



# Comhairle Cathrach Chorcaí

## Cork City Council

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

Robert Honohan  
79 The Green,  
Coolroe Meadows,  
Ballincollig,  
Cork

1<sup>st</sup> November 2021

**RE: R676/21 – Section 5 Declaration**  
**Property: 79 The Green, Coolroe Meadows, Ballincollig**

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)
- Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)
- Class 5 of the Planning and Development Regulations 2001 (as amended)
- the character of the boundary treatment along the rear boundary of the site, and to the north and south of the site

The Planning Authority has concluded that –

- the removal of the existing back boundary wall and construction of a new boundary wall constitutes works which are development, as defined in Section 3 of the Planning and Development Act, 2000, as amended
- the existing boundary wall is considered to be a structure and the removal of the existing boundary wall would not come within the scope of section 4(1)(h) of the Act, being works involving the removal and not maintenance, improvement or other alteration of the structure and the removal would materially affect the external appearance of the structure so as to render its appearance inconsistent with its character and that of neighbouring structures
- there is insufficient information in the referral as submitted to determine if the new boundary wall would satisfy Class 5 of Part 1 of Schedule 2 of the Planning and development Regulations, 2001 as amended

And therefore, the Planning Authority considers that –

- the replacement of the existing back boundary wall with a cavity block wall to the rear of 79 The Green, Coolroe Meadows, Ballincollig, **is development** and is **not exempted development**.



We are Cork.



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You are advised that in accordance with Section 5(3)(a) of the Planning & Development Act 2000 as amended where a Declaration has issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of the issuing of the Declaration.

Yours faithfully,

Áine O'Leary  
Assistant Staff Officer  
Community, Culture and Placemaking  
Cork City Council



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<b>PLANNER'S REPORT</b>		<i>Cork City Council – Development Management Community Culture &amp; Placemaking</i>
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Is the replacement of the existing back boundary wall with a cavity block wall development and if so is it exempted development?</i>	
<b>Location</b>	79 The Green, Coolroe Meadows, Ballincollig, Cork.	
<b>Applicant</b>	Robert Honohan	
<b>Ref</b>	R676.21	
<b>Date</b>	28.10.2021	
<b>Recommendation</b>	<i>Is development and is not exempted development</i>	

**ASSESSMENT:**

There is limited detail with this referral. The applicant has completed the form and submitted a copy of a land registry map. There are no plans or drawings submitted. I note the report prepared by the Assistant Planner.

There are two elements to this referral –

- a) Removing the existing back boundary wall and
- b) Construction of a cavity block wall

I consider that the replacement of the wall to the rear of this property constitutes the carrying out of works. The replacement of the stone wall with a new block wall will involve excavation and construction. As such it constitutes development.

The next issue for consideration is whether or not the proposal is exempted development.

The applicant is proposing to replace the existing back boundary wall with a cavity block wall.

*a) Removing the existing back boundary wall*

The existing back boundary wall is a stone wall which is covered in vegetation. The stone is visible when up close to the wall. The applicant has stated that some of the stones fall off it (into his garden area).

This wall was originally a field boundary as evidenced in the historic OS maps. To the north and south of the site it appears that the same boundary treatment continues.

This wall is considered a 'structure' within the meaning as set out in the legislation. This type of boundary treatment continues to the north and south of the site and is a characteristic of the area. This wall is to be removed for a length of approx. 8m. The removal of the wall would not come within the scope of Section 4(1)(h) as the works are not for the maintenance, improvement or other

alteration of the structure and the removal would materially affect the appearance of the structure and render it inconsistent with the character of the structure and of the neighbouring structures.

*b) Construction of a cavity block wall*

The following is a review of the proposal against the conditions / limitations set out in Column 2 under Class 5.

<p>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.</p> <p>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.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>	<p>1. No plans have been submitted showing the new wall and detail of its height relative to ground level on both sides (and noting the definition of 'ground level' in the legislation.</p> <p>2. The proposed replacement wall will be of cavity block. It is noted the applicant has not provided detail that the wall will be capped. The wall would be in view from The Avenue which is a public road to the rear of the site. The applicant has not detailed whether the wall would be plastered.</p> <p>3. N/A</p>
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There is insufficient information as to whether the new wall would satisfy condition numbers 1 and 2.

There is no detail on existing and proposed ground levels, and whether the construction of the wall would alter grounds levels.

With regard to Article 9(1), the governing permission for this site is 96/4712. The estate file was destroyed in a 2009 flooding event and it is not available. A list of conditions which was attached to the grant of permission is also not available. It is uncertain therefore if a condition was attached requiring that this wall was to be retained or that the plans detailed that the wall would be retained. In the absence of documentation, I am unable to offer a recommendation on this matter.

Based on the detail submitted and available, the applicant has not demonstrated that the new block wall would satisfy the conditions and limitations set out in Class 5.

As the proposal is contrary to Section 4(1)(h) of the Act, there is no merit in seeking detailed plans and particulars from the applicant. Ownership of the boundary wall would need to be confirmed.

**CONCLUSION & RECOMMENDATION:**

I concur with the report and recommendation of the Assistant Planner.

