

Comhairle Cathrach Chorcaí Cork City Council

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

Owen Curtin



18/09/2024

RE: Section 5 Declaration R867/24 Units 5 & 6 Westpoint Business Park, Ballincollig, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 16th August 2024, I wish to advise as follows:

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

- (a) Sections 2, 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended;
- (b) Articles 6(1), 9(1), and 10(1)(b) of the Planning and Development Regulations
 2001, as amended;
- (c) the planning history of the site, in particular 08/5902 and Condition 4 of that permission;

It is considered that the specific question for which a declaration is sought IS **DEVELOPMENT** and IS **NOT EXEMPTED DEVELOPMENT** Units 5 & 6 Westpoint Business Park, Ballincollig, Cork

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 18th September 2024.



Is mise le meas,

David Foley

David Foley

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council

SECTION 5 DECLARATION – PLANNER'S REPORT

File Reference: R 867/24

Description: Whether the closing up of communicating doors at ground and

first floor levels between units 5 & 6 so that they will be two separate units no longer interconnected is development or is not

development and is or is not exempted development.

Applicant:

Owen Curtin

Location:

Units 5 & 6 Westpoint Business Park, Ballincollig, Cork

PURPOSE OF REPORT

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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.

2. SITE LOCATION

The site consists of a modern terrace of two storey units (Nos. 1-7) within the overall Westpoint Business Park which is accessed off the Leo Murphy Link Road and lies to the southeast of Ballincollig village.

3. RELEVANT SITE HISTORY

Overall business/industrial campus

S99/5054: Permission granted for the development of Westpoint Business Campus containing 11 light industrial units, enterprise units and high-tech manufacturing units and corporate headquarter units.

Units 5 & 6 Westpoint

<u>08/5902</u> Permission granted for an extension of office/ancillary support space into the existing warehouse/production space at ground floor level of unit 5, the construction of a first floor for office/ancillary support space over the existing warehouse/production space in unit 5, the provision of an access corridor from unit 5 to unit 6 at ground and first floor level, alterations to the front and rear elevations of unit 5, the provision of 5 car parking spaces and all associated works.

4. 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.

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.

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.

5. PLANNING ASSESSMENT

5.1 Legislation

5.1.1 Planning and Development Act, 2000 as amended

Section 2 (1) of the 2000 Planning and Development Act states as follows: -

"In this Act, except where the context otherwise requires -

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined....

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....

[&]quot;development" has the meaning assigned to it by Section 3....

Section 3 (1) of the 2000 Planning and Development Act states as follows: -

'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) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4(1)(h) states as follows: -

'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) of the Act 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.

5.1.2 Planning and Development Regulations, 2001 as amended

Article 6 (1) of these Regulations states as follows:-

"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 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development. Article 9 (1) states:-

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

- (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 10 (1) states:-

Development which consists of a change of use within any one of the classes of use 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-

- (a) Involve the carrying out of any works other than works which are exempted development;
- (b) contravene a condition attached to a permission under the Act;
- (c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned;

5.2 Planning Assessment

The proposal as stated in the application form is to close up the communicating doors at ground and first floor levels so that the units will return to being 2 No. separate units no longer interconnected.

The application form states there will be no change of use to the units. The units were most recently in use by H10 medical - and the units appear to be currently vacant.

Units 5 & 6 were denoted as high-tech manufacturing units (Phases 1 and 2) on the drawings attached to the governing permission for the business park - S99/5054. Condition 22 of that permission related to permitted uses:

```
The proposed structures shall to safequard the amenities of the used opinion as that the area and because it is considered that any change of use shall take place use would warrant the making without the prior grant of an application for and the Approval of the Flamming grant of Planning Approval.

Authority, notwithstanding the exempted development provisions of the Local Government (Planning & Development) Regulations 1994, as americal.
```

Condition 23 prohibited subdivision of the units without planning permission:

```
Sundivision of the industrial To control intensification of units, enterprise units and use of the site. highterh manifesturing units shall not take place mayor with the prior Promission of the Planning Authority
```

Under 08/5902 – an amalgamation of Units 5 and 6 was granted permission including the provision of an access corridor from Unit 5 to Unit 6 at ground and first floor level.

The following is a description of the use which was submitted as part of planning application 08/5902:

The warehouse/ production space is used for the storage, configuration and assembly of products for distribution. The existing support areas are used by in-house staff.

