



Comhairle Cathrach Chorcaí Cork City Council

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

Boyd Barrett Murphy O' Connor Architects
Glenbeg,
Waterfall,
Cork
T12KWP7

10th May, 2021

RE: R659/21 – Section 5 Declaration
Property: “Annerville”, 121 Pouladuff Road, Cork

Dear Sir/Madam,

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

- the particulars received by the Planning Authority on 04/05/2021
- the provision of Schedule 2, Part 1, Class 1 and Class 5 of the Planning and Development Regulations, 2001(as amended)

the planning authority considers that —

the construction of a block wall, no more than 2 metres high, at the rear of Annerville, Pouladuff Road, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours faithfully,

Kerry Bergin
Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council



We are Cork.

SECTION 5 DECLARATION – PLANNER’S REPORT

File Reference: R659/21
Description: Construction of a block wall
Applicant: Tim McCarthy
Location: Pouladuff Road
Date: 06.05.2021

SUMMARY OF RECOMMENDATION

Constitutes development; is exempt 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 currently forms the rear garden of a bungalow ‘Annerville’ which is sited on the corner of Pouladuff Road and the entrance road into Woodhall.

Subject Development

The development subject to this Section 5 declaration request asks the following question of the Planning Authority: is the construction of a block wall, no more than 2 metres high, at the rear of the above property, to be built along the dashed red line as indicated on the site location map (attached) considered to be development, and if so, is it exempted development as it would seem to fall under schedule 2, Part 1, Class 5, of the Planning and Development Regulations, 2001.

Land use zoning

According to the Cork County Development Plan 2014, the site is zoned ZU 3-1 Existing Built-Up Areas with an objective:

“Normally encourage through the Local Area Plan’s development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas will be resisted.”

Planning History:

Planning permission was granted in 2018 for the construction of a terrace of 3 No. two storey houses with off-street car parking (Ref: TP/18/37960).

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 (2) (a) states the following:

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 1 of the above regulations relates to general exempted development.

Classes 1- 8 refer to development within the curtilage of a house.

Specifically, *Class 5* refers to 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 decorative finish, other concrete blocks or mass concrete.

Definitions

The definition of "Structure" in Section 2 of 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)"

Assessment

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.

It is noted that the property is not a Protected Structure as per RPS of the current Cork City Development Plan 2015-2021 and is not located within a designated Architectural Conservation Area of the City Plan.

Assessment

The first issue for consideration is whether or not the matter at hand is *‘development’*.

‘Development’ as defined in the Act (3) (1) comprises two possible chief components: *‘the carrying out of any works on, in, over or under land’*, or *‘the making of any material change in the use of any structures or other land’*. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

As per definition of *“Structure”* in Section 2 of the Planning and Development Act, 2000, the proposed wall is considered to be a structure.

As per definition of *“development”* in Section 3 (1) of the Planning and Development Act 2000 (as amended), it is considered that the erection of this wall constitutes works, and as such, is *‘development’* and that the remaining question therefore is whether it is *‘exempted development’*.

Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) relates to exempted development. As noted above, Class 5 relates to 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 decorative finish, other concrete blocks or mass concrete.

Class 5 goes on to set out distinctive categories for exempted development. The proposal before the Council under this Section 5 application have been assessed against each in turn in the table below.

Conditions and Limitations	Assessment
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.	The submitted plans show a wall that would be within the bounding of the garden and be 2 metres high. This condition is satisfied.
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	The submitted plans and information on the application form state that the wall will be block on flat where it is retaining and hollow block above this, it will include supporting pillars within the wall as required and be capped. It will be rendered on both sides. This condition is satisfied.

public area, including public open space, shall be rendered or plastered.	
3. No such structure shall be a metal palisade or other security fence.	From the information submitted, this condition is satisfied.

Recommendation

Having regard to:

- the particulars received by the Planning Authority on 04/05/2021.
- the provision of Schedule 2, Part 1, Class 1 and Class 5 of the Planning and Development Regulations, 2001(as amended)

the planning authority considers that —

the construction of a block wall, no more than 2 metres high, at the rear of Annerville, Pouladuff Road, Cork
IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Gillian Tyrrell
Assistant Planner
06.05.2021

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

23rd March 2021

Re: Section 5 Declaration Application

Dear Sir / Madam,

Our client is contracted to purchase a plot of ground benefitting from a recent planning permission, planning reg. ref. 18/37960. Prior to the sale concluding, the vendor has requested that a Section 5 Declaration be sought for the construction of the dividing wall, as outlined in detail in the application form, as they wish to ensure that it is not seen as commencement of the planning permission.

We envisage the proposed wall to be exempted development as it would seem to fall under schedule 2, Part 1, Class 5 of SI no. 600/2001 - Planning and Development Regulations, 2001.

Please find enclosed a Section 5 Declaration Application Form, 2 no. copies of the site location map with the location of the proposed wall marked in a dashed red line. We also enclose the fee of €80.

We look forward to receipt of this application in due course.

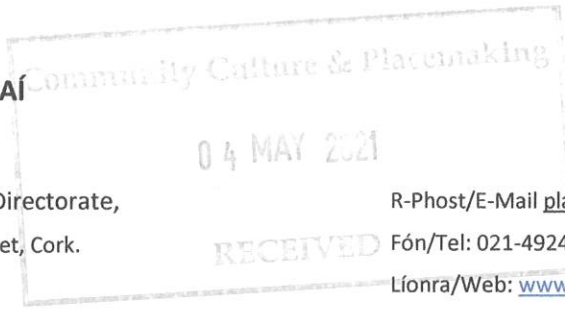
Yours sincerely,

James Murphy O'Connor



COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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



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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

Rear of "Annerville", 121 Pouladuff Road, 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.

Is the construction of a block wall, no more than 2 metres high, at the rear of the above property, to be built along the dashed red line as indicated on the attached site location map considered to be development, and if so is it exempted development as it would seem to fall under schedule 2, Part 1, Class 5 of SI no. 600/2001 - Planning and Development Regulations, 2001 ?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The property is due to be divided into plots 'A' and 'B' as indicated on the site location map, on foot of planning ref: 1837960. The purchaser of plot 'B' intends to build the block wall to divide the property prior to commencing development and seeks confirmation that the erection of the dividing wall along the dashed red line is considered exempt development.

The wall is proposed to be no more than 2m in height. It is to be block on flat where it is retaining and hollow block above this. It will be rendered on both sides. It will include supporting pillars within the wall as required and capped.

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? n/a

5. Was there previous relevant planning application/s on this site? Yes, planning ref 18/37960
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	Wall, 25.9m long
(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"/> If yes, please provide floor areas. (sq m) _____ n/a
(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) _____ _____ _____

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other <input checked="" type="checkbox"/> Other
Where legal interest is 'Other', please state your interest in the land/structure in question	Contracted to Purchase	
If you are not the legal owner, please state the name and address of the owner if available	Mr. Brendan Walsh, Annerville, 121 Pouladuff Road, Cork.	

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

Signature:  _____
Date: 23rd March 2021 _____

- 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.



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