



Comhairle Cathrach Chorcaí Cork City Council

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

Douglas Lawn Tennis Club,
c/o Frank Brennan,
Rosslea,
Strawberry Hill,
Monkstown,
Co. Cork T12 P64W.

02/10/2023

**RE: Section 5 Declaration R799/23 Douglas Lawn Tennis Club,
Douglas Hall Lawn, Well Road, Cork T12 X067.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 04th September 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), and
- Articles 6, 9 and 10 and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 to 2023,

The Planning Authority considers that –

the development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles at Douglas Lawn Tennis Club, Douglas Hall Lawn, Well Road, 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, 02nd October 2023.



We are Cork.

Is mise le meas,



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

PLANNER'S REPORT

Ref. R 799/23

Cork City Council
Development Management
Community, Culture & Placemaking
Directorate

Application type	SECTION 5 DECLARATION
Question	<i>Whether the development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles is development and, if so, is it exempted development?</i>
Location	Douglas Lawn Tennis Club, Douglas Hall Lawn, Well Road, Cork
Applicant	Frank Brennan
Date	03/10/2023
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 not framed using the phrasing of section 5. The applicant states in the request, "*Whether the development of two padel courts with a 4mtr surround fence and 6mtr high LED lighting poles and is this development 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:

Whether the development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles is development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is located within the grounds of the Douglas Lawn Tennis Club with an access onto Douglas Hall Lawn which is accessed via the Well Road.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of two No. Padel courts with a 4m surrounding fence and 6mtr high LED lighting poles.

5. RELEVANT PLANNING HISTORY

TP 06/31428 Permission GRANTED for the extension and alterations to existing single storey club house to include the part removal of existing roof and construction of a two storey extension, with alterations to internal layouts and existing fenestration at Douglas Lawn Tennis Club, Douglas Hall Lawn, Well Road, Cork

ABP.28.212131 (TP 05/29365) Permission REFUSED for the extension of lighting up times to facilitate the holding of tournaments up to 11.30pm on the following dates on an annual basis: May-7 days commencing on Saturday of the third weekend; August- 8 days commencing on Saturday of the third weekend and October- 6 days commencing on Saturday of the second weekend at Douglas Lawn Tennis Club, Douglas Hall Lawn, Well Road, Cork

The following An Bord Pleanála precedent cases are also noted:

06D. RL 2069

04.RF.1061

27.RF.677

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 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) (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,*
- (a) (viiB) 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,*
- (a) (viiC) 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,*
- (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*

(Article 6) Schedule 2, Part 1, Class 33

Exempted Development — General

<p>Column 1 Description of Development</p>	<p>Column 2 Conditions and Limitations</p>
<p><i>Development for amenity or recreational purposes</i></p> <p>CLASS 33</p> <p><i>Development consisting of the laying out and use of land—</i></p> <p><i>(a) as a park, private open space or ornamental garden,</i></p> <p><i>(b) as a roadside shrine, or</i></p> <p><i>(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.</i></p>	<p><i>The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated.</i></p>

7. ASSESSMENT

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 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’.

In relation to the proposed development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles, the proposed element is for construction and alteration to the

existing land which 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 development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles 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 6 and **Class 33 (c)** applies, as the development is for the development for amenity or recreational purposes.

Having assessed the proposed development against Class 33 (c) and its conditions and limitations I find as follows:

Class 33 (c) states that this exemption relates to developments "*for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land*".

From reviewing the details of the Douglas Lawn Tennis Club website it is clear that the use of the land will not be available without a charge to any member of the public. Rule 1.1 of the Club Rules clearly states that "*Club facilities are reserved for the use of paid up members and their guests (provided such guests are invited in accordance with the rules for guest players)*". In this regard it is considered that the proposed development would not come within Class 33 (c) and therefore is not considered to be exempted development.

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 there is insufficient information submitted to allow the Planning Authority to carry out an Appropriate Assessment Screening to assess whether the proposed development would affect the integrity of these European sites. Accordingly it is considered that **further information in relation to same is required**.

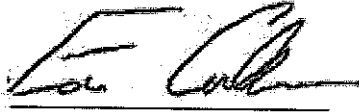
9. RECOMMENDATION

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 2023

the planning authority considers that —

the development of two Padel courts with a 4m surrounding fence and 6m high LED lighting poles at Douglas Lawn Tennis Club, Douglas Hall Lawn, Well Road, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



Eoin Cullinane
A/Executive Planner
28/09/2023

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

Lionra/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

FRANK BRENNAN

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

DOUGLAS LAWN TENNIS CLUB
DOUGLAS HALL LAWN, WALL ROAD, CORK T12X067

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?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

WHETHER THE DEVELOPMENT OF TWO PADDEL COURTS WITH A 4MTR SURROUND FENCE AND 6MTR HIGH LED LIGHTING POLES AND IS THIS DEVELOPMENT EXEMPTED DEVELOPMENT.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

RELEVANT REFERENCES 27.RF.677 AND 04.RF.1061

THE COURTS WOULD BE POSITIONED SLIGHTLY LOWER THAN AN ADJACENT TENNIS COURT, WITH 3MTR FENCING AND 10MTR LIGHTING POLES

DEVELOPMENT MANAGEMENT
CCP

04 SEP 2023

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?

If so please supply details:

0529365

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	
(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)
(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	B. Other <input checked="" type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question	LEASEHOLDER	
If you are not the legal owner, please state the name of the owner if available	CORK CITY COUNCIL	

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

Signature: FB Brennan

Date: 02/09/2023

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

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.

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.

The application should be sent to the following address:

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

- 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

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protection policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr/>.

We request that you read these as they contain important information about how we process personal data.



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Douglas Lawn Tennis Club



DOUGLAS LAWN TENNIS CLUB

PROPOSED LOCATION



DOUGLAS LAWN TENNIS CLUB

SEMI-ANNUAL COURTS

