

Comhairle Cathrach Chorcaí Cork City Council

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

Colm Power,



14/08/2025

RE: Section 5 Request.

R964/25: Block A & Block B, South Terrace Court, South Terrace.

A Chara.

With reference to your request for a Section 5 Declaration at the above-named property, received on the 18th of June 2025.

Following a request for Further Information, the applicant has reframed the question:

'We request a declaration under Section 5 of the Planning and Development Act 2000 to determine whether the above proposed works constitute exempted development or whether planning permission is required'

'The South Terrace Management Board of Directors proposes to carry out landscaping works in the existing outdoor area between Black A and Block B of South Terrace Court. This area is currently surfaced in tarmacadam and is used as a tennis court. There is existing gated access via South Terrace which is used for emergency and maintenances purposes.

'The proposed works include:

- 1. Removal of existing tarmacadam surface as necessary for landscaping.
- 2. Installation of soft landscaping, including planting of shrubs, flowers, and minimal trees, while maintaining existing hedging.
- 3. Construction of raised flower beds with built-in seating along the back wall (currently without vegetation)
- 4. Retention of existing gated access from South Terrace for emergency vehicles.
- 5. Maintenance of emergency vehicle access routes, with any soft landscaping and ground treatments designed to support such access.
- 6. Relocation of refuse bins from the existing ramps into a new purpose-build wooden (or similar) enclosure integrated within landscape design.

No changes are proposed to existing boundary walls or gated entries. The works are intended to create a greener, more recreational area for residents.'

We are Cork.



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The Planning Authority considers that the substantive issue arising in this case is whether the proposed development is a change of use and whether the change of use is material. This is applicable to part 4 & 5 of the reframed question, (4), 'Retention of existing gated access from South Terrace for emergency vehicles' & (5) Maintenance of emergency vehicle access routes, with any soft landscaping and ground treatments designed to support such access.

The Planning Authority is of the view that the retention of the emergency vehicular access and the addition of an area to facilitate vehicular activity is materially different to the existing use as an amenity area (tennis court).

It is further noted, following a site inspection 07/08/2025, the footpath immediately adjacent the area for 'Retention of existing gated access from South Terrace for emergency vehicles' is not dished or lowered to facilitate access, this area is on lands outside the application area. This brings into question traffic and pedestrian safety entering and existing from South Terrace and the need for additional referrals on this type of application that cannot be afforded the necessary consideration in an exempted development context.

The Planning Authority notes an extract from ABP Inspector's Report 28.RL3602, that is applicable in this instance. 'On the matter of whether or not a change of use is material, I note the findings of Barron J. in the case of Galway CC v Lackagh Rock Ltd. which state: "To test whether or not the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must be materially different'.

Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000, or articles 6 or 10 of the Planning and Development Regulations 2001. The Planning Authority is of the view that there is no exemption that would facilitate the proposed development.





Comhairle Cathrach Chorcaí Cork City Council

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In view of the above and having regard to:

- The details submitted by the applicant on 19/06/2025 and 22/07/2025.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 10 of the Planning and Development Regulations 2001 (as amended

It is considered that the question before the Planning Authority 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 Coimisiún Pleanála within 4 weeks of the date it is issued.

