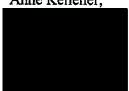


Comhairle Cathrach Chorcaí Cork City Council

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

Anne Kelleher,



09/09/2024

RE: Section 5 Declaration R861/24 Saint Marthas, Redemption Road, Farranree, Cork, T23E9K4

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, I wish to advise as follows:

The Planning Authority, in review of the above and having regard to -

- Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 9 and Schedule 2, Part 1, Classes 1, 5, 6 and 50 of the Planning and
 Development Regulations 2001 (as amended)

It is considered that the specific question for which a declaration is sought IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT at Property Address.

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, 09th of September 2024.

Is mise le meas,

Rob Keating
Rob Keating
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



PLANNER'S REPORED Ref. R861/24	DRT	Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description Is the 10sq.m rear extension and partial demolition works exempt from P		molition works exempt from Planning.
Location	Saint Marthas, Redemption Road, Farrance	ee, Cork
Applicant	Anne Kelleher	
Date	06/09/2024	
Recommendation	Is Development and Is Not Exempted Deve	lopment

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 10sq.m rear extension and partial demolition works exempt from Planning.

The proposal comprises the following elements:

- The replacement of existing roof structure.
- The provision of a roof light on rear roof plane of roof.
- Partial demolition of existing property to facilitate proposed extension.
- Proposed extension to rear of property.
- Various internal layout changes/ alterations.
- · Relocation of entrance door.

It also appears that is it proposed to raise ground levels behind the dwelling to provide a path behind the dwelling. Some form of fence is also proposed to enclose this area separating it from the remaining garden area which is at a lower level. This is assessed below.

3. SITE DESCRIPTION

The subject site is located on Redemption Road, Farranree on the north side of Cork City. The site comprises a single storey dwelling that appears to be vacant for a number of years. The structure is in poor condition with evidence that the roof is failing. It is unclear when the building was last used as residential accommodation.

4. PLANNING HISTORY

Subject Site

23/41878 – Permission sought to demolish existing dwelling and for the construction of a new two-storey dwelling, a new vehicular entrance and parking area along with all associated site works. **Outcome: Application withdrawn.**

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

- 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.

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)(a),

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—

- 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, or
- ii) The development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

Section 4(2)(b)

Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

Section 4(2)(c)

Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

Section 5(1),

(See section 1 of this report)

Section 57(1)

Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

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 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

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 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

Desci	Column 1 ription of Development		Column 2 Conditions and Limitations
Develop of a hou	ment within the curtilage	1.	 a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres
	ension of a house, by the ction or erection of an		b) 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.

Column 1		
Description of Development		

extension (including a conservatory) to the rear of the house or by the conversion for use as part of of the house of any garage, store, shed or other similar structure attached to the rear or to

the side of the house.

Column 2 Conditions and Limitations

- c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.
- (a) 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.
 - (b) 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.
 - (c) Subject to paragraph (a), where the house is 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 20 square metres.
- 3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
- 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.
 - (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.
 - (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.
- 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.
- (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

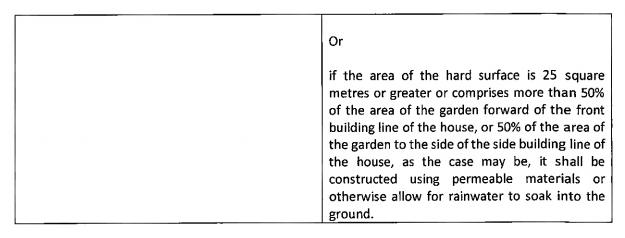
Column 1 Description of Development	Column 2 Conditions and Limitations			
	(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.			
	(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.			
	7. The roof of any extension shall not be used as a balcony or roof garden.			

Schedule 2, Part 1, Class 5

Column 1	Column 2			
Description of Development	Conditions and Limitations			
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.	 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. 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 public area, including public open space, shall be rendered or plastered. No such structure shall be a metal palisade or other security fence. 			

