

Richard Whitley,

28/08/2024

RE: Section 5 Declaration R863/24 39 Saint Patrick Street, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 06/08/2024, I wish to advise as follows:

The Planning Authority 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, 10 and Schedule 2, Part 1, Class 56 (e) of the Planning and Development Regulations 2001 (as amended),

With particular reference to Schedule 2, Part 1, Class 56 (e) of the Planning and Development Regulations 2001 (as amended), the proposed solar panel array is not the 2m minimum distance from the edges of the roof. It is considered that *the specific question for which a declaration is sought* **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** at 39 Saint Patrick Street, Cork.

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.

Is mise le meas,

David O'Regan

**David O'Regan,
Assistant Staff Officer,
Community, Culture &
Placemaking Directorate**

PLANNER'S REPORT Ref. R863/24		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>"Is the construction of a solar array on the roof of the premises at 39 St. Patrick's Street, Cork, exempted development?"</i>	
Location	39 St. Patrick's Street	
Applicant	Richard Whitley	
Date	14/08/2024	
Recommendation	<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 framing the question to the planning authority, the applicant states in Q2 of the application form:

"Is the construction of a solar array on the roof of the premises at 39 St. Patrick's Street, Cork, exempted development?"

3. Site Description

The property in question is a 4-storey mid terrace city centre property. There are retail sales at ground and 1st floor with stock rooms, staff offices and changing areas at the 3rd and 4th floors. It is listed on the NIAH as being of Regional Importance (Ref. 20513095) but is not a protected structure.

4. Planning History

TP04/28440: Permission granted for new shopfront, new signage, alterations to sales floors at ground and first floors.

5. Legislative Provisions

5.1 The Act

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 2001-2013.

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 The Regulations**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.

Article 9 (1)

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (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,*

Article 10 (1)

Development which consists of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be development where the existing use is an unauthorised, save where the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned*

Schedule 2, Class 56 (e)

<i>(e) The placing or erection on a roof of a business premises or light industrial building, or within the</i>	<i>1. Where such development is located within a solar safeguarding zone, the total aperture area of any solar photo-voltaic and/or solar thermal collector panels, taken</i>
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curtilage of a business premises or light industrial building, or on a roof of any ancillary buildings within the curtilage of a business premises or light industrial building of a solar photo-voltaic and/or solar thermal collector installation.

together with any other such panels previously placed on a roof, shall not exceed 300 square metres.

2. Where such development is located within a solar safeguarding zone, the planning authority for the area shall be notified in writing no later than 4 weeks after the commencement of such development and such notification shall include details regarding the location and scale of the development.

3. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed

a. for a business premises, 1.2 metres in the case of a flat roof or 15cm in any other case.

b. for a light industrial building, 2 metres in the case of a flat roof or 50cm in any other case.

4. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 2 metres in the case of a flat roof or 50cm in any other case from the edge of the roof on which it is mounted.

5. Development shall not be exempted development where the highest part of the solar photo-voltaic or solar thermal collector installation exceeds the highest part of any roof that is not a flat roof (excluding any chimney).

6. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels shall not be placed or erected on a wall or any roof that is not a flat roof.

7. The height of any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall not exceed 1.6 metres above roof level.

8. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall be a minimum of 2 metres from the edge of the roof on which it is mounted.

9. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the business premises or light industrial building.

10. The total aperture area of any free-standing solar photo-voltaic and solar thermal collector panels taken together with any other such existing free-standing panels shall not exceed 75 square metres.

	<p>11. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.</p> <p>12. The placing or erection of a solar photo-voltaic or solar thermal collector installation on any wall shall not be exempted development.</p> <p>13. The placing or erection of any free-standing solar photo-voltaic or solar thermal collector installation within an Architectural Conservation Area shall only be exempted development if those works would not materially affect the character of the area.</p> <p>14. No sign, advertisement or object not required for the functioning or safety of the solar photo-voltaic or solar thermal collector installation shall be attached to or exhibited on such installation.</p> <p>15. Development under this Class shall only be exempted development where the solar photo-voltaic or solar thermal collector installation is primarily used for the provision of electricity or heating for use within the curtilage of the business premises or light industrial building, and shall not be considered a change of use for the purposes of the Act.</p> <p>16. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.</p>
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6. ASSESSMENT

6.1 Development

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'*.

'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.'*

The proposal is to erect (construct) solar panels on the roof. This is considered development and works as it will place additional new structures onto the existing roof. The works relating to the solar panels are limited to the front part of the roof section. This is concealed from the street level by a higher parapet.

5.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. There is no existing condition prohibiting solar panels. There is no known unauthorised development at this unit, nor is it a protected structure.

The unit is located within the designated Architectural Conservation Area of Oliver Plunkett Street. It does not come within a designated solar safeguarding zone (The CUH solar safeguarding zone runs partly through the adjoining building).