Is mise le meas,

Anthony Angelini

Assistant Staff Officer

Planning & Integrated Development

Cork City Council



PLANNER'S REPORT		Cork City Council	
Ref. R964/25		Culture, Community and Placemaking	
Application type	Section 5 Declaration		
Application type Reframed Question 'We request a declaration under Section 5 of the P 2000 to determine whether the above proposed we development or whether planning permission is readditional Details 'The South Terrace Management Board of Director landscaping works in the existing outdoor area bet South Terrace Court. This area is currently surface tennis court. 'There is existing gated access via South Terrace we maintenances purposes.' 'The proposed works include: 1. Removal of existing tarmacadam surface 2. Installation of soft landscaping, including minimal trees, while maintaining existing terms.		orks constitute exempted quired'. s proposes to carry out ween Black A and Block B of d in tarmacadam and is used as a hich is used for emergency and as necessary for landscaping. planting of shrubs, flowers, and	
Location Applicant Date Response	vehicles. 5. Maintenance of emergency vehicle access relandscaping and ground treatments designe 6. Relocation of refuse bins from the existing rawooden (or similar) enclosure integrated with	tion of existing gated access from South Terrace for emergency les. enance of emergency vehicle access routes, with any soft caping and ground treatments designed to support such access. ation of refuse bins from the existing ramps into a new purpose-build en (or similar) enclosure integrated within landscape design. The proposed to existing boundary walls or gated entries. The works are eate a greener, more recreational area for residents.	
received Recommendation	Is Development, Is Not Exempted Development		
	10 Development, 13 Not Exempted Development		

This report should be read in conjunction with the pervious report on the file dated 10/07/2025.

FURTHER INFORMATION REQUETSED

1. The proposed site layout plan shows a vehicular area with vehicular access from South Terrace. The applicant is requested to reframe the question to clearly describe the proposed works.

FURTHER INFROMATION PROVIDED AND ASSESSMENT

A response to the further information request was received on 22/07/2025.

The applicant has reframed the question as outlined above in this report and is assessed as follows:

Item 1:

The submitted drawing depicts the proposed development, the hard surface area emergency vehicle and the emergency vehicular access for retention from South Terrace. See figure 1.

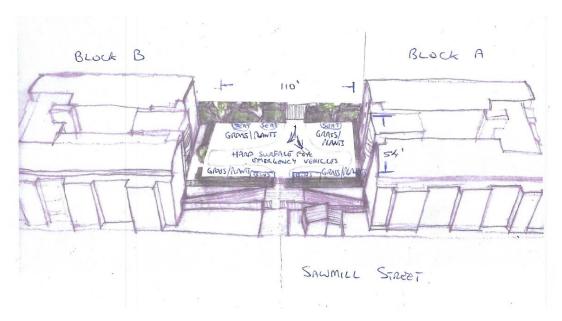


Figure 1 (application drawing submitted 19/06/2024)

I consider that the substantive issue arising in this case is whether the proposed development is a change of use and whether the change of use is material. This is applicable to part 4 & 5 of the reframed question, (4), 'Retention of existing gated access from South Terrace for emergency vehicles' & (5) Maintenance of emergency vehicle access routes, with any soft landscaping and ground treatments designed to support such access. I am of the view that the retention of the emergency vehicular access and the addition of an area to facilitate vehicular activity is materially different to the existing use as an amenity area (tennis court). It is further noted, following a site inspection 07/08/2025, the footpath immediately adjacent the area for 'Retention of existing gated access from South Terrace for emergency vehicles' is not dished or lowered to facilitate access, this area is on lands outside the application area. This bring into question traffic and pedestrian safety entering and existing from South Terrace and the need for additional referrals on this type of application that cannot be afforded the necessary consideration in an exempted development context. I note an extract from ABP Inspector's Report 28.RL3602, that is applicable in this instance. 'On the matter of whether or not a change of use is material, I note the findings of Barron J. in the case of Galway CC v Lackagh Rock Ltd. which state: "To test whether or not the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would

take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must be materially different'.

Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000, or articles 6 or 10 of the Planning and Development Regulations 2001. I am of the view that there is no exemption that would facilitate the proposed development.

In view of the above and having regard to:

- The details submitted by the applicant on 19/06/2025 and 22/07/2025.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, and 10 of the Planning and Development Regulations 2001 (as amended

It is considered that the question before the planning authority **Is Development and is Not Exempted Development.**

John Si -

Alan Swanwick A/Executive Planner

14/08/2025

Mary Doyle

, m/D ogle

A/Senior Executive Planner

14/08/2025

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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

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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

Colm Power

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

BLOCK A + BLOCK B SOUTH TERRALE COURT

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.