Schedule 2, Part 1, Class 6

		Column 1	Column 2
		Description of Development	Conditions and Limitations
(a)	(a) The construction of any path, drain or pond or		The level of the ground shall not be altered by
	the carrying out of any landscaping works within the curtilage of a house.		more than 1 metre above or below the level of the adjoining ground.
(b)	Any w	orks within the curtilage of a house for—	
	i)	The provision to the rear of the house	
		of a hard surface for use for any	
-		purpose incidental to the enjoyment of	
ļ		the house as such, or,	
	ii)	the provision of a hard surface in the	Provided that the area of the hard surface is less
		area of the garden forward of the front	than 25 square metres or less than 50% of the
		building line of the house, or in the area	area of the garden forward of the front building
		of the garden to the side of the side	line of the house, or 50% of the area of the
		building line of the house, for purposes	garden to the side of the side building line of the
		incidental to the enjoyment of the	house, as the case may be, whichever is the
<u></u>		house as such.	smaller,



Schedule 2, Part 1, Class 50 (b)

The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

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'. 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.

'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 includes acts of demolition and construction/ alteration and therefore falls within the definition of 'works'. Therefore, the proposal constitutes 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. 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 4(1)(a) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within subsections (1) and (2) of section 4.

Section 4(1)

I consider that the various internal layout alterations including relocation of the entrance door and replacement of the roof structure (incl. provision of 1 no. rooflight on the rear roof plane) to fall within the provisions of Section 4(1)(h) being works 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)

I consider that Class 1 of Part 1, Schedule 2 of the Regulations applies to the construction of the proposed rear extension. The proposal is assessed below against the exemption criteria (conditions/ limitations).

Condition / Limitation 1

- a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres
- b) 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.
- c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

<u>Assessment</u>

- a) The dwelling does not appear to have been extended previously. The extension at c. 10sq.m is within the 40sq.m limit.
- b) No element of the proposal relates to an extension above ground level.
- c) This limitation does not apply.

Condition / Limitation 2

- a) 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.
- b) 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.
- c) Subject to paragraph (a), where the house is 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 20 square metres.

Assessment

- a) The dwelling does not appear to have been extended previously.
- b) The dwelling does not appear to have been extended previously and no element of the proposal relates to an extension above ground level.
- c) This limitation does not apply

Condition / Limitation 3

Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Assessment

No element of the proposal is above ground floor level.

Condition / Limitation 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.
- 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.
- 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.

Assessment

- a) The height of the extension does not exceed the height of the rear wall of the house.
- b) This limitation does not apply.
- c) The height of the highest part of the roof of the extension exceeds the height of the eaves. This condition/limitation is not met.

Condition / Limitation 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.

<u>Assessment</u>

The proposed extension would not reduce the area of private open space to the rear of the house to leas than 25sq.m.

Condition / Limitation 6

- a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
- c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 m

<u>Assessment</u>

- a) The proposed windows at ground floor level are not less than 1m from the boundary they face.
- b) This condition/limitation does not apply.
- c) This condition/limitation does not apply.

Condition / Limitation 7

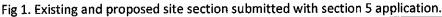
The roof of any extension shall not be used as a balcony or roof garden.

<u>Assessment</u>

It does not appear that the roof is proposed to be used as a balcony of roof terrace.

As the proposed extension does not comply with the exemption criteria for Class 1, the proposed partial demolition of the dwelling is not exempted under Class 50(b) of the Regulations.

As outlined above, it appears that is it proposed to raise ground levels behind the dwelling to provide a path behind the dwelling. Some form of fence is proposed to enclose this area separating it from the remaining garden area which is at a lower level. This area is shown as existing on the submitted site section. However, this path area was not indicated on the existing section drawing submitted with a previous planning application on the site (CCC. Planning Ref. 23/41878). See figures 1 and 2 below. In any event, I consider that landscaping works to the rear of the dwelling falls within Class 6 of Part 1, Schedule 2 of the Regulations where the ground has not been altered by more than 1m above or below the level of the adjoining ground. The fence falls within the provisions of Class 5 of Part 1, Schedule 2 of the Regulations.



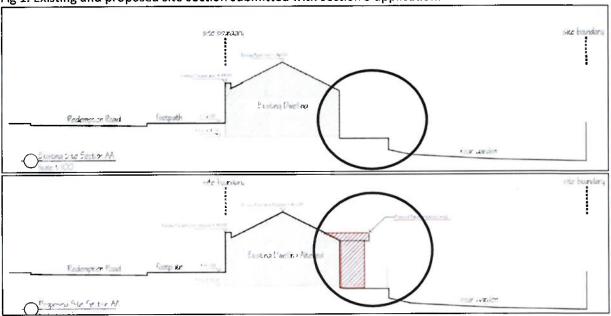
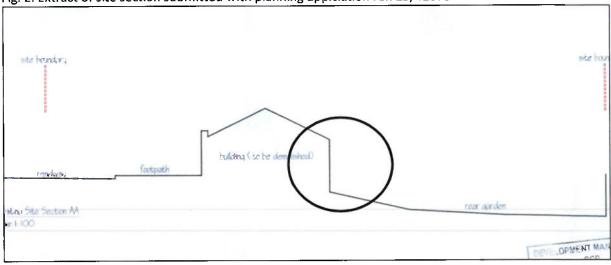


Fig. 2. Extract of site section submitted with planning application ref. 23/41878



Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION: Is not exempted development.

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. 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, and 9 and Schedule 2, Part 1, Classes 1, 5, 6 and 50 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that -

The construction of a 10sq.m rear extension and partial demolition works at Saint Martha's, Redemption Road, Farranree, Cork IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT

Jan Oosterhof

A/ Executive Planner

STa- Obertof

06/09/2024

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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

DEVELOPMENT MANAGEMENT CCP

0 1 AUG 2024

CORK CITY COUNCIL

R-Phost/E-Mail planning@corkcity.le

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)

V.
1. NAME OF PERSON MAKING THE REQUEST
ANNE RELIEHER
2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT
SAINT MARTHAIS, REDENIPTION ROAD, FARRANGER
CORK T23 E9R4
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.
decidration.
90 He 10 m2 REAR EXTENSION + MARTIAL
95 the 10 m² REAR EXTENSION + PARTIAL DEMOLITION WORKS EXEMPT FROM
Character Deanistes
PLANNING? (PROPOSED BRAWINGS).
HILACKED).

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

ENCLOSED DRAWINGS & MARS.

4,	Are you aware of any enforcement processif so please supply details:	edings con	nected to t	his site?	
5.	Is this a Protected Structure or within the curtilage of a Protected Structure?				
	If yes, has a Declaration under Section 57 requested or issued for the property by the		-	manufacture.	
6.	Was there previous relevant planning app If so please supply details:				
7.	APPLICATION DETAILS				
	r the following if applicable. Note: Floor are nd should be indicated in square meters (sq.		sured from	the inside of the external	
	a) Floor area of existing/proposed structure		L	floor area 50m² d floor area 61m² tota	
	 b) If a domestic extension, have any previor extensions/structures been erected at the location after 1st October, 1964, (including for which planning permission has been obtained)? 	nis ng those	Yes L If yes, ple m)	_ No ☑ ase provide floor areas. (sq	
	c) If concerning a change of use of land and ing/ previous use (please circle)			se state the following: e (please circle)	_
LAISE	5/m²		Om ² ec	ctension => 51m² total Dwelly	nç
. LEGA	AL INTEREST		,		A)
	e tick appropriate box to show applicant's interest in the land or structure	A. Ow	ner	B. Other	
	re legal interest is 'Other', please state your est in the land/structure in question				
	u are not the legal owner, please state the e of the owner if available				
. I / W	e confirm that the information contained it	n the appli	cation is tr	ue and accurate:	
	Date: OI AUGUST 2021	٠ .			

