

Comhairle Cathrach Chorcaí Cork City Council

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

Dylan Casey
Hutch O' Malley Consulting Engineers Ltd
"The Railway Station"
Patrickswell
Co. Limerick

01/12/2020

**RE: Section 5 Declaration R616/20 88 North Main Street, Cork City,
Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

Having regard to:

- the particulars received by the Planning Authority on 2nd November 2020
- the provision of Article 10(6) (d) (vi) and Article 10(6) (d) (vii) of the Planning and Development Regulations, 2001 (as amended)

It is considered that,

- The proposed change of use is development and is not exempted development.

Is misa le meas,

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R 616/20

Description: Whether the conversion of an existing unused bank at ground and first floor level to a partial residential use on ground floor comprising 1 no. residential unit and the complete change of use of the first floor for residential use comprising 4 no. residential units is or is not development and is or is not exempted development.

Applicant: Urban Green Private Ltd.

Location: 88 North Main Street, Cork

Date: 24/11/2020

SUMMARY OF RECOMMENDATION

Constitutes development; is not exempted development

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.

Site Location

The site is located at 88 North Main Street, Cork. The property is a two storey, multi bay unit, adjacent to St. Peter’s church (RPS: PS219). The building was formerly in use as a bank.

Subject Development

The proposed development subject to this Section 5 declaration request asks the following question of the Planning Authority in respect of the conversion of part of the existing ground floor commercial unit to a residential unit, and the conversion of the first floor from commercial unit to a residential unit. The applicant considers that the development is exempted development as:

- **The change of use would be exempt under S.I. 30/2018 which allows for a change of use of certain vacant commercial premises to residential use by exemption up to 31/12/2021.**

The applicant seeks clarification on whether the above works and use is development and is exempted development.

Relevant Legislation

Planning and Development Act, 2000

Section 3 (1) of the Act defines “*Development*” as, ‘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 of the Act refers to '*Exempted Development*' and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

'Development consisting of the carrying out of the 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 of the structure or of neighboring structures'.

Definitions

The definition of "*Structure*" in the 2000 Act is as follows:

"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 (ii)"

Planning and Development (Amendment) (No.2) Regulation, 2018

As an amendment to the Article 10 of the principal regulations of the *Planning and Development Regulation 2001*, Article 10 of Part 4 of the Regulations provides definitions Classes of Uses for the purposes of Exempted Development.

The amendment broadens the availability for exempted development for change of use to residential use from Class 1, 2, 3 or 6 of Part to Schedule 1. Class 2a is defined as "*financial Services*".

Under the amendment of the regulations, the proposed development for residential use, and any related works shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d) which is as follows:

(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the

structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting. 4 [30]

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

Ministerial Guidelines

The document *Sustain Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities* (March 2018) is of relevance here. The guidelines specify minimum floor areas for residential units. Specific Planning Policy Requirement 3 requires the following:

Specific Planning Policy Requirement 3

Minimum Apartment Floor Areas:

- Studio apartment (1 person) 37 sq.m
- 1-bedroom apartment (2 persons) 45 sq.m
- 2-bedroom apartment (4 persons) 73 sq.m
- 3-bedroom apartment (5 persons) 90 sq.m

Land use zoning

The Cork City Development Plan 2015-2021 ("The Development Plan") establishes the following:

ZO 1 City Centre Retail Area (CCRA)

Objective: To provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.

The site is located within the North Main Street Architectural Conservation Area where objective 9.29 seeks to preserve and enhance designated Architectural Conservation Areas in the city.

Planning History

On this site:

TP 01/25668: – Permission was granted on 8th February 2002 to replace the existing fascia signage with new signage to match, subject to 3 no. conditions set out as follows;

1. The development shall be carried out in accordance with the drawings and specifications submitted to the Planning Authority on 05/11/01 except where altered or amended by conditions in this permission

Reason: To enable the Planning Authority to check the proposed development when completed

2. (a) Signs which overhang footpath shall not be lower than 2.1 meters off ground to Cork Corporation's satisfaction

(b) Sign shall not cause glare on traffic to Cork Corporation's satisfaction

Reason: In the interest of road traffic and pedestrian safety.

TP 75/5544: Permission granted on 10th November 1975 for the conversion of a shop to a bank at no. 88/89 North Main Street, Cork, subject to 3 no. conditions, set out as follows;

1. The developer to make a contribution of £800 to Cork Corporation towards the cost of works viz. provision of car parking spaces facilitating the proposed development subject to:
 - a. Where the proposed works are not commenced within 7 years of completion of the development, the Planning Authority shall return the contribution
 - b. Where the proposed works are, within the said period are carried out in part only or in such manner as to facilitate the development to a lesser extent, the Planning Authority shall return a proportionate part of the contribution.
 - c. The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.

Reason: Adequate and efficient car parking cannot be provided within the site cartilage. This contribution is to fund for the provision of by the Corporation of car parking facilities adjacent to the city centre. The proposed parking areas will facilitate the development.

2. Details of proposed external finishes must be submitted to and approved by the Planning Authority before commencement of development.

Reason: In the interests of the proper planning and sustainable development of the area

3. The figures "88/89" must be included in the ground floor frontage.

Reason: To facilitate identification.

Sub-threshold EIS

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 EIS is not required to be submitted.

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.

Assessment

Is the proposal "Development"?

As per definition of "*development*" in Section 3 (1) of the Planning and Development Act 2000 (as amended), the issues of works and material change of use proposed by this development will be assessed to determine the planning status of the proposed development.