South TERRICE MANAGEMENT BOARD OF DIRECTORS AND ITS MEMBERS ARE COLDENING TO ELANDSCAPE THE OUTDOOR AREA (CURRENTLY A FEWNIS COLDET) AND BORDERS BETWEEN BLOCK A AND BLOCK B OF SOUTH TERRICE COLDET INTO A GREENER AREA (GLADON ALEA).

our Question is wHETHER PLANNING PERMISSION is HEDWINEO?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

SEE ATTICHED SHEET.

CORK CITY COUNCIL PLANNING & DEVELOPMENT

1 9 JUN 2025

DEVELOPMENT MANAGEMENT

4.	If so please supply details:	edings conr	ected to this s	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	of the Plan ne Planning	ning & Develo Authority?	pment Act 2000 been			
6.	Was there previous relevant planning app If so please supply details:	plication/s c	on this site?				
	No						
7.	APPLICATION DETAILS						
Answer walls a	the following if applicable. Note: Floor are nd should be indicated in square meters (sq.	eas are mea M)	sured from the	inside of the external			
	 a) Floor area of existing/proposed structure 						
(1	b) If a domestic extension, have any previo extensions/structures been erected at the location after 1 st October, 1964, (including for which planning permission has been obtained)?	nis	Yes	No provide floor areas. (sq			
	c) If concerning a change of use of land and	d / or buildii	ng(s), please st	ate the following:			
Existi	TENNIS (SURT	Proposed existing use (please circle)					
7. LEGA	L INTEREST						
legal i	e tick appropriate box to show applicant's interest in the land or structure	A. Own	er	B. Other			
intere	e legal interest is 'Other', please state your est in the land/structure in question	Direc	TOR Soy	THE TOR NONE CO			
	are not the legal owner, please state the of the owner if available						
8. I / We	confirm that the information contained in	o dia constic	ation is true a	nd accurate:			
:	Signature:						
	Date: <u>/6/06/25</u>	-					

3. Question/ Declaration Details.

South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area/garden area.

Our question is whether Planning Permission will be required to do so?

Additional Details

As a larger number of young families are residing in the blocks and the under-utilisation of the existing tennis court we are looking to create a more aesthetic green/ recreational area for our residents.

In our opinion it will improve the overall appearance of the complex and have a positive environmental impact on the complex and inner city of Cork.

Gated access will remain as is for Emergency vehicles off South Terrace.

Layout will ensure emergency vehicles can reach/ access both buildings on suitably supported ground.

Landscaping will be mainly scrubs and plants/ flowers maintaining existing hedging lining the area. Trees if any will be minimal and not in the way of emergency vehicles. Will propose raised flower beds with built in seating along back wall where there is no vegetation at the moment.

Currently the refuse bins for the complex are kept on the ramps. The proposal is to take them off the ramps and incorporate them into the new design and construct a wood or other shelter to hide them from view. This will improve access and the aesthetic look to the complex.

All proposals to be costed and presented to members for approval before any works carried out.



Comhairle Cathrach Chorcaí Cork City Council

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

Colm Power,



10/07/2025

RE: Section 5 Request.

R964/25: Block A & Block B, South Terrace Court, South Terrace.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on the 18th of June 2025.

In framing the question to the planning authority, the applicant states in Q2 of the application form:

"South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area / garden area".

Having considered the particulars submitted with the application and the relevant legislation, it is recommended that the following further information be sought:

The proposed site layout plan shows a vehicular hardstanding area with vehicular access from South Terrace. The applicant is requested to reframe the question to clearly describe the proposed works.

It is thus considered that **FURTHER INFORMATION** is required to process the application.

