

Comhairle Cathrach Chorcaí Cork City Council

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

Úna O'Brien,
54 Belgard Downs,
Rochestown,
Cork T12 D9XA.

08/12/2023

**RE: Section 5 Declaration R813/23 54 Belgard Downs, Rochestown,
Cork T12 D9XA.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 13th November 2023, I wish to advise as follows:

In view of the above and having regard to:

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

The Planning Authority considers that –

The dishing of the entire footpath and extending the driveway into the existing front lawn of an existing dwelling at 54 Belgard Downs, Rochestown, Cork **IS DEVELOPMENT AND IS NOT EXEMPTED DEVELOPMENT.**

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 08th December 2023.



We are Cork.

Is mise le meas,



Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



PLANNER'S REPORT
Ref. R 813/23

Cork City Council
Development Management
Strategic Planning and
Economic Development

Application type	SECTION 5 DECLARATION
Question	<i>Is the dishing of the entire footpath and extending the driveway into the existing front lawn of an existing dwelling development and if so, is it exempted development?</i>
Location	54 Belgard Downs, Rochestown, Cork
Applicant	Úna O'Brien (owner)
Date	08/12/2023
Recommendation	Is development and is not exempted development

INTERPRETATION

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

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

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

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

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

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is framed using the phrasing of section 5. The applicant states in the request, *"Is the dishing of the entire footpath outside of 54 Belgard Downs, Rochestown, Cork and extending the driveway into the existing front lawn of 54 Belgard Downs, Rochestown Cork development and if so, is it exempted development?"*

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:

Is the dishing of the entire footpath and extending the driveway into the existing front lawn of an existing dwelling development and if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a two storey terraced dwelling in the Sustainable Residential Neighbourhoods zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the dishing of the entire footpath outside of the existing dwelling and the extending of the paved/concrete driveway in place of the existing front grassed area.

5. RELEVANT PLANNING HISTORY

No planning history on site.

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

“exempted development” has the meaning specified in section 4.

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

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) in relation to a protected structure or proposed protected structure, includes—*
 - (i) the interior of the structure,*
 - (ii) the land lying within the curtilage of the structure,*
 - (iii) any other structures lying within that curtilage and their interiors, and*
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).*

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

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

Section 4(1)(h)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2)

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or*

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

Article 9(1)

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

(a) if the carrying out of such development would—

(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,

(Article 6) Schedule 2, Part 1

Classes 1-8 relate to development within the curtilage of a house and Class 6 relates to “any works within the curtilage of a house”.

Schedule 2, Part 1, Class 6

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
CLASS 6	

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>(a) <i>The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.</i></p> <p>(b) <i>Any works within the curtilage of a house for—</i></p> <p style="padding-left: 40px;">(i) <i>the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,</i></p> <p style="padding-left: 40px;">(ii) <i>the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.</i></p>	<p><i>The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.</i></p> <p><i>Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,</i></p> <p style="text-align: center;"><i>or</i></p> <p><i>if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.</i></p>

7. ASSESSMENT

It should be noted at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

7.1 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 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. In relation to proposed alteration to the public footpath and extended parking area, it is clear that the proposal comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION

Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

It is therefore necessary to consider whether the proposed rear extension comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3).

I consider that article 9(1) applies as the proposed development relates to alterations to a means of access onto a public roadway with a carriageway greater than 4m, and **Class 6** applies, as it is an extension of a hardstanding area to the front of an existing dwelling house.

Having assessed the proposed dishing of the kerb against Article 9 (1) it is considered that the proposed development consists of the widening of a means of access to a public roadway with a surfaced carriageway exceeding 4 metres in width. The proposed development is also of a type which may be considered to endanger public safety by reason of a traffic hazard or obstruction of road users. In this regard it is considered that the proposed works are not exempted development in accordance with Article 9 (1).

