



# Comhairle Cathrach Chorcaí Cork City Council

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

Noel & Mary Moynihan  
The Gables Bar  
31/32 Douglas Street  
Cork City  
T12 AH21

20<sup>th</sup> May 2021

**RE: R662/21 – Section 5 Declaration**  
**Property: The Gables Bar, 31/32 Douglas Street, Cork City**

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise and having regard to —

- Sections 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6 and 9 of the Planning and Development Regulations 2001 as amended,

it is considered that the laying of paving slabs in the rear garden IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

Yours faithfully,

Kerry Bergin  
Assistant Staff Officer  
Community, Culture and Placemaking  
Cork City Council



We are Cork.

<b>Application type</b>	Section 5 Declaration
<b>Description</b>	<i>Whether the laying of paving slabs in back garden is development and if so, is it exempted development?</i>
<b>Location</b>	The Gables Bar 31/32 Douglas Street Cork
<b>Applicant</b>	Mary & Noel Moynihan
<b>Date</b>	19/05/2021
<b>Recommendation</b>	<i>Is development and is exempted development</i>

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 as 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 laying of paving slabs in back garden an exempted development?*

In view of the above, the question before the planning authority is considered to be as set out in Q2 of the application form (and as set out above).

### 3. SITE DESCRIPTION AND RELEVANT PLANNING HISTORY

The site in question is an existing 2 storey public house located along the Douglas Road. It is also occupied as a residence. There is a fenced garden to the rear which is currently under stone chippings. Currently tis is not in use.

#### Planning History:

07/31779: Granted on appeal by An Bord Pleanála. Condition 3 of same states: *The rear of the public house shall not be used as a smoking area or beer garden. No public access or use (except for emergency purpose) of the prosed roof garden or of all the rear areas shall be permitted at any time. Reason: In the interests of protecting the amenities of adjoining residential properties.*

E8183: Enforcement case regarding hard surface area to the rear of 31/32 Douglas Street (The Gables Bar). Case closed. No planning infringement.

## **4. LEGISLATIVE PROVISIONS**

### **4.1 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, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

Section 4(1)(h),

*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),

*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 2001-2013.*

Section 5(1),

*(See section 1 of this report)*

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.*

### **4.2 The Regulations**

Article 9 (1)

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

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*



(a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

## 5. ASSESSMENT

### **Development**

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act comprises two chief components: ‘works’, and ‘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 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’.

The proposal involves altering the surface of the rear garden area. It is considered that they would come within the definition of ‘works’ set out in the Act. Therefore, it is most likely that the proposed changes constitute ‘development’.

### **Exempted development**

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

The ‘works’ (i.e. development) to be carried out includes the laying of paving slabs in the back garden. Currently the entire area is covered in loose chippings.

Class 6 b) i) of Schedule 2, Part 1 (Development within the curtilage of a house) of the Exempted Development Regulations 2001 (as amended), states:

*The provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such.*

While the ground floor is a public house, this property is also a habitable dwelling. There is no evidence that this is being used or is proposed to be used as a beer garden. I also note that Condition 3 of the 2007 permission given the use of the rear garden and does not permit it to be used as a beer garden. The specific question to be answered is whether or not the laying of paving slabs to the rear is exempted development. Given that this is a primary residence, and that an recent enforcement case as concluded that there is no planning issue regarding the change of the previous surface to the current hard surface of loose chippings, I consider that the works could come under Class 6 b) i) as above and therefore consider them to be exempt development.

## 6. ENVIRONMENTAL ASSESSMENT

### **6.1 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.

**6.2 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.

**7. 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 of the Planning and Development Regulations 2001 as amended,

it is considered that the laying of paving slabs in the rear garden IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT.

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Mary Doyle  
Executive Planner

12-05-2021

**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](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924564/4321

Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)

**SECTION 5 DECLARATION APPLICATION FORM**  
under Section 5 of the Planning & Development Acts 2000 (as amended)

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

**The Gables Bar, 31 / 32 Douglas Street, Cork City, T12 AH21.**

**2. 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 laying of paving slabs in my back garden an exempted development?**

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**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

**Please see the attached copies of previous correspondence from  
Ms Claire Ring Clerical Officer in the planning enforcement section  
Cork City Council.**

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3. Are you aware of any enforcement proceedings connected to this site?

If so please supply details: **No.**

4. 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?

5. Was there previous relevant planning application/s on this site?

If so please supply details: **Yes however we did not progress with this works. Planning application number T.P.07/31779**

**6. APPLICATION DETAILS**

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	<b>This is not an internal floor area It is an outside garden area 11.5 x 7.5 meters</b>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> 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) ----- <b>N/A</b> -----	Proposed/existing use (please circle) ----- <b>N/A</b> -----

**7. APPLICANT/ CONTACT DETAILS**

Name of applicant (principal, not agent):		<b>Mr Noel &amp; Mrs Mary Moynihan</b>
Applicants Address	<b>The Gables Bar, 31 / 32 Douglas Street, Cork City, T12 AH21.</b>	
Person/Agent acting on behalf of the Applicant (if any):	Name:	<b>N/A</b>
	Address:	
	Telephone:	
	Fax:	
	E-mail address:	
Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

## 5. 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 and address of the owner if available		

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

Signature: Noel Moynihan

Date: 07-May-2021

### ADVISORY NOTES:

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

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

*The application should be sent to the following address:*

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

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- 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.corkcity.ie/en/council-services/public-info/gdpr>.*

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



Halla na Cathrach  
Corcaigh.

Noel & Mary Moynihan,  
31/32 Douglas Street,  
Cork.

30<sup>th</sup> April, 2013.

**RE: Application to Extend the Duration of a Planning Permission – T.P.07/31779 – Permission to construct a single storey extension to the rear, incorporating a new cold room, disabled toilet and associated site works at The Gables Bar, 31/32 Douglas Street, Cork.**


Dear Sir,

I refer to the application to extend the duration on the above permission submitted on 27<sup>th</sup> March, 2013.

I wish to advise you that this application has been GRANTED in accordance with Sections 42 of the Planning & Development Act 2000 as amended by the Planning and Development Act 2010 and the Planning & Development Regulations 2001-2010.

As your application meets the requirements set out, the duration of T.P.07/31779 can be extended to 8<sup>th</sup> May, 2018.

Yours faithfully,

  
Senior Staff Officer,  
Strategic Planning and Economic  
Development Directorate.

Surveyed 1973  
Revised 2012  
Levelled 1973

# Urban PLACE Map



ITM CENTRE PT. COORDS  
567639,571343

DESCRIPTION

MAP SHEETS

1:1000  
6382-15 6382-20



Produced by National Map Services,  
Unit 7, South Ring Business Park,  
Kinsale Road,  
Co. Cork  
On behalf of Ordnance Survey Ireland,  
Phoenix Park, Dublin 8.

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71195



Plot Ref. No. 25153007\_1\_1  
Plot Date 05-MAR-2013



Scale:- 1:1,000  
Scála:- 1:1,000

167798

167798

167565

167585





# Comhairle Cathrach Chorcaí Cork City Council

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

Mary & Noel Moynihan,  
The Gables Bar,  
31/32 Douglas Street,  
Cork

5<sup>th</sup> May, 2021

**Re: The Gables Bar, 31/32 Douglas Street**

A Chairde,

In relation to your correspondence in connection with the above dated the 27<sup>th</sup> of April, 2021 and received in this office on the 30<sup>th</sup> of April, 2021.

