



# Comhairle Cathrach Chorcaí Cork City Council

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

John Desmond & Mary Young  
41 Nun's Walk  
Friars Walk  
Cork

22/12/2020

**RE: Section 5 Declaration R624/20 41 Nun's Walk, Friar's  
Walk, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, 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, and
- Articles 6, Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended

the planning authority considers that —

While the completion of the driveway and the erection of low metal posts sympathetic to the existing railings **IS DEVELOPMENT AND IS EXEMPTED DEVELOPMENT**, that the dishing of the footpath by the City Council at 41 Nun's Walk, Friars Walk, Cork cannot be determined under the provision of Section 5 of the Planning and Development Act, 2000, as amended.

Is misa le meas,

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



**We are Cork.**

## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R 624/20

**Description:** Whether the completion of a driveway and the erection of low metal posts, sympathetic to the existing railings, along with the dishing of the footpath by the City Council considered exempted development.

**Applicant:** John Desmond and Mary Young

**Location:** 41 Nun’s Walk, Friars Walk, Cork

**Date:** 21/12/20

### SUMMARY OF RECOMMENDATION

1. Completion of the driveway and erection of low metal posts Constitutes development and is exempted development
2. Dishing of footpath by City Council on public road cannot be determined under Section 5 Declaration

### Interpretation

In this report the ‘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.

### 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.

### The Questions before the Planning Authority

The Question to the Planning Authority is,

*“Whether the completion of a driveway and the erection of low metal posts, sympathetic to the existing railings, along with the dishing of the footpath by the Council is exempted development”*

In my opinion the intention of the request is clear.

### Site Description

The subject property comprises a two storey, semidetached dwelling, located at the corner of Nun's Walk and Reendowney Place, Cork.

### **Description of Development**

The proposed development comprises the completion of a driveway and the erection of a low metal posts sympathetic to the existing railings. In addition, the development includes the dishing of the footpath by the City Council, to allow for the safe access/egress of a car from the proposed parking space.

### **Planning History**

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

### **Relevant Legislation**

#### **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) (e)**

(1) The following shall be exempted developments for the purposes of this Act—  
(e) development consisting of the carrying out by the corporation of a county or other borough or the council of a county or an urban district of any works required for the construction of a new road or the maintenance or improvement of a road

**Section (4) (2)**

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempt 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)**

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.

**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 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.

*Exempted Development - General*

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>Development within the curtilage of a house</i>  <i>CLASS 5</i> <i>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</i>	<ol style="list-style-type: none"><li><i>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.</i></li><li><i>2. Every wall other than a dry or natural stone wall bounding</i></li></ol>

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>decorative finish, other concrete blocks or mass concrete.</i></p> <p>CLASS 6</p> <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>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>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>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.</i></p> <p>3. <i>No such structure shall be a metal palisade or other security fence</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><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>

#### Article 9 (1)

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—
    - i. Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
    - 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,
    - iv. Except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring

- forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- v. Consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies
  - vi. Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
  - vii. Consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
    - A consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended
    - B comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
    - C consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
  - viii. Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
  - ix. Consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where

it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan in the draft variation of the development plan or the draft development plan,

- x. Consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- xi. Obstruct any public right of way
- 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 or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

#### **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 it 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'. It is clear that the proposal constitutes 'works', which is defined in Section 2(1) of the Act as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

As the proposal comprises 'works', it is clearly therefore 'development' within the meaning of the Act.

## Conclusion: Is development

### **Is it 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. Section 4(3) of the Act states that exempted development wither means development specified in Section 4(1) or development which is exempted development having regard to any regulations under Section 4(2).

The proposed works comprise different aspects of works, which I will deal with separately as follows;

- 1) The completion of a driveway
- 2) Erection of low metal posts sympathetic to the existing railings
- 3) Dishing of the footpath by the City Council.

#### 1. The completion of a driveway

I consider that the proposal comes within **subsection (2) of section 4,**

I consider that Article 6 Class 6 of Schedule 2 of the Planning and Development Regulations, 2001, as amended applies as the development comprises the completion of a driveway to the front of a dwelling house.