Having assessed the extension of the hardstanding area to the front of the dwelling to encompass all of the existing grassed area in relation to Schedule 2, Part 1, Class 6, it is considered that the area proposed development would exceed 50% of the area to the front of the dwelling and therefore may be considered exempted development if the proposed area is to be constructed using permeable materials or otherwise to allow for rainwater to soak into the ground. The applicant states in the application form that “*I want to dish the entire footpath so that I can make the area available to park my car bigger – by either paving or concreting all the garden or the majority of the garden*”. Concrete would not be considered acceptable and any paving proposed should be permeable.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Is not exempted development

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required,

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required**.

8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required**.

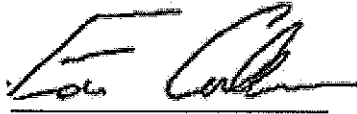
9. RECOMMENDATION

In view of the above and having regard to —

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

the planning authority considers that —

the dishing of the entire footpath and extending the driveway into the existing front lawn of an existing dwelling at 54 Belgard Downs, Rochestown, Cork **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.**



Eoin Cullinane
A/Senior Executive Planner
08/12/2023

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924709

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Úna OBrien

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

54 Belgard Downs, Rochestown, Cork, T12 D9XA

3. 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?*

Is the dishing of the entire footpath outside of 54 Belgard Downs, Rochestown, Cork and extending the driveway into the existing front lawn of 54 Belgard Downs, Rochestown Cork development and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

*****Existing*****

Please refer to the photos attached to the email. No. 54 is the middle house with the wine coloured front door.

My existing front garden is (approximately) evenly split between a small driveway/ parking space (one car) and a small grass lawn. The approx. measurements are as follows:

- *The driveway part: 270cm wide and 470cm deep. Positioned immediately in front of my porch/front door.*

- **The lawn part:** 295cm wide and 530cm deep. Includes a small concrete 'path' in front of the house

Some info about the existing footpath:

- The footpath in front of the drive way is already dished.
- The part that is not dished is badly broken, cracked and is in desperate need of repair.
- The part that is dished is higher than normal – doesn't dish all the way to the road.
- Given all the recent work (water meter, Siro, street lighting changes) the footpath is a patchwork of finishes.

Also, I number of my neighbours have already paved/concreted their entire front gardens or have replaced the lawn with pebbles.

*****Proposed*****

I want to dish the entire footpath so that I can make the area available to park my car bigger – by either paving or concreting all the garden or the majority of the garden.

- Currently, it's very tight space wise and sometimes the way other cars are parked on the road make it difficult for me to access my driveway/reverse into my parking space.
- When I can't park in my driveway I'm forced to park a bit away from my house which is awkward with a baby and baby paraphernalia.
- When my car is parked it can be difficult to get the buggy in and out of the house as the car is 'in the way'.
- Often when I'm parked in my driveway my car door opens over my neighbour's garden. My neighbours garden is paved other than a small strip immediately adjacent to my garden. She plans to plant a hedge in that strip which will make my space tighter/more awkward for getting in and out of the car.

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

If so please supply details: No

5. Is this a Protected Structure or within the curtilage of a Protected Structure? No

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

6. Was there previous relevant planning application/s on this site? No

If so please supply details:

7. 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	Structures are not applicable to this application.
(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"/> No 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)

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	N/a Legal interest is Owner	
If you are not the legal owner, please state the name of the owner if available		