Is mise le meas,

Anthony Angelini

Assistant Staff Officer

inthony Lange

Planning & Integrated Development

Cork City Council



		Cork City Council	
PLANNER'S REPORT		Development	
Ref. R964/25		Management	
		Strategic Planning and Economic Development	
Application type	Section 5 Declaration		
Description	South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area / garden area.		
Location	Block A + Block B, South Terrace Court, South Terrace, Cork.		
Applicant	Colm Power		
Date Received	15/08/2025		
Recommendation	Request Further Information		

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:

'South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area / garden area'.

Additional Details: See proposed site layout map provided with this application for exemption.

3. Site Description

The property in question is located in an area zoned ZO 5 City Centre and is within the South Parish ACA, Sub Area A. The South Terrace Court development consists of two blocks east and west with a tennis court situated between the blocks. Ground floors have historically been in use as medical clinics with residential apartments overhead. There are a number of change of use applications permitted in recent years as outlined in the planning history below.

4. Planning History

TP 94/18705 Permission granted for the erection of 48 apartments at the western end of the former timberyard site bounded by South Terrace, Infirmary Road and Sawmill St.

TP 94/19031 Permission granted to amend TP 18705 to include 12 commercial units at ground floor with 46 apartments over to western end of site Sawmill St/Infirmary Rd/South Terrace.

TP 94/19227 Permission granted to amend plans of permission TP 18705/94 (for 48 apartments) to 58 apartments.

TP 0024158 – Permission granted to construct 6 apartments over a commercial unit.

TP 1737357 – Permission granted for change of use from commercial use to residential use at a mixed use building.

TP 1938779 – Permission granted for the retention of the change of use of a ground floor commercial unit to a one-bedroom apartment at a mixed-use building.

TP 2039753 - Permission granted for change of use from commercial use to residential use comprising of 2 no 1 bed apartments at a mixed-use building.

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, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land <u>or</u> '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.

5.2 The Regulations

Planning and Development Regulations, 2001 (as amended)

Article 6(1) of the 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, (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"...

(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,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

6. ASSESSMENT

5.1 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. '.

I consider that the proposed element constitutes development as it comprises works to an external area. Whether the proposed development constitute a change of use that is material in nature will be determined following the applicant response to the further information request outlined below in this report.

5.2 Exempted development

The next issue for consideration is to determine whether the development constitutes exempted development.

Q - South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area / garden area.

The question before the Planning Authority does not fully describe the proposed development. The submitted proposed site layout plan includes an area of hard surface for emergency vehicles within the proposed green area / garden. This also appears to show vehicular access from South Terrace.

I consider that there is insufficient information to make a determination on the proposed development. It is recommended that further information is sought as set out below.

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. Conclusion

The question has been asked:

Question - South Terrace Management Board of Directors and its members are looking to landscape the outdoor area (currently a tennis court) and borders between Block A and Block B of South Terrace Court into a greener area / garden area.

Having considered the particulars submitted with the application and the relevant legislation as set out above, it is considered that further information is required with regard the reframing of the question to better align with the intended works. The proposed site layout plan shows a vehicular area with vehicular access from South Terrace. The question is required to be reframed to include these details.

RECOMMENDATION

It is recommended that the following further information be sought:

 The proposed site layout plan shows a vehicular hardstanding area with vehicular access from South Terrace. The applicant is requested to reframe the question to clearly describe the proposed works.

pola Si -

Assistant Planner

Alan Swanwick

10/07/2025

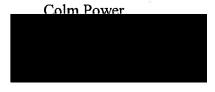
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Gwen Jordan McGee

Senior Executive Planner

10/07/2025

Anthony Angelini, Planning & Integrated Development, Cork City Council, City Hall, T12 T997



22/07/25

Dear Anthony,

Ref:R964/25: Block A & Block B, South Terrace Court, South Terrace

Description of Proposed Works (for Section 5 Declaration):

The South Terrace Management Board of Directors proposes to carry out landscaping works in the existing outdoor area between Block A and Block B of South Terrace Court. This area is currently surfaced in tarmacadam and is used as a tennis court.

