# Comhairle Contae Chorcaí Cork County Council

Corcaigh T12 R2NC, Éire.
Fón: (021) 4276891 • Faics: (021) 4276321
Suíomh Gréasáin: www.corkcoco.ie
County Hall,
Cork T12 R2NC, Ireland.

Halla an Chontae,

Cork T12 R2NC, Ireland.
Tel: (021) 4276891 • Fax: (021) 4276321
Web: www.corkcoco.ie



Ann O'Leary & Brendan Lenihan, c/o Brian McCutcheon, McCutcheon Halley Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork.

8th February 2024

REF:

D/201/24

LOCATION:

Longwood, Lissycrimeen, Lislevane, Bandon.

RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 - 2010.

Dear Sir & Madam,

On the basis of the information submitted by you on 12<sup>th</sup> January 2024 the Planning Authority, having considered the question whether or not the replacement of the original rubble stone walls with concrete block walls in the older part of the dwelling for which permission was granted under Planning Register Reference No. 07/905 to alter and extend the original dwelling at **Longwood**, **Lissycrimeen**, **Lislevane**, **Bandon**, **Co. Cork** is or is not development and is or is not exempted development has declared that it is **development and is not exempted development**.

#### **Reason for Decision**

We are Cork.

The Planning Authority in considering this referral had particular regard to:

- Sections 2, 3, and 4 of the Planning and Development Act, 2000, (as amended),
- Articles 5, 6, and 9 and of the Planning and Development Regulations, 2001, (as amended),
- The planning history of the site and
- The particulars received by the Planning Authority on 12<sup>th</sup> January 2024

#### And Whereas Cork County Council has concluded that -

The replacement of the original rubble stone walls with concrete block walls in the older part of the dwelling for which permission was granted under Planning Register Reference No. 07/905 to alter and extend the original dwelling at Longwood, Lissycrimeen, Lislevane, Bandon, Co. Cork constitutes development that is not exempted development on the grounds that:



- (a) the demolition of the existing walls constitutes "works" that comes within the meaning of "development" as set out in Section 3(1) of the Planning and Development Act, 2000, (as amended),
- (b) the works do not fall within the meaning of 'exempted development' specified in Section 4 of the Planning and Development Act 2000, (as amended).

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Yours faithfully,

KEVIN O' REGAN SENIOR EXECUTIVE OFFICER, PLANNING DEPARTMENT.

#### Ref D/201/24

## **Exempted Development under Section 5 of the Planning and Development Act 2000**

Re: Request for Declaration under Section 5 of the Planning and Development Act 2000, as amended, in regard to the planning status of a dwelling at Lissycrimmeen, Lislevane, Bandon, Co. Cork

# **Site Location and Description**

The site is located in a coastal area a short distance east of Dunworley Bay. There is an existing dwelling and detached shed on the site.

# **Proposal**

The applicant seeks a Declaration of Exemption under Section 5 of the Planning and Development Act 2000, as amended, on the question of:

"Whether the replacement of the original rubble stone walls with concrete block walls in the older part of the dwelling for which permission was granted under Planning Register Reference No. 07/905 to alter and extend the original dwelling is, or is not, development and is, or is not, exempted development."

# **Policy Context**

In terms of <u>planning designations</u>, the subject site lies within the rural housing policy area type designated as 'Tourism and Rural Diversification Area' in the Cork County Development Plan (CCDP) 2022. The site is located within a mapped High Value Landscape and fronts onto designated Scenic Route S71.

The site is located within the indicative Screening Zone for Seven Heads SPA (Site Code 004191) as mapped on the Planning Enquiry System. The potential for significant impacts on the SAC can be ruled out on the basis of the nature of the proposed development.

The site is not situated within a flood risk zone as mapped the CCDP 2022 flood risk maps. Having regard to the nature and scale of the proposed development, and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.



