

Comhairle Cathrach Chorcaí Cork City Council

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

Ballyphehane Community Association
c/o Catherine Clarke
Waterman Consulting Engineers
4 Union Quay
Cork

31/10/2024

RE: **Section 5 Declaration R881/24 Ballyphehane Community
Centre, Tory Top Road, Ballyphehane, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 03rd October 2024, I wish to advise as follows:

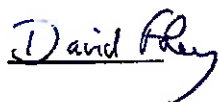
The Planning Authority in view of the above and having regard to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended
- (b) Section 3(1) of the Planning and Development Act, 2000
- (c) Section 4(1) of the Planning and Development Act, 2000, as amended
- (d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended
- (e) Parts 1 of Schedule 2 (Class 61) of the Planning and Development Regulations, 2001, as amended

It is considered that *the specific question for which a declaration is sought* **IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT** at Ballyphehane Community Centre, Tory Top Road, Ballyphehane, 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, 31st October 2024.

Is mise le meas,





We are Cork.

David Foley
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

PLANNER'S REPORT Ref. R881/24		Cork City Council Development Management Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Description	<i>Is installing 68kW of PV panels (approximately 320sqm of panels) on the south and west facing ground floor pitched roofs of the community centre considered exempted development as it is within a Solar Safeguarding Zone?</i> <i>Panels will be installed in accordance with the SEAI's Solar Photovoltaic Code of Practice for installers.</i>	
Location	Ballyphehane Community Centre, Tory Top Road, Ballyphehane, Cork.	
Applicant	Catherine Clarke	
Date of receipt	03/10/2024	
Recommendation	<i>Is Development and is Not 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

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 Q3 of the application form:

'Is installing 68kW of PV panels (approximately 320sqm of panels) on the south and west facing ground floor pitched roofs of the community centre considered exempted development as it is within a Solar Safeguarding Zone'.

3. Site Description

The property in question is a Community Centre located at Tory Top Road, Ballyphehane, Cork. The Community Centre forms part of a larger Public Open Space / Park.

4. Planning History

TP 17/37259 – Permission granted for alterations to community centre including the removal of railings around storage area at south-western corner of building and built-up area to form internal part of main building to remove stonework at front entrance lobby on south elevation and fit new glazed front.

TP 04/28657 – Permission granted to construct a two-storey extension (total area 576m²) to the existing community hall including 8 no. changing rooms with toilets and showers, an aerobics room and a gymnasium at the Ballyphehane Community Hall.

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 6 (1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column.

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,*

Class 61

The placing or erection on a roof, or within the curtilage, or on a roof of any ancillary buildings within the curtilage, of the following buildings or sites of a solar photo-voltaic and/or solar thermal collector installation:

(i) an educational building,

(ii) health centre or hospital,

(iii) recreational or sports facility,

(iv) place of worship,

(v) community facility or centre,

(vi) library,

(vii) sites for the provision of gas, electricity, telecommunications services or water supplies or wastewater services operated by a statutory undertaker.

1. Where such development is located within a solar safeguarding zone, the total aperture area of any solar photo-voltaic and/or solar thermal collector panels, taken together with any other such panels previously placed on a roof, shall not exceed 300 square metres.

2. Where such development is located within a solar safeguarding zone, the planning authority for the area shall be notified in writing no later than 4 weeks after the commencement of such development and such notification shall include details regarding the location and scale of the development.

3. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed 1.2 metres in the case of a flat roof or 15cm in any other case.

4. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 2 metres in the case of a flat roof or 50cm in any other case from the edge of the roof on which it is mounted.

5. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels shall not be placed or erected on a wall or any roof that is not a flat roof.

6. The height of any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall not exceed 1.6 metres above roof level.

7. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall be a minimum of 2 metres from the edge of the roof on which it is mounted.

8. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the building or site.

9. The total aperture area of any free-standing solar photo-voltaic and solar thermal collector panels taken together with any other such existing free-standing panels shall not exceed 75 square metres.

10. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.

11. The placing or erection of a solar photo-voltaic or solar thermal collector installation on any wall shall not be exempted development.

12. The placing or erection of any free-standing solar photo-voltaic or solar thermal collector installation within an Architectural Conservation Area shall only be exempted development if those works would not materially affect the character of the area.

13. No sign, advertisement or object not required for the functioning or safety of the solar photo-voltaic or solar thermal collector installation shall be attached to or exhibited on such installation.

14. Development under this Class shall only be exempted development where the solar photo-voltaic or solar thermal collector installation is primarily used for the provision of electricity or heating for use within the curtilage of the building or site, and shall not be considered a change of use for the purposes of the Act.

15. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.