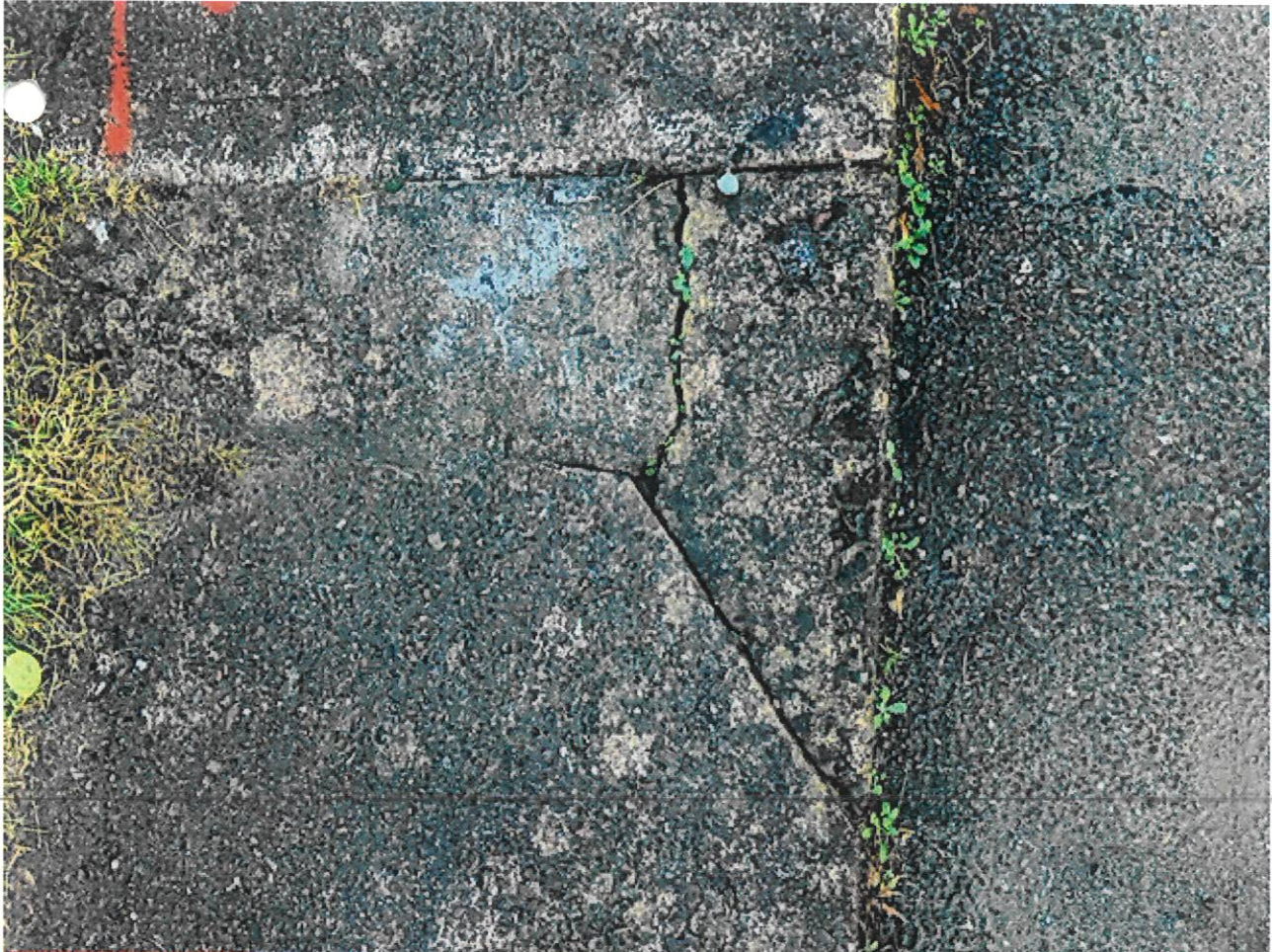
8.1 / We confirm that the information contained in the application is true and accurate:

Signature:

Una O'Brien

Date:

11 Nov 2023





Kate Magner

From: planning
Sent: Monday 13 November 2023 09:52
To: Kate Magner
Subject: FW: Section 5 declaration application for
Attachments: section 5 declaration application form_unaobrien 20231111.docx

Hi Kate,

Can you deal with this please?

Thanks

Val.

From: una obrien <[REDACTED]>
Sent: Sunday, November 12, 2023 1:29 PM
To: planning <planning@corkcity.ie>
Subject: Section 5 declaration application for

You don't often get email from [REDACTED]. [Learn why this is important](#)

[EXTERNAL EMAIL] This email originated from outside Cork City Council. Do not follow guidance, click links or attachments unless you recognise the sender and know the content is safe.

Hi,

Please find attached a section 5 declaration application form along with supporting photographs (No 54 is the middle house - wine coloured door).

Please can you advise the best way to pay the admin fee? Is there an option to pay online or over the phone? Thank you.

Cheers,

Úna