I am asked to advise you that you should submit an application for a Section 5 Declaration to the Development Management Section of Cork City Council. They may be contacted by email on [planning@corkcity.ie](mailto:planning@corkcity.ie) and will be able to advise in relation to this process. Information is also available on the Cork City Council Website [www.corkcity.ie](http://www.corkcity.ie)

Is mise le meas,

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CLERICAL OFFICER  
PLANNING ENFORCEMENT SECTION  
COMMUNITY, CULTURE & PLACEMAKING DIRECTORATE  
[planningenforcement@corkcity.ie](mailto:planningenforcement@corkcity.ie)



**We are Cork.**

The Gables Bar.  
31 / 32 Douglas St,  
Cork.  
27-April-2021  
nmgables@eircom.net

Ms. Claire Ring,  
Clerical Officer,  
Planning Enforcement Section,  
Cork City Council.

Dear Ms. Ring,

My name is Noel Moynihan and my wife is Mary and we are the owners and residents of the Gables Bar 31 / 32 Douglas Street Cork.

With Covid Restrictions lifting, we are currently going through the process of applying for a temporary license to open up a section of our back fence for 2 days to bring in 400 x 400 x 40 mm Kilsaran Classic Rustic paving slabs with Liam Casey and Mark Cotter in the Parks Department. See the attached page extract from the Kilsaran Catalogue.

I was speaking to Liam Casey recently and he said I needed to get a letter from the planning department stating that it is OK to lay slabs in our back garden.


Please see the 2 No. attached photographs of our back garden. Currently it is just covered with stone chippings and the weeds are coming up through the chippings. We wish to tidy up our back yard by laying paving slabs to make the area habitable for Mary and I.

I give a solemn commitment that we will only be using the back yard as a private garden for ourselves.

~~Please see a previous letter you sent to us allowing us to lay paving slabs in our back garden.~~

If you could please reconfirm by letter to us that it is OK to lay paving slabs in our back garden and also send a copy of the letter to Liam Casey and Mark Cotter I would be extremely grateful.