5. ASSESSMENT

6.1 Development

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

'Development' as defined in the Act (3)(1) comprises two possible chief components: 'the carrying out of any works on, in, over or under land', or 'the making of any material change in the use of any structures or other land'. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

The details of this Section 5 application consist of the installation of Solar PV Panels (approximately 320sqm of panels) on the roof of Ballyphehane Community Centre, Tory Top Road, Ballyphehane, Cork. This would constitute 'Development' as defined in Section 3(1) of the Act.

6.2 Exempted development

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

The building subject to this Section 5 declaration serves as a Community Centre located within an area zoned for Public Open Space. The structure is not a Protected Structure, is not a NIAH listed building and is not located in an Architectural Conservation Area.

This Section 5 application did not include sufficient details regarding measurements / dimensions of the solar array and the location ancillary equipment and cannot be assessed on this basis.

Notwithstanding this, I note *Part 1 of Schedule 2, Class 61(1)*,

'Where such development is located within a solar safeguarding zone, the total aperture area of any solar photo-voltaic and/or solar thermal collector panels, taken together with any other such panels previously placed on a roof, shall not exceed 300 square metres.'

The Community Centre at Tory Top Road, Ballyphehane is located within 'Cork University Hospital Solar Safeguarding Zone', the proposed aperture area of the solar array is stated as being approximately 320sqm, this is in excess of the 300sqm limit of the exemption as outlined in Class 61(1) of the regulations.

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. Conclusion

The question has been asked:

'Is installing 68kW of PV panels (approximately 320sqm of panels) on the south and west facing ground floor pitched roofs of the community centre considered exempted development as it is within a Solar Safeguarding Zone?'

8. RECOMMENDATION

In view of the above and having regard to —

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1) of the Planning and Development Act, 2000, as amended,

(d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Parts 1 of Schedule 2 (Class 61) of the Planning and Development Regulations, 2001, as amended,

It is considered that *installing 68kW of PV panels (approximately 320sqm of panels) on the south and west facing ground floor pitched roofs of the community centre within a Solar Safeguarding Zone* exceeds the 300sqm limit of the exemption and IS DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.



Alan Swanwick

Assistant Planner

31/10/2024

COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

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

Fón/Tel: 021-4924709

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

1. NAME OF PERSON MAKING THE REQUEST

Catherine Clarke

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

Ballyphehane Community Centre, Tory Top Road, Ballyphehane, Cork

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Is installing 68kW of PV panels (approximately 320m² of panels) on the south and west facing ground floor pitched roofs of the community centre considered exempted development as it is within a Solar Safeguarding zone?

Panels will be installed in accordance with the SEAI's s Solar Photovoltaic Code of Practice for Installers.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

Please see attached plan and aerial photo



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

If so please supply details: No

5. 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? ☐

6. Was there previous relevant planning application/s on this site? ☐ Not relating to PV panels
If so please supply details:

7. 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	No new structure, on existing roof, approximately 320m2 of PV panels
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes ☐ No ☐ 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)	Proposed/existing use (please circle)

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner - Yes	B. Other
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 of the owner if available		

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

Signature: C. Coakley

Date: 02.10.24

CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

9. Applicant:

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FLAT ROOF

NEW SPORT HALL ROOF - NO PV
PANEL INSTALLATION ALLOWED

**GYM ROOF - NO PV PANEL
INSTALLATION CURRENTLY
PROPOSED**

**TOWER PITCHED ROOF -
NO PV PANEL INSTALLATION
CURRENTLY PROPOSED**

A 08 03 24 PH ISSUED FOR TENDER



BALLYPHEHANE COMMUNITY CENTRE

PROPOSED UPGRADES AT
BALLYPHEWANE COMMUNITY CENTRE
TORY TOP ROAD, BALLYPHEWANE, COBK

ROOF PLAN - PROPOSED

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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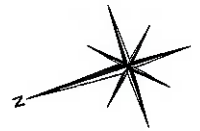
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ROOF PLAN
SCALE - 1:200

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ROOF PLAN
SCALE - 1:200

A	08.03.24	PH	ISSUED FOR TENDER	
Rev	date	By	Description	
 Waterman Kelly CONSULTING ENGINEERS & ARCHITECTS 40 Lincoln Road, #11-02, Singapore 048663 Email: enquiries@watermankelly.com Tel: 6733 7777 Fax: 6733 7776 Email: enquiries@watermankelly.com				
BALLYPIHEANE COMMUNITY CENTRE PROPOSED UPGRADES AT BALLYPIHEANE COMMUNITY CENTRE 10701 ROAD BALLYPIHEANE, CO. K ROOF PLAN - PROPOSED Scale: 1:500 Date: 08.03.24 Drawn By: VVH/0775 - 07 Checked By: A				



03 OCT 2024

CITY COUNCIL