It is recommended that the applicant is advised as follows: -

The Planning Authority in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- (b) Articles 6, and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 5 of the Planning and Development Regulations 2001 (as amended)

- (d) the character of the boundary treatment along the rear boundary of the site, and to the north and south of the site

The Planning Authority has concluded that:

- (a) the removal of the existing back boundary wall and construction of a new boundary wall constitutes works which are development, as defined in Section 3 of the Planning and Development Act, 2000, as amended
- (b) the existing boundary wall is considered to be a structure and the removal of the existing boundary wall would not come within the scope of section 4(1)(h) of the Act, being works involving the removal and not maintenance, improvement or other alteration of the structure and the removal would materially affect the external appearance of the structure so as to render its appearance inconsistent with its character and that of neighbouring structures
- (c) there is insufficient information in the referral as submitted to determine if the new boundary wall would satisfy Class 5 of Part 1 of Schedule 2 of the Planning and development Regulations, 2001 as amended

The Planning Authority hereby decides that the replacement of the existing back boundary wall with a cavity block wall to the rear of 79 The Green, Coolroe Meadows, Ballincollig, is development and is not exempted development.

You are advised that in accordance with Section 5(3)(a) of the Planning & Development Act 2000 as amended where a Declaration has issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of the issuing of the Declaration.

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Yvonne Hogan  
A/SEP, Development Management  
Planning Department  
28.10.2021

<b>PLANNER'S REPORT</b> <b>Ref. R676/21</b>		Cork City Council – Development Management Community Culture & Placemaking
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Is the replacement of the existing back boundary wall with a cavity block wall development and if so is it exempted development?</i>	
<b>Location</b>	79 The Green, Coolroe Meadows, Ballincollig, Cork.	
<b>Applicant</b>	Robert Honohan	
<b>Date</b>	21/10/2021	
<b>Recommendation</b>	<i>Is development and is not exempted development.</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

### **1. Requirements for a Section 5 Declaration**

Section 5(1) of the Planning and Development Act 2000 as amended states,

*5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.*

The requirements for making a section 5 declaration are set out in the Act.

### **2. The Question before the Planning Authority**

In response to Q2 on the application form the applicant frames the following question:

*Is the replacement of the existing back boundary wall with a cavity block wall development and if so is it exempted development?*

### **3. Site Description**

The property in question relates to a two storey semi-detached dwelling. The wall proposed to be replaced comprises the existing rear boundary wall, made of stone and c1.5m in height. The wall is shared with the adjoining neighbours and faces onto a public road 'The Avenue' within the estate.

It is noted that this wall is separated from and is not visible from the public road. As illustrated below.



#### 4. Planning History

There are no recent planning applications associated with the site, permission was originally granted for this site under Reg. Ref. 96/4712.

There is an enforcement case in relation to this property, Ref. E8324, in relation to the removal of a rear boundary and the construction of a shed. No decision has been made in this case.

#### 5. Legislative Provisions

##### 5.1 Planning and Development Act, 2000 as amended

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, as amended.

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 Planning and Development Regulations, 2001 as amended**

### **Article 6(1)**

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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)**

Development to which article 6 relates shall not be exempted development for the purposes of the Act – sets out a number of restrictions.

### **Schedule 2, Part 1 – Exempted Development**

General Classes 1 –8 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

## **6. Assessment**

### **6.1 Development**

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 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.'*

As noted above Section 3(1) of the Planning and Development Act states that: '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 in the use of any structures or other land.*

I consider that the replacement of the wall to the rear of this property constitutes the carrying out of works and as such it constitutes development.

### **6.2 Exempted Development**

The next issue for consideration is whether or not the proposal is exempted development.



In this context the applicant seeks to remove the existing boundary, upon inspection appears to be made of stone and sod and extends to the north and south to the back of neighbouring properties, as such the replacement of said wall will involve excavation works which are not considered exempted development.

Additionally, it is considered that the nature of the proposed works are inconsistent with Section 4(1)(h) of the Act, considering that the replacement of the existing wall would materially affect the appearance of this boundary and would be inconsistent with the character of the adjoining properties.

Notwithstanding the above the applicant has failed to supply sufficient detail of the proposed replacement wall in term of its height and materials.

Therefore, the proposed removal of the existing wall and its replacement with a cavity block wall does not comply with Section 4(1)(h) and as such is not considered exempted development.

## **7. Environmental Assessment & Restrictions on Exemption**

### **7.1 Screening for Environmental Impact Assessment**

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

### **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 development site relative to these European sites and related watercourses and to the nature and scale of the development it is considered that the development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

## **8 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 —

*the replacement of the existing back boundary wall with a cavity block wall development and if so is it exempted development?*

**Is development and is not exempted development.**

Deirdre Kiernan  
Assistant Planner  
21/10/2021

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**COMHAIRLE CATHRACH CHORCAI  
CORK CITY COUNCIL**

Community, Culture & Placemaking Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.

R-Post/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)  
Fón/Tel: 021-4924564/4321  
Lionra/Web: [www.corkcity.ie](http://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**

79 The Green, Coolroe Meadows, Bellinacollig, 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 we replace my existing back boundary wall with a cavity ~~with~~ block wall?

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required)*

The existing wall is a 5ft stone ditch and we want to replace it with a cavity block wall because some of the stones fall off it and the kids 5+3 are always climbing on it

Our back boundary wall does not back onto a public road so it is not shared with any other person

Comhairle Cathrach

Cork City Council

12-07-2021

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?  *not that I am aware of*

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?  NO  
 If so please supply details:

**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 <sup>st</sup> 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)
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**7. APPLICANT/ CONTACT DETAILS**

Name of applicant (principal, not agent):		<u>Robert Honohan</u>
Applicants Address	<u>79 The Green, Coolroe Meadows, Bellencollig, Cork</u>	
Person/Agent acting on behalf of the Applicant (if any):	Name:	
	Address:	<u>N/A</u>
	Telephone:	<u>[REDACTED]</u>
	Fax:	<u>[REDACTED]</u>
	E-mail address:	<u>[REDACTED]</u>
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"/>



[REDACTED]

## 5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	Owner	
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: [Handwritten Signature]

Date: 25/06/21

### 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, Community, Culture & Placemaking 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.