Unit 5 directly bounding Unit 6 has been acquired so as to extend the operations of Primacy Healtcare 21 Ltd. in Cork. It is proposed to develop both units as a single entity for it's use into the future by the organisation. The extended areas are required for further capacity to store and demonstrate the substantial product range dealt by Primacy Healthcare 21 Ltd., some of which are large items, such as orthopaedic beds and furniture items. Further office, meeting space and support areas are also required and for staff.

Condition 4 of planning permission 08/5902 states as follows:

The combined premises, subject of this application, shall be used as a single unit by the applicant company or similar high-tech manufacturing operation and no sub-division of the combined unit shall take place without the prior grant of planning permission.

In the interests of orderly development and compliance with the land-use zoning of the area of which the site forms part.

As was established under RL2603 there are two structures/planning units involved in the proposed development and as such Section 4(1)(h) of the Planning Act 2000 (as amended) does not apply as it specifically refers to a *single* structure only. In other words, the benefit of exemption cannot be attached to a number of units rather solely to a single planning unit or structure.

In addition the subdivision of the unit may have material changes in terms of the impact in terms of traffic flows/demands/waste storage/presentation and could reasonably result in a material change in the use of the units through intensification of use. It also appears that one of the units would be used solely as offices as the link with the warehouse use would be removed – this would need to be clarified.

As noted above Condition 4 of 08/5902 prohibits the subdivision of the combined unit (5 & 6) without a grant of planning permission.

Given the above condition the proposed subdivision of the units would contravene this condition therefore planning permission would be required for such work.

8. CONCLUSION & RECOMMENDATION

Having regard to:

(a) Sections 2, 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended;

- (b) Articles 6(1), 9(1), and 10(1)(b) of the Planning and Development Regulations 2001, as amended;
- (c) the planning history of the site, in particular 08/5902 and Condition 4 of that permission;

It is concluded that:

- (a) the closing up of communicating doors at ground and first floor levels between units 5 & 6 so that they will be two separate units no longer interconnected involves works of construction that would be classified as development,
- (b) the carrying out of such works would contravene condition 4 of the governing permission 08/5902.

Therefore:

(1) the said closing up of communicating doors at ground and first floor levels between units 5 & 6 Westpoint Business Park so that they will be two separate units no longer interconnected is development and is not exempted development.

Evelyn Mitchell, Senior Executive Planner 18/09/2024

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

1 5 AUS 2024

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

DWEN CURTIN

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

UNIT 5 + UNIT 6, WESTPOINT BUSINESS PARK, LEO MURPHY ROAD, BALLINCOLLIG, CORK.

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.

IT IS PROPOSED TO CLOSE UP THE COMMUNICATING DOORS AT GROUND & FIRST FLOOR LEVELS, BETWEEN UNITS 5 4 6 AT WESTPOINT BUSINESS PARIC, SO THAT THEY WILL RETURN TO BEING 2 NO. SRPARATE UNITS, NO LONGER INTERCONNECTED. IS PLANNING PERMISSION NEEDED TO BLOCK UP THESE 2 NO. DOOR OPES BOHICH ALL LOCATED IN THE PARTY WALL INTERNALLY.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

PLANNING PERMISSION REF. No. 08/5902 WAS GRANTED 29/08/08 FOR A QUANTUM of WORKS WHICH INCLUDED THE PROVISION OF THESE 2 NO. COMMUNICATING DOORS, SO AS TO CREATE A LINK BETWEEN UNITS 5+6 - IE: A CONTINUE DOVE AT EACH FLOOR LEVEL, IN THE PARTY WALL. THIS PROPOSAL IS MERELY TO SEAL UP THESE 2 DOORS, WHILST RETAING THE UNITS IN THEIR CURRENT & APPROVED USE.

