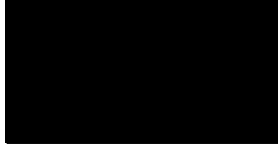


Comhairle Cathrach Chorcaí Cork City Council

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

Raymond O'Leary,



11/09/2024

RE: Section 5 Declaration R865/24, 29 Wilton Court, Wilton, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 13th of August 2024, I wish to advise as follows:

The Planning Authority in view of the above and having regard to –

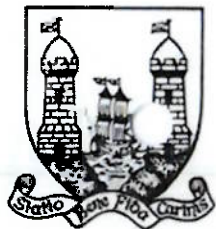
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended),
- Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and
- Section 4 (1)(h) of the Planning and Development Act 2000 (as amended)

It is considered that '*the conversion of garage*' **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** at 29 Wilton Court, Wilton, Cork, T12P3XF.

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, 11/09/2024



We are Cork.



Comhairle Cathrach Chorcaí

Cork City Council

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

Is mise le meas,

Rob Keating

Rob Keating

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council



We are Cork.

PLANNER'S REPORT
Ref. R 865/24

Cork City Council
Development
Management
Strategic Planning
and Economic
Development

Application type
Question

SECTION 5 DECLARATION

Whether the conversion of a garage and replacement of a garage door with a window is development and if so is or is not exempted development.

Location
Applicant

29 Wilton Court, Cork.
Raymond O'Leary

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

'Whether the conversion of a garage and replacement of a garage door with a window is development and if so is or is not exempted development.'

3. SITE DESCRIPTION

The subject property comprises a two-storey terraced dwelling house in 'Wilton Court' a housing estate which adjoins Sarsfield Road to the east of the Wilton Shopping Centre.

4. PLANNING HISTORY

On site

03/27222: Permission granted for the conversion of the garage to a living area and associated works with pitched roof above and new first floor window to front elevation (file unavailable).

Adjoining property No. 28 Wilton Court

02/26429: Permission granted for the conversion of the garage to living area and associated works with pitched roof.

R32/03: Section 5 application seeking a declaration as to whether the construction of an extension to the rear required planning permission. A request for Further Information was sought in relation to drawings to show the full house layout and site area etc however no response was received to same.

5. CURRENT LEGISLATIVE PROVISIONS

5.1 Planning and Development Act, 2000 as amended

Section 2(1),

"exempted development" has the meaning specified in section 4.

"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, except where the context otherwise requires, "development" means—

- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or*
- (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).'*

Section 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.*

5.2 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.

Article 9,

Article 9 sets out restrictions on exemptions specified under article 6. Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development, including (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"...

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

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to "the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house".

Schedule 2, Part 1, Class 1

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1</p> <p><i>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</i></p>	<ol style="list-style-type: none"> 1. (a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i> (b) <i>Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i> (c) <i>Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i> 2. (a) <i>Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</i> (b) <i>Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</i> (c) <i>Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of</i>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p> <p>5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above</p>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>

6. ASSESSMENT

6.1 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'.

As noted above Section 3 (1) of the Planning and Development Act states that:

'In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).'

The conversion of the garage and the replacement of the door with a window clearly 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.*

6.2 Exempted Development

The next issue for consideration is whether or not the matter at hand is exempted development.

Conversion of existing garage to living accommodation

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

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to *"the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house"*.

In this case the garage is located to the front of the house given the rather unusual design of these dwellings — therefore the exemption under does not apply in this instance.

(It is noted that no floor plan drawings have been submitted— these would normally be required for clarity and assessment against the exemption conditions and limitations outlined above as well as for confirmation that an extension rather than a separate unit is proposed).

Conclusion:

Is development and is not exempted development.

Replacement of garage door with window

The applicant has submitted a photograph of the neighbouring property which replaced its garage door with a window and states that similar will be done to this property. I consider that such works when associated with a standard garage conversion would normally fall under Section 4(1)h of the Planning and Development Act 2000 as amended: i.e. *'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'*. However in this case the works are associated with a garage conversion that is not exempted development and given that the garage lies so far forward of the front building line I consider that the works would alter the character of these particular dwellings (many of which retain the garage doors) and therefore requires planning permission.

Other issues

These properties would originally have had flat roofed garages – both this property and the adjoining now have pitched roofs over this area. This development has not been referenced in the question to the Planning Authority but is likely to have required planning permission as it involves the blocking up of a first floor window and the insertion of two velux windows. It is not clear when this work was carried out – possibly in tandem with the works to the neighbouring property (No. 28) – I note permission had been granted for the works to No. 29 as noted in the planning history section above but this was in association with the garage conversion which was not carried out at the time – so it may be the case that the planning permission was only partially implemented – case law notes that planning permissions should be carried out in their entirety – i.e. persons cannot 'pick and choose' which elements to implement.

7. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state as follows:

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.

7.1 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.

7.2 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 the proposed development would not affect the integrity of these European sites. Accordingly it is considered that appropriate assessment is not required.

8. CONCLUSION

In considering this referral the Planning Authority had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and
- (d) Section 4 (1)(h) of the Planning and Development Act 2000 (as amended).

The Planning Authority has concluded that:

- (a) the conversion of the garage to living accommodation – these works do not come within the scope of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations 2011 (as amended) as they relate to the conversion of a garage attached to the front of the dwelling not to the side or rear therefore the exemption does not apply in this instance;
- (b) the replacement of the garage door with a window does not constitute exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) having regard to the location of the structure forward of the main building line, the character of neighbouring structures. The works would also be associated with development that is not exempted development – i.e. the garage conversion.

Therefore, the Planning Authority decides that –

- (a) the conversion of the garage to living accommodation is development and is not exempted development and
- (b) the replacement of the garage door to a window on the front elevation is development and is not exempted development

all at, 29 Wilton Court, Wilton, Cork.

Evelyn Mitchell,
Senior Executive Planner,
10.09.2024

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: 021-4924029

Líonra/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

RAYMOND O'LEARY.

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

29 WILTON COURT, WILTON, CORK.
T12 PSXF.

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.

IS THE CONVERSION OF GARAGE AT THIS ADDRESS DEVELOPMENT,
AND IF SO IS IT EXEMPTED DEVELOPMENT?

DEVELOPMENT MANAGEMENT
CCP

13 JUL 2024

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

THE GARAGE DOOR WILL BE REPLACED **CORK CITY COUNCIL**
SIMILAR TO NEIGHBOUR'S AS SHOWN IN PICTURE
ATTACHED, IN ORDER TO CONVERT GARAGE TO A
HOME OFFICE / WC NO ~~EXTERNAL~~ MODIFICATIONS
TO THE BUILDING.

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? ☐ YES.

If so please supply details:

C3/27333.

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	GARAGE: 12.4 m ²
(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)	Proposed/existing use (please circle)
NO CHANGE OF USE.	

7. 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 of the owner if available		

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

Signature: _____

Date: 13/01/2024

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
 3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.



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