Works

The proposed change of use requires the carrying out of internal works. These works will be carried out within the interior of the structure (the building itself) and would therefore be considered as internal works. Having regard to the provisions set out in Section 4 (1) (h) of the Act, these internal works would not materially affect the external appearance of the structure. In addition, it can be stated that these internal works would not render the appearance as inconsistent with the character of the structure or of neighboring structures and would therefore be considered exempted development under this section of the Act.

Material Change of use

The established use of the planning unit subject to this Section 5 request is as a bank. The Planning and Development Regulations 2001 (as amended) define this use "financial services" in Part 4 of Schedule 2, where 11 different classes of use are listed. Class 2 is defined as "*Use for the provisions of: (a) Financial Services, (b) professional services (other than health or medical services), (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.*".

The proposed residential use is not within the same class use as the established use and would therefore constitute a material change of use and would be considered as constituting "development" as defined in the Act.

It is noted that the permitted use as a bank (Class 2a) is in the same class of use as the Professional Services (Class 2 b) and on this basis, the proposed partial change of use from bank to professional service is not a material change of use.

Is the proposal exempted development?

The planning agent for the applicant has submitted an assessment of the proposed development as part of this Section 5 declaration request. It is asserted that the change of use is exempted development having regard to:

- Planning and Development (Amendment) (no. 2) Regulations 2018 which provides for exempted development for the change of use from certain class uses (Includes Class 2, Use as financial services) to residential use.

The established use (now vacant) of the planning unit was as a bank. The vacancy has been in excess of 2 years. Notwithstanding any other considerations, the change of use from a bank (Class 2a) to residential use would be exempt under the regulations as amended.

However, it is noted that the subject structure includes the partial change of use of the ground floor from financial services (class 2a) to residential. Having regard to the zoning objective for the site which is set out under Objective ZO1 of the Development Plan, it is noted that it is the objective of the Planning Authority that the CCRA provides for the protection, upgrading and expansion of retailing. However, having regard to Paragraph 15.7 of the Development Plan Retailing is prioritised in this area but not to the exclusion of other land use types. Other uses such as residential, hotel, office and cultural and leisure facilities etc which compliment the retail function of the CCRA and promote vibrancy in the City Centre are also permitted.

Based on the drawings submitted, it is confirmed that the residential dwelling floor areas are in keeping with the minimum floor standards as set out in "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under Section 28 of the Planning and Development Act. However, minimum storage areas have not been provided for in the floor plans. On this basis, the proposed development will be de-exempted by virtue of the limitations on such exemptions set out in Article 10(6) (d) (vi) of the Planning and Development Regulations (2001) as amended.

In addition, having regard to Article 10(6) (d) (vii) of the Planning and Development Regulations, it is noted that the ground floor apartment does not have adequate natural lighting, with only the bedroom benefiting from any natural light. In this regard, it is considered that the planning exemption for change of use cannot be applied in this instance.

Finally, it is noted that it is the intention to utilise the rest of the ground floor area,

Recommendation

Having regard to:

- the particulars received by the Planning Authority on 2nd November 2020
- the provision of Article 10(6) (d) (vi) and Article 10(6) (d) (vii) of the Planning and Development Regulations, 2001 (as amended)

It is considered that,

- The proposed change of use is development and is not exempted development.

**COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL**

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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

88 North Main Street, Cork City, Cork

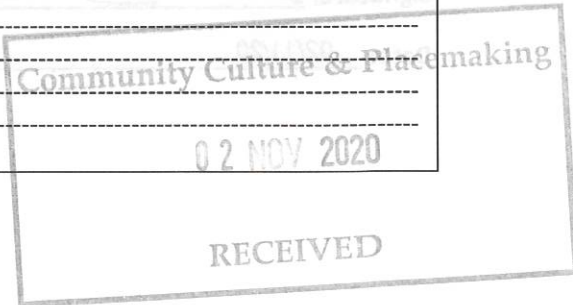
2. QUESTION/ DECLARATION DETAILS

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.
The building has been historically used by Permanent TSB for the provision of professional services. Works began to convert part of the building for residential use for 5 Apts; 1 No. 1 bed, and 4 No. studios. The layout and size of the apartments have been adjusted to suit the existing building layout and structure, adapted with the updated Part B guidelines. The building has been vacant >2 years. The remainder of the front section of the ground floor shall be used by Peter McVery Trust to provide professional advice to members of the public and to oversee the residential use. Please confirm that the residential use is in exempt in accordance with SI 30 of 2018. With regard to "Specific Planning Policy Requirement 2" as the building is existing there is 1 No. 1 bed unit and 4 No. studio apartments. As a managed development we believe this is in accordance with the Guidelines. Please confirm that the unaffected use as a Class 2 Development for Peter McVery Trust is suitable.

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

Proposed Works are the material Alterations to part of the existing ground floor layout as part of proposed internal renovation, and partial Material Change of Use of the remaining ground floor area, and entire first floor layout from commercial to residential (apartments), and all ancillary works.





REVISION DETAILS	DATE

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OS LICENSE NUMBER: AB010713

INFORMATION	
Name	88 Main Street, Cork City, Cork
Project	Urban Green Private Ltd.
Client	Urban Green Private Ltd.
Drawing Title	Site Layout
Drawn	DC
Scale	1:500
Checked	DOM
Date	13/09/20

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Project No: 20108
Drawing No: P01
Revision:

