

## Comhairle Cathrach Chorcaí Cork City Council

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

Siobhan O'Donoghue, Gemini, Castletreasure, Douglas, Cork T12 Y3VC.

11/05/2023

RE: Section 5 Declaration R775/23 Gemini, Castletreasure, Douglas, Cork T12 Y3VC.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 14<sup>th</sup> April 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),
- Articles 5(2), 9 and 10 of the Planning and Development Regulations 2001 to 2018,
- S.I. No. 306/2022 European Union (Planning and Development) (Displaced Persons
   From Ukraine Temporary Protection) Regulations 2022

The Planning Authority considers that –

- 1. Change of use of the basement utility room and storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for an au-pair;
- 2. Change of use of the basement garage into separate accommodation (including kitchenette, bathroom and living/bedroom) for nephew;
- 3. Change of use of the basement storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for displaced persons from Ukraine;

We are Cork.

# at Gemini, Douglas, 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, 11<sup>th</sup> May 2023.

Is mise le meas,

Sate Rague

**Development Management Section** 

Community, Culture and Placemaking Directorate

**Cork City Council** 

## PLANNER'S REPORT

Ref. R 775/23

Cork City Council
Development Management
Community, Culture and

cemaking Directorate

Application type

#### **SECTION 5 DECLARATION**

Question

Whether the following is development or is exempted development:

- Change of use of the basement utility room and storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for an au-pair;
- Change of use of the basement garage into separate accommodation (including kitchenette, bathroom and living/bedroom) for nephew;
- 3. Change of use of the basement storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for displaced persons from Ukraine.

Location

Gemini, Castletreasure, Douglas, Cork

**Applicant** 

Siobhán O'Donoghue (owner)

Date

11/05/2023

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 a number of existing and proposed modifications to the existing dwelling to accommodate additional persons within the existing footprint of the dwelling.

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 following is development or is exempted development:

1. Change of use of the basement utility room and storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for an au-pair;

- 2. Change of use of the basement garage into separate accommodation (including kitchenette, bathroom and living/bedroom) for nephew;
- 3. Change of use of the basement storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for displaced persons from Ukraine.

#### 3. SITE DESCRIPTION

The subject property is an existing dwelling house in the ZO City Hinterland zoning. The general area is primarily agricultural in nature with some residential development.

#### 4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the change of use of the basement of the existing dwelling from use as part of the existing dwelling into three (3) no. additional separate accommodation units.

#### 5. RELEVANT PLANNING HISTORY

None.

#### 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(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)

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.

#### 6.2 Planning and Development Regulations 2001 to 2018 as amended

#### Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

#### (Article 6) Schedule 2, Part 1, Class 14

Class 14 relate to development for changes of use.

#### Schedule 2, Part 1, Class 14

#### Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
Change of use	B 9 = 8
CLASS 14	×
Development consisting of a change	
of use—  (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,  (b) from use as a public house, to use as a shop,  (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,	
(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,	
(e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,	

## Column 1 Description of Development

## Column 2 Conditions and Limitations

- (f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.
- The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.
- (g) from use as a hotel, to use as a hostel (other than a hostel where care is provided),
- (h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,
- (i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and
- (j) from the change of use specified in paragraph (h) or(i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or(i) or both.

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

## S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

- 1. These Regulations may be cited as the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.
- 2. In these Regulations -

"Act of 2000" means the Planning and Development Act 2000 (No. 30 of 2000);

"Council Directive" means Council Directive 2001/55/EC of 20 July 20011 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;

"Council Implementing Decision" means Council Implementing Decision (EU) 2022/382 of 4 March 20222 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection;

"development" has the same meaning as it has in the Act of 2000;

"displaced persons" means persons to whom temporary protection applies in accordance with Article 2 of the Council Implementing Decision;

"relevant period" means the period commencing on the making of these Regulations and ending when the temporary protection introduced by the Council Implementing Decision comes to an end in accordance with Article 6 of the Council Directive;

"State authority" means -

- (a) a Minister of the Government, or
- (b) the Commissioners of Public Works in Ireland;

"temporary protection" has the same meaning as it has in the Council Directive.

- 3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.
- (2) A reference to "proposed development" in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

#### SCHEDULE:

#### Article 3

- 1. Reception and integration facilities.
- 2. Residential accommodation, including ancillary recreational and sporting facilities.
- 3. Medical and other health and social care accommodation.
- 4. Education and childcare facilities, including ancillary recreational and sporting facilities.
- 5. Emergency management coordination facilities.
- 6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.
- 7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

#### 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'. It is clear that the proposal constitutes a 'material change in the use' of parts of the structure. 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)

In my opinion parts 1 and 2 of this proposal come within the scope of section 4(2) as the works relate to a change of use. The substantive issues of the case are set out below.

## S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

In my opinion part 3 of this proposal come within the scope of S.I. No. 306/2022 as the works relate to accommodation for displaced persons from Ukraine. The substantive issues of the case are set out below.

1. Change of use of the basement utility room and storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for an au-pair;

The proposed works comprise of the change of use of part of an existing dwelling house into a separate residential accommodation unit.

Essentially this proposal involves the change of use of part of a residential basement into a separate residential accommodation unit, akin to an apartment or family flat.

Class 14(e) of Schedule 2, Part 1, relates to development for changes of use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling. In this regard it is noted that there is no exemption for the change of use of a single dwelling into

multiple residential units. Any change of use to an existing dwelling to provide an additional, separate residential accommodation unit on the site, albeit for an additional dwelling, apartment or family flat, would require planning permission and would have to be assessed in accordance with the proper planning and sustainable development for the location.

As the proposed development does not comply with Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 to 2018, as amended, it is not considered that an exemption applies.

2. Change of use of the basement garage into separate accommodation (including kitchenette, bathroom and living/bedroom) for nephew;

The proposed works comprise of the change of use of part of an existing dwelling house into a separate residential accommodation unit.

Essentially this proposal involves the change of use of part of a residential basement into a separate residential accommodation unit, akin to an apartment or family flat.

Class 14(e) of Schedule 2, Part 1, relates to development for changes of use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling. In this regard it is noted that there is no exemption for the change of use of a single dwelling into multiple residential units. Any change of use to an existing dwelling to provide an additional, separate residential accommodation unit on the site, albeit for an additional dwelling, apartment or family flat, would require planning permission and would have to be assessed in accordance with the proper planning and sustainable development for the location.

As the proposed development does not comply with Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 to 2018, as amended, it is not considered that an exemption applies.

3. <u>Change of use of the basement storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for displaced persons from Ukraine.</u>

The proposed works comprise the change of use of part of an existing dwelling house into a separate residential accommodation unit for displaced persons from Ukraine.

As this element of the proposal is for accommodation for displaced persons from Ukraine it must be assessed under S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022.

I note that S.I. No. 306/2022 states that any proposed development seeking exemption under these regulations must meet specific criteria as specified in S.I. No. 306/2022 and states that "the Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons".

It is noted that the Section 5 Application Form submitted does not state that the proposed change of use is being carried out by, or on behalf of, a State authority.

As this proposed change of use is not being carried out by, or on behalf of, a State Authority it is not considered to meet the requirement of S.I. No. 306/2022. Therefore, as the proposed development does not comply with S.I. No. 306/2022, it is not considered that an exemption applies.

#### 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 the proposed development would not affect the integrity of these European sites. Accordingly it is considered that appropriate assessment is not 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 5(2), 9 and 10 and Part 4 of Schedule 1 of the Planning and Development Regulations 2001 to 2018
- S.I. No. 306/2022 European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

the planning authority considers that -

the following development:

- 1. Change of use of the basement utility room and storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for an au-pair;
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- 3. Change of use of the basement storage room into separate accommodation (including kitchenette, bathroom and living/bedroom) for displaced persons from Ukraine;

at Gemini, Castletreasure, Douglas, Cork, Cork IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.

Eoin Cullinane Assistant Planner

11/05/2023

### COMHAIRLE CATHRACH CHORCAÍ **CORK CITY COUNCIL**

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

### **DEVELOPMENT MANAGEMENT** CCP

1 4 APK 2023

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

CORK CITOY/GO021409124709

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

SIDBWAW 0' DONOGHUE

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

CASTLETREASURE, DOUGLAS

CORN

### 3. QUESTION/ DECLARATION DETAILS

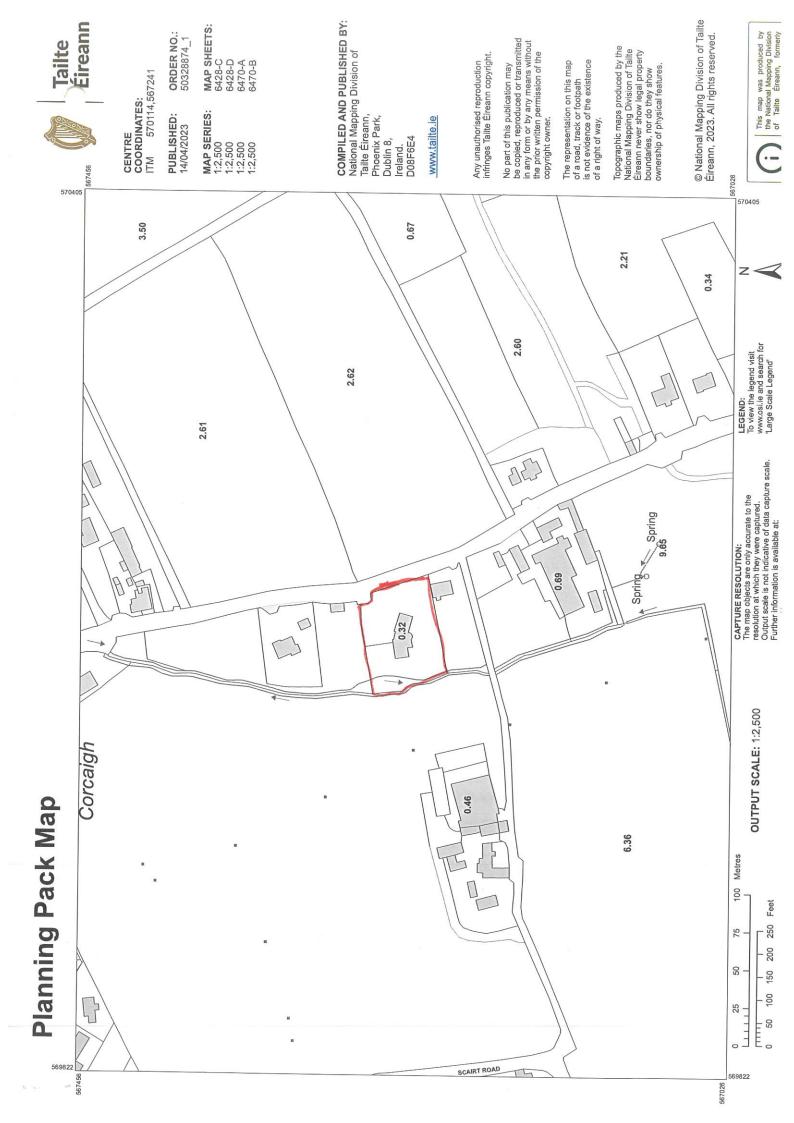
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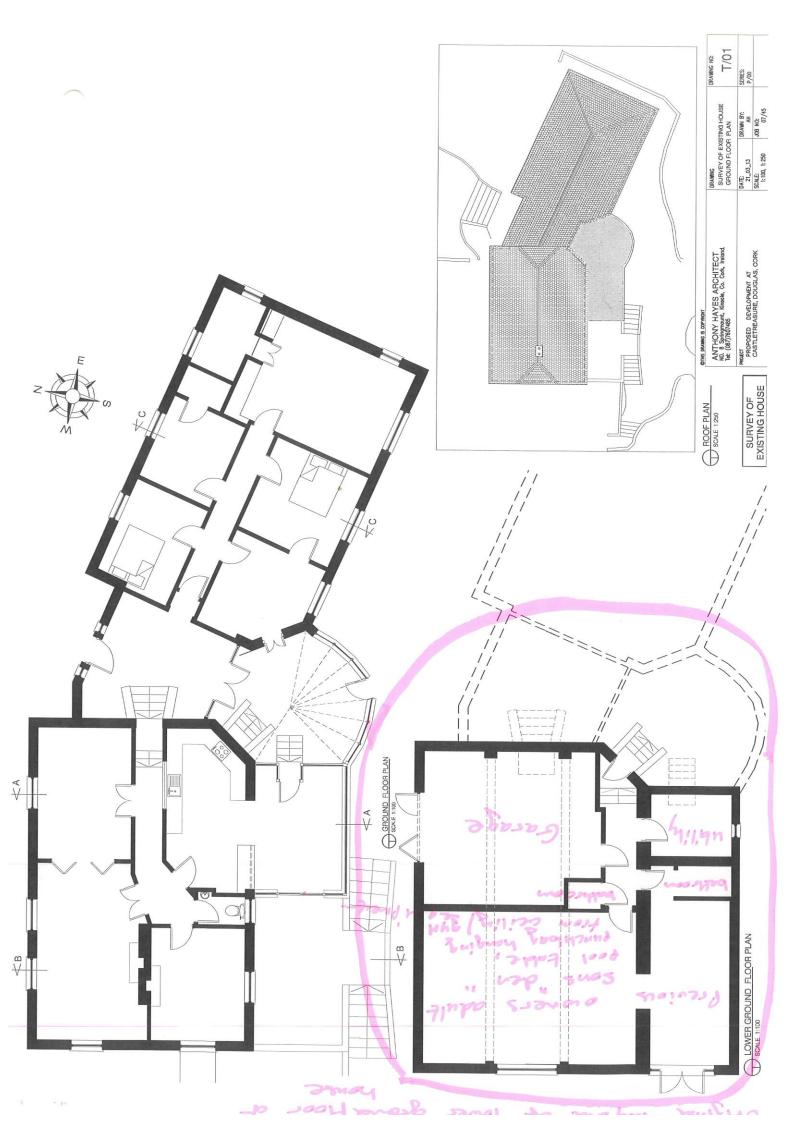
Sample Question:

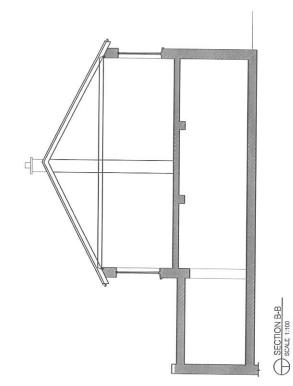
Is the construction of a shed at No 1 Wall St, Cork development and if so, is it

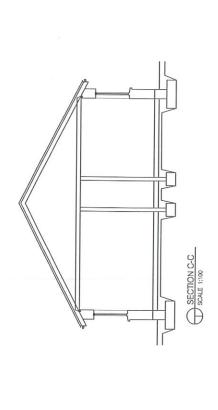
exempted development? Note: only works listed and described under this section will be assessed under the section 5 ore declaration. Seeling Declaration relation fully garage contained from a llomo da outlined upstairs exempt have approached reft ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT into (Use additional sheets if required). Ukranian one accomodation considering and into with scheme. need games would be will -exempt carnet 1 of 4

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5	. Is this a Protecte	d Structure or within the	e curtilage of a Pi	otected Structure?	No
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6	. Was there previo	ous relevant planning ap y details:	plication/s on th	is site?	
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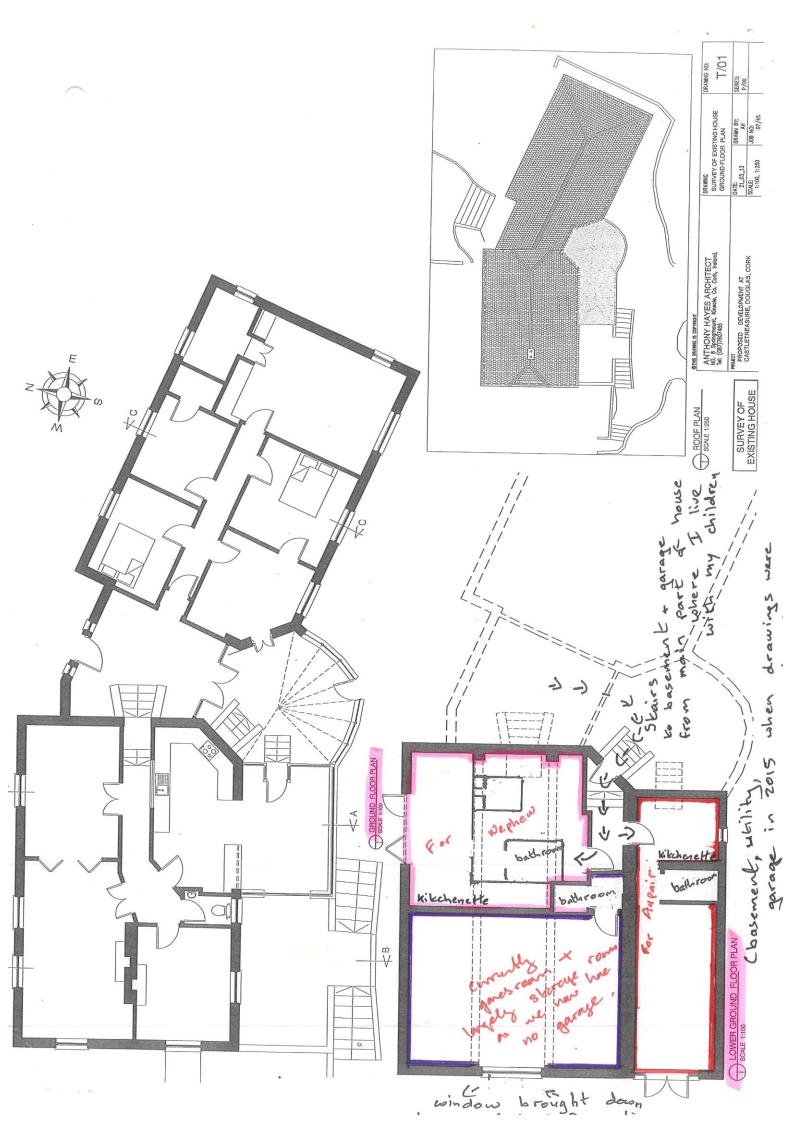




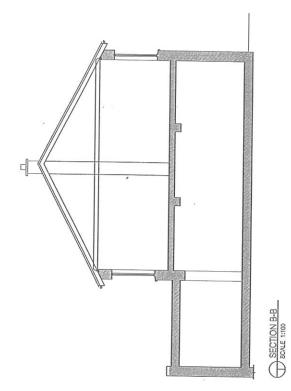


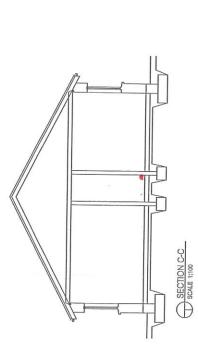
SECTION A-A

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CASTLETREASURE, DOUGLAS, CORK	SCALE:	JOB NO:	









SECTION A-A



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