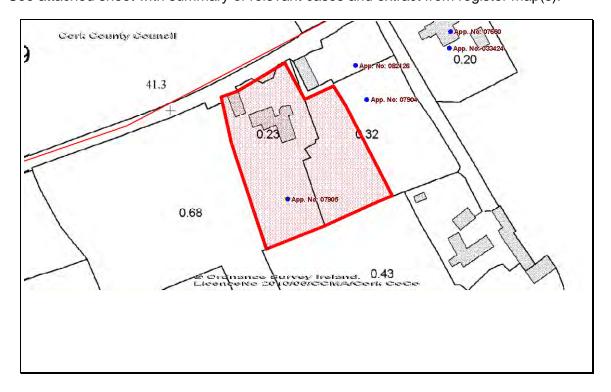
Site outlined in yellow

# **Planning History**

Permission was granted for additions and alterations to dwellinghouse and all associated site works subject to 11no.conditions under 07/905. Condition 1 of the decision states:

1	The proposed development shall be	To clarify the documents to which this
	carried out in accordance with plans and	permission relates in the interests of the
	particulars lodged with the Planning	proper development of the site.
	Authority on 30/03/2007, save where	
	amended by the conditions herein.	

See attached sheet with summary of relevant cases and extract from register map(s).



#### **Enforcement History**

None

#### **Relevant Statutory Provisions**

The most relevant statutory provisions are as follows:

#### Planning and Development Act 2000

**Section 2(1)** of the Planning and Development Act, 2000 provides that: "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.

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

**Section 3(1)** of the Planning and Development Act, 2000 provides that: "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)** of the Planning and Development Act 2000 sets out what shall be exempted developments for the purposes of the Act.

# Section 4(1)(h) of the Act states:

"The following shall be exempted development for the purposes of this act:

Development consisting of the carrying out of works for the maintenance improvement or other alterations of any structure, being works which effect 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)** makes provision for ministerial regulations to set out further exemptions. The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

**Section 4(4)** states that 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.

# Planning and Development Regulations 2001 (as amended)

**Article 6** sets out development which shall be exempted development for the purposes of the Act.

**Article 9** sets on restrictions on exemption for development to which article 6 relates.

# **Internal Reports**

None

# **External Reports**

None

# **Assessment**

# **Details of Proposal**

It is submitted that permission was granted for additions and alterations to a dwelling under 07/905 and during the course of the construction of the permitted extension the 'original stone walls of the cottage were found to be in poor condition and were reconstructed in concrete block'.

I inspected to site on 25/01/2024 – photos below.









The question arises as to whether the replacement of the original rubble stone walls with concrete block walls is development and is or is not exempted development.

The definition of works under Section 2 of the Act 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 any other material to or from the surfaces of the interior or exterior of the structure".

On this basis the demolition of the existing dwelling walls and the construction of new concrete blocks walls falls within the definition of 'works'.

The definition of 'development' under Section 3 of the Act includes the carrying out of any works on, in, over or under land. The proposed development would involve works within the meaning of Section 3 of the Act. As such the proposed development constitutes development. Therefore, the question in this case is whether or not it is exempted development.

# **Is or is not Exempted Development**

It is noted that the replacement of walls to a habitable dwelling, or indeed the demolition and replacement of a habitable dwelling, does not fall within the scope of Article 6 of the Planning and Development Regulations 2001, as amended.

The developer is asserting that the development is exempt under Section 4(1)(h) of the Planning and Development Act 2000 on the grounds that "The development for which permission was granted under Planning Ref. No. 07/905 was described on the application form and the grant of permission as 'additions and alterations to dwelling and site works'. This means that the permission did not require the original structure to be retained as existing and it was intended that it could be altered during construction."

Contrary to the assertion that the development carried out is exempt by virtue of Section 4(1)(h) on the grounds that the demolition and reconstruction of the walls comprise 'alterations' I fundamentally disagree that demolition falls under the act of maintenance, improvement or alteration. Furthermore, I do not agree with the statement that granting permission for 'alterations and additions', by implication, allows for alterations up to and including demolition of all walls of the dwelling.

It is noted that the cover letter submitted under 07/905 states "The proposal allows for the original existing farmhouse, with its particular vernacular character, to be retained'.

Condition no.1 of the permission granted required that the development shall be carried out in accordance with plans and particulars lodged with the Planning Authority on 30/03/2007 which provided for the retention of the dwelling.

I cannot support the argument that the development carried out falls under Section 4(1)(h) of the Act. The original dwelling walls were demolished and, therefore, the original habitable dwelling was demolished and replaced.

The demolition of a habitable dwelling is not exempted development within the meaning of 'exempted development' specified in Section 2 of the Planning and Development Act 2000, as amended, which states that 'exempted development' has the meaning specified in Section 4 of the Act. In the absence of a grant of permission to demolish and replace the original habitable dwelling it is considered that the dwelling on site constitutes unauthorised development.