4.	Are you aware of any enforcement proceedings cor if so please supply details:	nnected to this site?
5.	Is this a Protected Structure or within the curtilage of a Protected Structure? 🔲 🔥 🔾	
	If yes, has a Declaration under Section 57 of the Pla requested or issued for the property by the Plannin	
6.	Was there previous relevant planning application/s if so please supply details:	on this site?
	2.7. 08 5902 AND DRIGHAL	DERMISSION 3 99 5054.
7.	APPLICATION DETAILS	
	the following if applicable. Note: Floor areas are mend should be indicated in square meters (sq. M)	easured from the inside of the external
	a) Floor area of existing/proposed structure/s	UNIT 6 - 7300 1 NO
(b) If a domestic extension, have any previous	Yes No CHANCE
	extensions/structures been erected at this	If yes, please provide floor areas. (sq
	location after 1st October, 1964, (including those for which planning permission has been obtained)?	m) N/A
(c) If concerning a change of use of land and / or build	ding(s), please state the following:
No	Proposed CHANCE FROM USF APPROVED BER PLANNING REF. No 08 5902	d/existing use (please circle)
. LEGA	LINTEREST	
legal	e tick appropriate box to show applicant's A. Ow interest in the land or structure	B. Other
	re legal interest is 'Other', please state your est in the land/structure in question	N/A
	are not the legal owner, please state the of the owner if available	м/А,
.1/W	e confirm that the information contained in the app	lication is true and accurate:
	Signature:	
	Date: 98 38 24.	
	Date: 98/38/24.	

ADVISORY NOTES:

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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.

Please email planning@corkcity.ie with any queries.

- 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 protections policy is available at https://www.corkety.edu.org/doi/10/10/2019 inforcing

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

- 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
- 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,
- 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,
- 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.

Peter Lavelle Building Surveyors

Doonard Lower, Tarbert, Co. Kerry.

Chartered Building Engineers Chartered Building Surveyors Fire Engineers Planning Consultants E-mail; plavelle@plbs.ie Tel; o68-36149

Mobile; 087-6811515

Planning Department, Community, Culture, & Placemaking Directorate. Cork City Council, City Hall, Anglesea Street, Cork. 13.08.2024

Re: Section 5 Declaration re Planning Permission:

Client:

Mr. Owen Curtin

Location:

Unit 5, Westpoint Business Park, Ballincollig, Co. Cork, Eircode P31 XK11

(Note: Units 4 - 7 have the same Eircode)

Proposal:

To close up the link door in the Party Wall at both Ground and First Floor levels between Unit 5 and Unit 6, so as to return them to two separate units, whilst

retaining their current uses.

Dear Sir / Madam,

Please find enclosed the following documents in support of our Section 5 Declaration re the query as to whether or not planning permission is required for the above proposal.

- 1. 1 Copy of the completed Section 5 Declaration re Planning Permission
- 2. 2 no. copies of 1:1000 Scaled Site Location Plan
- 3. 2 no. copies of 1:500 Scaled Site Layout Plan
- 4. 2 no. copies of Plans and Elevations
- 5. 2 no. copies of OSI map
- 6. Planning Application Declaration fee for £80

Regards

Peter Lavette, M.B.Eng, MRICS, MSCSI, MIFireE, FCABE.

S99/5054: Permission granted for the development of Westpoint Business Campus containing 11 light industrial units, enterprise units and high-tech manufacturing units and corporate headquarter units.

Units 5 & 6 Westpoint Buildings

<u>08/5902</u> Permission granted for an extension of office/ancillary support space into the existing warehouse/production space at ground floor level of unit 5, the construction of a first floor for office/ancillary support space over the existing warehouse/production space in unit 5, the provision of an access corridor from unit 5 to unit 6 at ground and first floor level, alterations to the front and rear elevations of unit 5, the provision of 5 car parking spaces and all associated works.

04/5910 (also appealed)

The following applications have been submitted, subsequent to the original; permission. They are:

01 / 0147: application for a bakery in place of two enterprise units. Permission refused but granted on appeal to the Board.

02 / 1373: Permission granted for a warehousing, distribution and service centre for building construction materials, furnishings and fittings in place of 3 light industrial units and a corporate headquarters at the northern end of the site. (M. D. O'Shea and Sons; see photographs.)

02 / **2165:** Permission granted to construct a trade warehouse and service distribution centre comprising up to 4 individual units in place of the corporate headquarters proposed for Site "G" at the northern end of the site. (*This is to the north of the accompanying appeal ref. no. PL04. 209371.)*

02 / 4302: Permission granted to change light industrial units to a trade warehouse and service distribution centre comprising 15 enterprise units in 3 blocks on site "B".

03 / 5414: Permission refused for a two storey office building comprising 12 office units, car park and associated site works in place of the corporate headquarter unit on site "F" to the north of appeal site.

04 / 5911: Further application on Site "F" for a trade warehouse and service distribution centre comprising up to 4 individual enterprise units with car park and associated site works. This application was granted permission but is now the subject of the accompanying appeal ref. no. **PL04. 209371**.