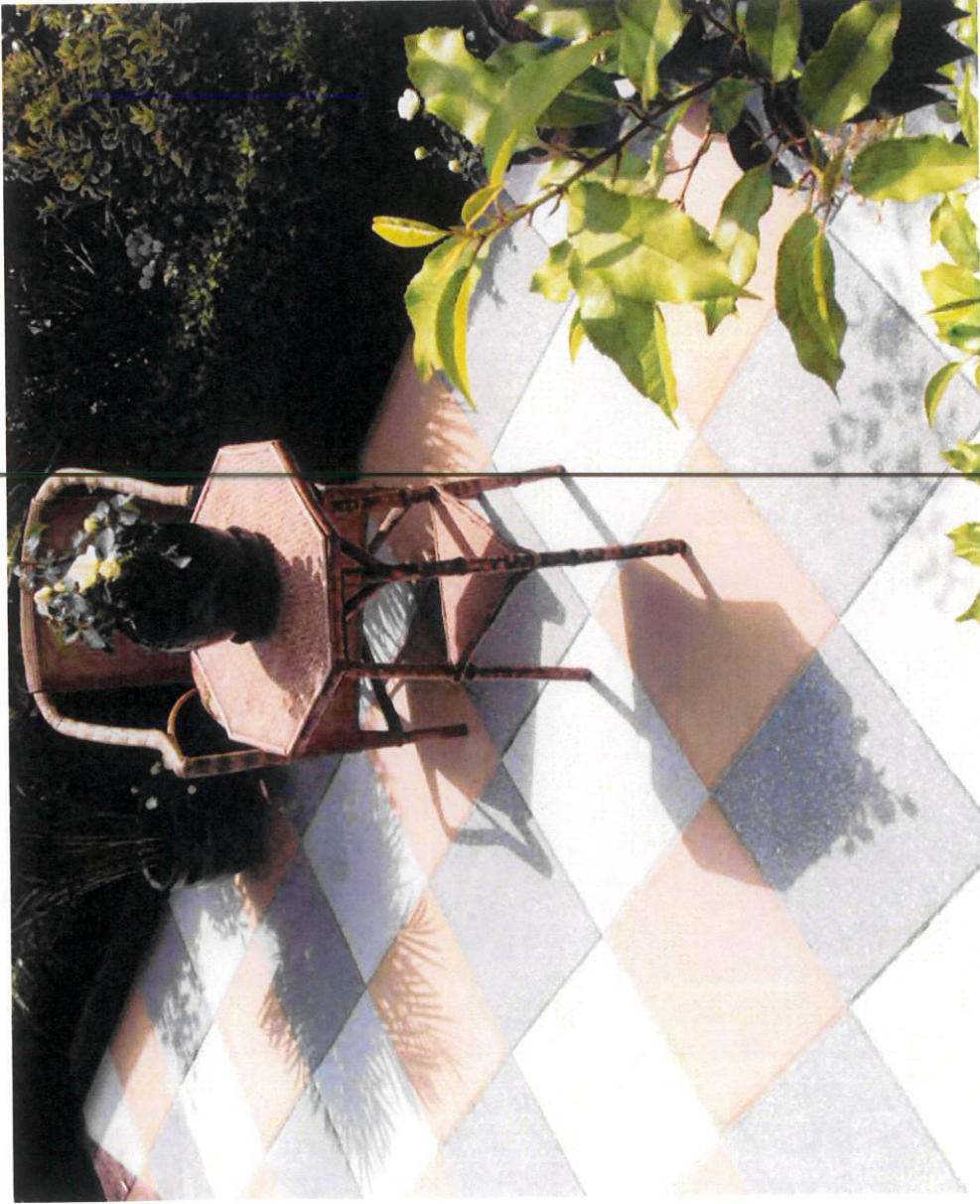
Yours Sincerely,

  
Mary and Noel Moynihan.



# CLASSIC FLAGS

The original patio paving flags are as popular today as they have always been. Easy to install with a large selection of colours and sizes makes this range a perennial favourite.



Natural



Charcoal



Buff



Curragh Gold



Rustic

Product Range	Dimensions (mm)	Colours	Pcs per m <sup>2</sup>	m <sup>2</sup> per Bale	Pcs per Bale	No Layers	Approx Bale Weight (kg)
Classic Flags (Smooth)	400 x 400 x 40	Natural, Charcoal, Buff, Curragh Gold, Rustic	6.25	13.44	84	14	1180
	400 x 400 x 50	Natural, Charcoal, Buff, Curragh Gold, Rustic	6.25	11.57	72	17	1215
	450 x 450 x 50	Natural, Charcoal, Buff, Curragh Gold, Rustic	4.94	11.94	56	14	1010
	600 x 300 x 50	Natural	5.55	8.64	48	8	1175
	600 x 400 x 50	Natural, Charcoal, Buff, Curragh Gold	4.16	11.52	48	12	1215
	600 x 600 x 50	Natural, Charcoal, Buff, Curragh Gold	2.77	10.8	30	15	1180













# Comhairle Cathrach Chorcaí Cork City Council

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

Noel & Mary Moynihan,  
31/32 Douglas Street,  
Cork

6<sup>th</sup> July, 2020

**Re: E8183 – 31/32 Douglas Street, Cork**

A Chairde,

I am asked to write to you to advise that a written complaint has been received by the Planning Enforcement Section in relation to alleged unauthorised works to the rear of the above premises.

During a recent inspection while it was noted that a change of ground cover/surface treatment had occurred, this does not require planning permission at this time.

Please note that planning permission may be required if these works lead to a change of use of the area in the future.

Is mise le meas,

CLERICAL OFFICER

PLANNING ENFORCEMENT SECTION

COMMUNITY, CULTURE & PLACEMAKING DIRECTORATE

[planningenforcement@corkcity.ie](mailto:planningenforcement@corkcity.ie)



**We are Cork.**