The remaining legislation under which assessment falls is Class 56 (e), Schedule 2 of the Planning and Development Regulations (2001) as amended which refers to solar panels on a business premises subject to 16 conditions/limitations.

56 (e) The placing or erection on a roof of a business premises or light industrial building, or within the curtilage of a business premises or light industrial building, or on a roof of any ancillary buildings within the curtilage of a business premises or light industrial building of a solar photo-voltaic and/or solar thermal collector installation.

Criteria	Checklist/Comments
<i>1. Where such development is located within a solar safeguarding zone, the total aperture area of any solar photo-voltaic and/or solar thermal collector panels, taken together with any other such panels previously placed on a roof, shall not exceed 300 square metres.</i>	Proposed array is 75sq.m. This is under the 300sq.m.
<i>2. Where such development is located within a solar safeguarding zone, the planning authority for the area shall be notified in writing no later than 4 weeks after the commencement of such development and such notification shall include details regarding the location and scale of the development.</i>	Not located in a solar safeguarding zone.
<i>3. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed</i> <i>a. for a business premises, 1.2 metres in the case of a flat roof or 15cm in any other case.</i> <i>b. for a light industrial building, 2 metres in the case of a flat roof or 50cm in any other case.</i>	This is a flat roof of a business premises. The distance between the panels and the flat roof is 0.33m which comes well within the 1.2m.
<i>4. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 2 metres in the case of a flat roof or 50cm in any other case from the edge of the roof on which it is mounted.</i>	The panels are located 0.38m from the northeastern edge (Dune side), 8.8m from the southwestern edge (sharded roof with Permanent tsb Bank); and 0.44m from the northwestern roof edge (St. Patrick's Street). They are not a minimum of 2m away from 2no. roof edges.

5. Development shall not be exempted development where the highest part of the solar photo-voltaic or solar thermal collector installation exceeds the highest part of any roof that is not a flat roof (excluding any chimney).	n/a It is a flat roof.
6. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels shall not be placed or erected on a wall or any roof that is not a flat roof.	n/a. The question before the Planning Authority does not relate to any associated equipment.
7. The height of any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall not exceed 1.6 metres above roof level.	n/a. The question before the Planning Authority does not relate to any associated equipment.
8. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall be a minimum of 2 metres from the edge of the roof on which it is mounted.	n/a. The question before the Planning Authority does not relate to any associated equipment.
9. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the business premises or light industrial building.	n/a. The question before the Planning Authority does not relate to any associated equipment.
10. The total aperture area of any free-standing solar photo-voltaic and solar thermal collector panels taken together with any other such existing free-standing panels shall not exceed 75 square metres.	Proposed array is 75sq.m. This does not exceed the stated 75sq.m.
11. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.	n/a. The question before the Planning Authority does not relate to any associated equipment.
12. The placing or erection of a solar photo-voltaic or solar thermal collector installation on any wall shall not be exempted development.	The application does not propose any installations on walls.
13. The placing or erection of any free-standing solar photo-voltaic or solar thermal collector installation within an Architectural Conservation Area shall only be exempted development if those works would not materially affect the character of the area.	Given the high parapet from the front, it is considered that the proposed solar array will not be visible and therefore will not materially affect the character of the area.
14. No sign, advertisement or object not required for the functioning or safety of the solar photo-voltaic or solar thermal collector installation shall be attached to or exhibited on such installation.	No signs/advertising proposed.
15. Development under this Class shall only be exempted development where the solar photo-voltaic or solar thermal collector installation is primarily used for the provision of electricity or heating for use within the curtilage of the business premises or light industrial building, and shall not be considered a change of use for the purposes of the Act.	For business use.
16. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-	Should the Local Authority be made aware of issues, this can be enacted.

<p><i>voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.</i></p>	
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7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) 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 environmental impact statement is not required to be submitted.

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 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 the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. Conclusion

The question has been asked whether

"Is the construction of a solar array on the roof of the premises at 39 St. Patrick's Street, Cork, exempted development?"

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, 10 and Schedule 2, Part 1, Class 56 (e) of the Planning and Development Regulations 2001 (as amended),

With particular reference to Schedule 2, Part 1, Class 56 (e) of the Planning and Development Regulations 2001 (as amended), the proposed solar panel array is not the 2m minimum distance from the edges of the roof. It is therefore development and NOT exempted development.



Mary Doyle
Executive Planner

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
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Líonra/Web: 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

RICHARD WHITLEY

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 SOLAR ARRAY ON THE ROOF OF
THE PREMISES at 39, PATRICK STREET, CORK
EXEMPTED DEVELOPMENT?

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

SEE ATTACHED DRAWING SHOWING THE PROPOSED SOLAR ARRAY

SEE ATTACHED SITE LOCATION MAP

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? ☒

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? ☐ NO

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	74.6M2 SOLAR ARRAY
(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 checked="" 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) N/A	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 <input checked="" type="checkbox"/>	B. Other
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: 22ND JULY 2024



WATERMAN KELLY CONSULTING ENGINEERS
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www.watermankelly.ie

Our Ref: WK10616

Your Ref:

6th August 2024

The Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork.