There is existing gated access via South Terrace which is used for emergency and maintenance purposes.

The proposed works include:

- 1. Removal of existing tarmacadam surface as necessary for landscaping.
- 2. **Installation of soft landscaping**, including planting of shrubs, flowers, and minimal trees, while maintaining existing hedging.
- 3. Construction of raised flower beds with built-in seating along the back wall (currently without vegetation).
- 4. Retention of existing gated access from South Terrace for emergency vehicles.
- 5. **Maintenance of emergency vehicle access routes**, with any soft landscaping and ground treatments designed to support such access.
- 6. Relocation of refuse bins from the existing ramps into a new purpose-built wooden (or similar) enclosure integrated within the landscaping design.

No changes are proposed to existing boundary walls or gated entries. The works are intended to create a greener, more accessible recreational area for residents.

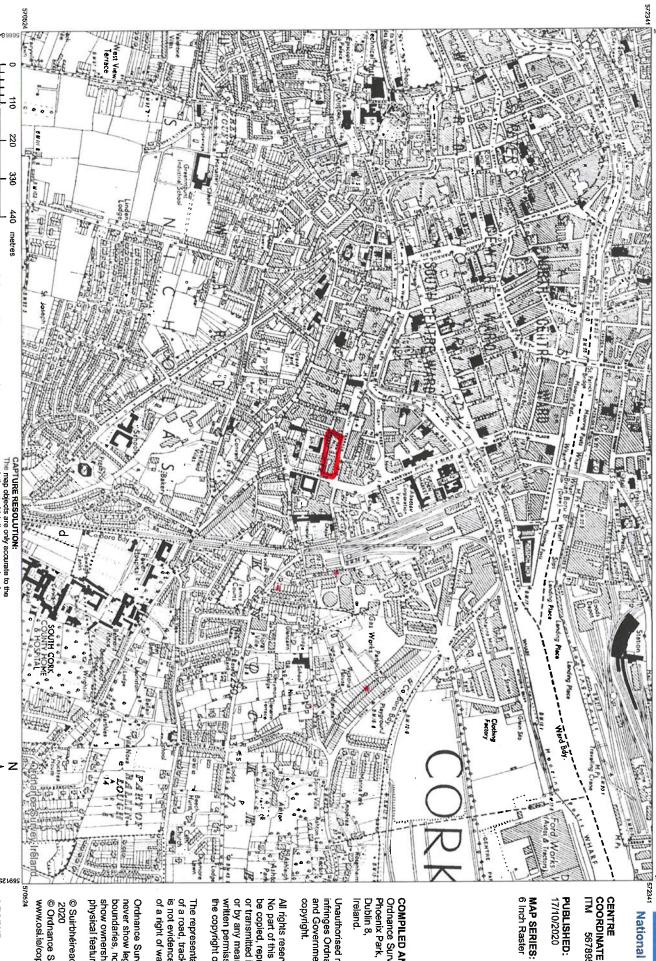
Question:

We request a declaration under Section 5 of the Planning and Development Act 2000 to determine whether the above proposed works constitute exempted development or whether planning permission is required?

Yours sincerely,

Colm Power

Site Location Map





National Mapping Agency

CENTRE
COORDINATES:
ITM 567895,571433

ORDER NO.: 50149224_1

MAP SERIES: 6 Inch Raster MAP SHEETS: CK074

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Phoenix Park, Dublin 8, ireland.

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http://www.osi.ie; search 'Large Scale Legend'

OUTPUT SCALE: 1:10,560

resolution at which they were captured.

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BLOCK A SAWMILL STARRET MELYS GRUS WA GAGES/ HAND SURFACE FORE 01 GROSS / PLANTS GRASS/PUNTITIONS 0 BLOCK

Sount Terrorgee Court

