

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.

Can I convert my garage to domestic use?

change:

Outside view a window Replaced fold up door

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The conversion for use as part of domestic house (normally exempted development under 40 sq. m) originally as study for teenagers

This work was done in 2009 + planning was never mentioned verbally or in writing at that time by Cork County Council

I contacted them since + said it wouldn't have been needed

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)

2.45
x 3.20

(a) Floor area of existing/proposed structure/s		7.84 sq. Meters
(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)	
Garage	Spare Bedroom / study	

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):		[REDACTED]
Applicants Address	[REDACTED]	
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	B. Other TENANTS
Where legal interest is 'Other', please state your interest in the land/structure in question	BUYING	
If you are not the legal owner, please state the name and address of the owner if available	Now CITY COUNCIL since last year	

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

Signature: Richard + Sileen Sherlock

Date: 22nd October 2020

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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

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
 3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.

Planning Pack Map

574313
568385



Planning Pack Map

574313
568389



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