**Re: SECTION 5 APPLICATION under Section 5 of the Planning & Development Acts
2000 (as amended),
Application by Richard Whitley for Exemption Declaration for Solar Array on Roof of
39, Patrick Street, Cork**

Dear Sirs,

I refer to the above and enclose herewith 2 no. copies of the following,

Section 5 application form,
Site location map,
Roof plan of proposed solar array,
Section through building showing solar array will not be visible from any elevation of the building
onto any street and will not be protruding above parapet wall level.

I also attach herewith cheque for €80.00 it being the application fee.

Kindly acknowledge receipt.

If you have any queries or require further information, please do not hesitate to contact me.

Yours faithfully,

JOHN O'BRIEN Eng Tech MIEI
Waterman Kelly Consulting Engineers

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 the document was originally issued.



Site plan showing the proposed solar array layout. The array is located adjacent to the Dune Building and The North Face Building. The array area is labeled "Proposed P.V. Array" with dimensions 542' and 7667'. The North Face Building has a "Lower Level Flat Roof" and a "Flat Roof". A compass rose indicates North is towards the top right. Other labels include "Dune Building", "Flat Roof", "AC Units", "Building", and "Adjoining PTSB Building". A red line outlines the perimeter of the solar array and the North Face Building.

MARLBORO STREET

[illegible]

Surveyed 1973
 Revised 2018
 Levellad 1973-1983

Land Registry Compliant Map

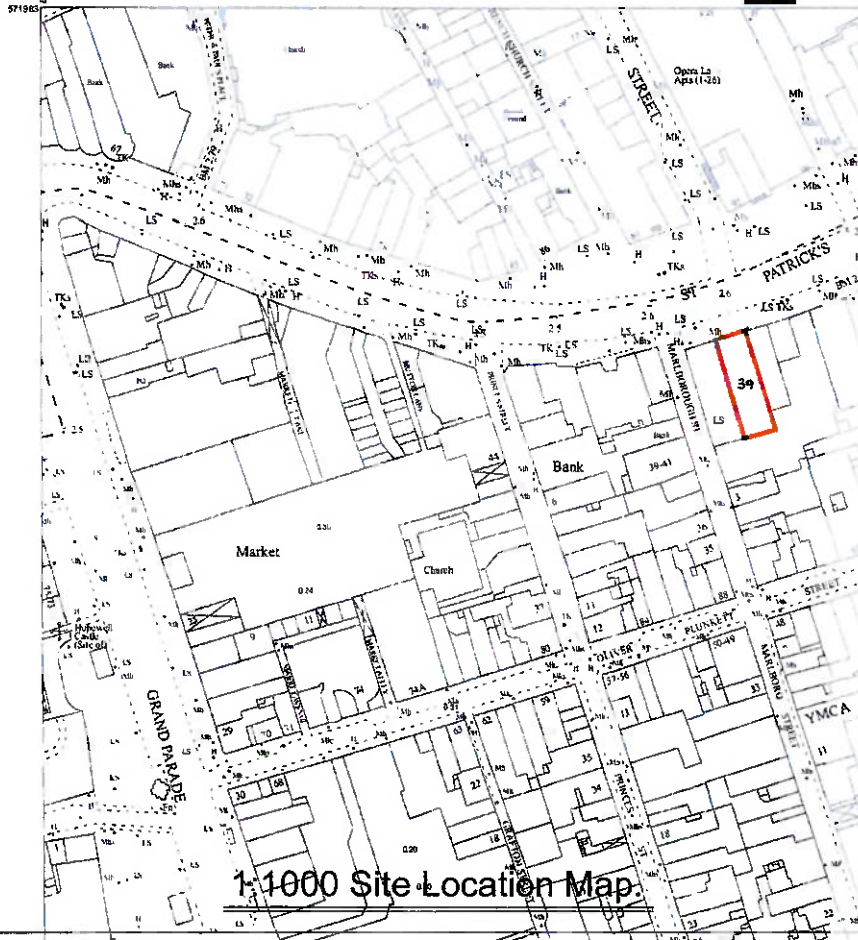


11th CENTURY PT. COORDS
 567392.571798

DESCRIPTION

MAP SHEETS

1:1000
 6382-10 6382-15



1:1000 Site Location Map



Area boundaries are taken as shown on the
 Ordnance Survey Map of the
 County of Cork
 Copyright and published by Ordnance Survey
 Ireland, Phoenix Park, Dublin 8, Ireland
 Surveyors should verify the accuracy of
 the information shown on the map
 before using it for any purpose

Name of Site	
39 Patrick Street Cork	
1:1000 Site Location Map	
WK 10616-2	