#### Recommendation

In considering this referral, the Planning Authority had regard particularly to –

- (a) Sections 2, 3, and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, and 9 and of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site,

I recommend that the replacement of the original rubble stone walls to dwelling with new concrete block walls is development and is not exempted development on the grounds that:

- (a) the demolition of the existing walls constitutes "works" that comes within the meaning of "development" as set out in Section 3(1) of the Planning and Development Act, 2000, as amended.
- (b) the works do not fall within the meaning of 'exempted development' specified in Section 4 of the Planning and Development Act 2000, as amended.

A. D'ILLEGU

Annie O'Keeffe 07/02/2024



The Secretary Planning Department Cork County Council Norton House Skibbereen Co. Cork P81 AT28

Piam 29 December 2023 12 JAN 2024 NOKION HOUSE, SKIBBEREEN, CO. CORK

Re:

Request for Declaration under Section 5 of the Planning and development Act 2000 (as amended) in regard to minor structural alteration to a dwelling house at Lissycrimeen, Lislevane, Bandon.

Dear Sir/Madam,

We act on behalf of Anne O'Leary and Brendan Lenihan of Glaisin, Abbey Road, Ovens, Co. Cork and submit on their behalf the attached request for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended).

The request is made in regard to current planning status their residential property at Longwood, Lissycrimeen, Lislevane, Bandon, Co Cork for which permission was granted under Planning Register Reference No. 07/905 to alter and extend the original dwelling on the site. During the course of conveyancing a question has been raised as to whether the replacement of the original rubble stone walls in the older part of the dwelling with concrete block walls was, or was not, development and was, or was not, exempted development.

The development for which permission was granted under Planning Ref. No. 07/905 was described on the application form and the grant of permission as "additions and alterations to dwelling and site works". This means that the permission did not require the original structure to be retained as existing and it was intended that it could be altered during construction.

We have been advised, that during the construction of the permitted extension, the original stone walls of the cottage were found to be in poor condition and were reconstructed in concrete block. These structural improvements were carried out without altering the external dimensions or finishes of the permitted development.

In our opinion, any alterations which are deemed to be necessary to improve the structural stability or thermal performance of the walls of a dwelling would normally be exempt under Section 4(1)(h) of the Planning and Development Act 2000 (as amended)<sup>1</sup> which provides for:

"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 neighbouring structures".

1 Hereafter referred to as 'the Planning Act'

CORK

6 Joyce House,

Tel: +353 (0)21 420 8710

4 Toor, Kreston House, Arran Court, Arran Quay,

Dublin 7, D07 K271 Tel: +353 (0)1 804 4477 Tel: +353 (0)21 420 8710

11 JAN 2024

County Hall Dubliork.

> Summerhili, Bantry, Co. Cork, P75 VP95

The Old Schoolhouse,

Bantry

As there has been no change in the permitted elevations, the change in the composition of the walls has not affected the external appearance of the permitted dwelling in any way.

We note that Condition 1 of the planning permission required the development to be carried out in accordance with the plans and particulars submitted with the planning application. However, the labels on the permitted drawings do not actually specify the cottage walls as "original" or "stone" and the response to question 10(1)(b) of the application form describes the material of all external walls as "concrete block". In our opinion, there was no requirement under Condition 1 for the original stone walls of the cottage to be retained.

It should also be noted that, while the original cottage predated the commencement of the Local Government (Planning and Development) Act in 1964, it was not old enough to appear on the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> editions of the historic Ordnance Survey. Therefore, the cottage did not have the heritage value, as defined by paragraph 16.3.22 of the County Development Plan, which would have justified a requirement that the original stone walls be retained.

In our opinion the existing dwelling is in substantial compliance with Condition 1 of the permission granted under Planning Ref. No. 07/905 and any structural changes to the original walls of the cottage may be deemed to be exempted development under Section 4(1)(h) of the Planning Act.

Yours sincerely,

Brian McCutcheon McCutcheon Halley

Brin Wearhen

Planning Department

1 1 JAN 2024

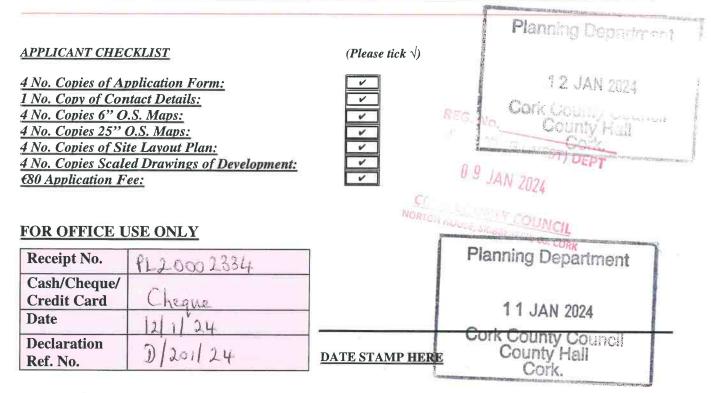
County Jouncil
Cork.







# CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION



You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3<sup>rd</sup> parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

# **DATA PROTECTION**

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at <a href="http://www.corkcoco.ie/Privacy-Policy">http://www.corkcoco.ie/Privacy-Policy</a> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to <a href="mailto:dpo@corkcoco.ie">dpo@corkcoco.ie</a> or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

1.	NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A - CONTACT DETAILS)
Ann C	Leary and Brendan Lenihan
2.	POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:
Longw	rood, Lissycrimeen, Lislevane, Bandon, Co Cork
3. Please Note: 0	QUESTION/DECLARATION DETAILS: state the specific question for which a Declaration of Exemption is sought Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption
Whether was gra	er the replacement of the original rubble stone walls with concrete block walls in the older part of the dwelling for which permission anted under Planning Register Reference No. 07/905 to alter and estend the original dwelling is, or is not, development and is, or is empted development.
	REG. No.
	O 9 JAN 2024
	COPIC COLUMN
	MOUSE, SKIBBEREN, CO. CO.
	Planning Department
	1 1 JAN 2024
	Cork County Council County Hall Cork

4	<b>APPI</b>	ICA	TION	DETA	1T C.

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres  $(m^2)$ 

(a) Floor area of existing/proposed structure(s):	No change in permitted building footprint of 179 sq.m.	
(b) If a domestic extension is proposed, 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 No IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII	
(c) If a change of use of land and/or building(s) is proposed, please state the following:		
Existing/previous use	Proposed use No change in existing residential use	
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No No In If yes, please state relevant reference number(s): No enforcement history	
5. LEGAL INTEREST OF APPLICANT IN T  Please tick appropriate box to show applicant's		
legal interest in the land or structure:  Where legal interest is "Other", please state	A. Owner B. Other	
your interest in the land/structure:	MANAGER	
If you are not the legal owner, please state the name of the owner/s (address to be supplied at	SO JAN 2021	
Question C in Contact Details):	MORION HOUSE TY CO.	
	RCHITECTURAL CONSERVATION AREA:	
Is this a Protected Structure/Proposed Protected Structure:  Yes  No	acture or within the curtilage of a Protected	
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: Yes		
If yes, please state relevant reference No		
Is this site located within an Architectural Conserva Development Plan?  Yes  N		
. APPROPRIATE ASSESSMENT:	20 x 3 x 3 x 3 x 5 x 5 x 5 x 5 x 5 x 5 x 5	
	Cork.	
Vould the proposed development require an appro ave a significant effect on the integrity of a Europe	priate assessment because it would be likely to ean site (SAC, SPA etc)? Yes No	

#### 8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <a href="http://www.corkcoco.ie/privacy-statement-cork-county-council">http://www.corkcoco.ie/privacy-statement-cork-county-council</a> or in hardcopy from any Council office; and to having your information processed for the following purposes:

# Processing of your Declaration of Exemption application by the Planning Authority

I give permission for my personal information to be processed for the purpose stated above

Signed (By Applicant Only)	Exemp Acheany
Date	21-Dec-2023

# GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a> or in hardcopy from any Council office; and to having your information processed for the following purposes:

# Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	febret -	HOLeany
Date	21-Dec-2023	0

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie

However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest:

Please note that all information / supporting documentation submitted Warning all beautiful view at the Planning Authority offices.

11 JAN 2024 Cork County Council County Hall Cork.

4

#### **ADVISORY NOTES:**

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

The application must 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 Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- 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 of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of
  Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption
  decision.
- In the event that no Declaration of Exemption 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 of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption 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.

9. I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the <u>Planning and Development Acts 2000</u>, as amended and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	Por Weishen
Date	21-Dec-2023
	Planning Department  REG. No.  I MAN 2024  Cork Ounty Council  Cork Ounty Field  No.  I MAN 2024  D 9 JAN 2024  Cork Ounty Field  Cork Oun