The proposed driveway comprises c. 21.9 sqm and therefore comes under the limitations set out in column 2. I do not consider that any restrictions on the exemption occur in this instance.

#### 2. Erection of low metal posts sympathetic to the existing railings.

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

I consider that Article 6 Class 5 of Schedule 2 of the Planning and Development Regulations, 2001, as amended applies as the development comprises the provision of low metal post railings.

The railing posts measure at c. 1m in height and are therefore below the limitation of 1.2m as set out in Column 2. I do not consider that any restrictions on the exemption occur in this instance.

#### 3. Dishing of the footpath by the City Council

Having regard to the third part of the question put before the planning authority, it is noted that the proposed works involve works carried out by the City Council on a public road. In this regard, it is not considered that the proposed works, if carried out by the Council, would come under the remit of Section 5 of the Act.

In this regard, a declaration on whether the proposed works constitute development that is exempted development cannot be made under Section 5 of the Act.



## **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, Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended

the planning authority considers that —

While the completion of the driveway and the erection of low metal posts sympathetic to the existing railings **IS DEVELOPMENT AND IS EXEMPTED DEVELOPMENT**, that the dishing of the footpath by the City Council at 41 Nun's Walk, Friars Walk, Cork cannot be determined under the provision of Section 5 of the Planning and Development Act, 2000, as amended.

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Sinéad Kearney  
Assistant Planner

41 Nun's Walk  
Friar's Walk  
Cork  
Date: 26/11/2020

087 7455180

Dear Sir/Madam

We wish to apply for an Exemption Certificate, Section V, for a parking space at the front of our house.

We are hoping to engage the council to dish the footpath to the front of the house so that we can safely park our car in a driveway.

We spoke to a representative from the Roads Department who agreed that in order for the Council to carry out that work, we would need to apply for an Exemption Certificate.

We are now applying for that Exemption Certificate and we trust that the enclosed documents, drawings and photos are sufficient.

Yours Sincerely

Mary Young & John Desmond



*Mary Young & John Desmond*

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

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

Comhairle Cathrach Chorcaí  
Cork City Council

03 DEC 2020

R-Phost/E-Mail: [planning@corkcity.ie](mailto:planning@corkcity.ie) Economic  
Fón/Tel: 021 4924762 Development Directorate  
Líonra/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**

41 NUNS WALK  
FRIANS WALK. CORK T12 N7V0

**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 completion of a driveway and the erection of low metal posts, sympathetic to the existing railings, along with the disting of the footpath by the city council, considered and exempted development?

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

The opening (2.7m) and driveway (parking for one car) already exists and constituted a very small portion of the existing garden.

We feel that it would be beneficial both us and the council to be able to safely park our car off the road.

In recent times we have extensively landscaped and planted up this garden mainly with hedge plants and trees, and we would like to complete the driveway.

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?  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?

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	<u>N/A</u>
(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) <u>N/A</u>
(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)
<u>N/A</u>	<u>N/A</u>

### 8. 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		
If you are not the legal owner, please state the name and address of the owner if available		

9. I / We confirm that the information contained in the application is true and accurate:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

[Signature]  
31/12/2020

**CONTACT DETAILS (Section 5 Reference No: \_\_\_\_\_)**

**10. Applicant:**

<b>Name(s)</b>	JOHN DESMOND AND MARY YOUNG
<b>Address</b>	41 NUN'S WALK ----- FRIARS WALK ----- CORK -----

**11. Person/Agent acting on behalf of the Applicant (if any):**

<b>Name(s):</b>	/		
<b>Address:</b>			
<b>Telephone:</b>			
<b>E-mail address:</b>			
<b>Should all correspondence be sent to the above address?</b> <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"/>

**12. ADDITIONAL CONTACT DETAILS**

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

**ADVISORY NOTES:**

<p>The application must be accompanied by the required fee of €80</p> <p>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.</p> <p>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.</p> <p><i>The application should be sent to the following address:</i></p> <p align="center"><b>The Development Management Section, Community, Culture &amp; Placemaking Directorate, Cork City Council, City Hall, Anglesea Street, Cork.</b></p>
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- 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.

# Planning Pack Map



OUTPUT SCALE: 1:1,000

**CAPTURE RESOLUTION:**  
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