

Comhairle Contae Chorcaí Cork County Council

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County Hall,
Carrigrohane Road, Cork T12 R2NC.
Tel (021) 4276891
Email: planninginfo@corkcoco.ie
Web: www.corkcoco.ie

17th June 2024

REF: D/232/24
LOCATION: Broomfield Ridge Bridge, Knockgriffin, Midleton, Co. Cork.

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

Dear Sirs,

On the basis of the information submitted by you on 16th May 2024 the Planning Authority, having considered the question whether or not the repair and partial reconstruction of part of Broomfield Ridge Bridge (also known as Moore's Bridge) at **Broomfield Ridge Bridge, Knockgriffin, Midleton, Co. Cork** is or is not development and is or is not exempted development has declared that the Planning Authority are precluded from making a determination on this application, pending a resolution of the status of the structure.

Reason for Decision

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

- Sections 3(1), 4(1), and 4(2) of the Planning and Development Act 2000 (as amended),
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- OPW Section 50 consent process, and
- The particulars received by the Planning Authority on 16th May 2024.

And Whereas Cork County Council has concluded that –

In considering this referral, and in particular having regard to the site history and the legal status of the subject bridge whereby its removal was required as part of an outstanding OPW S50 consent process, the Planning Authority would appear precluded from making a determination in this instance pending a resolution of the status of the structure.



We are Cork.

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



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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.

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <https://www.corkcoco.ie/privacy-statement-cork-county-council>

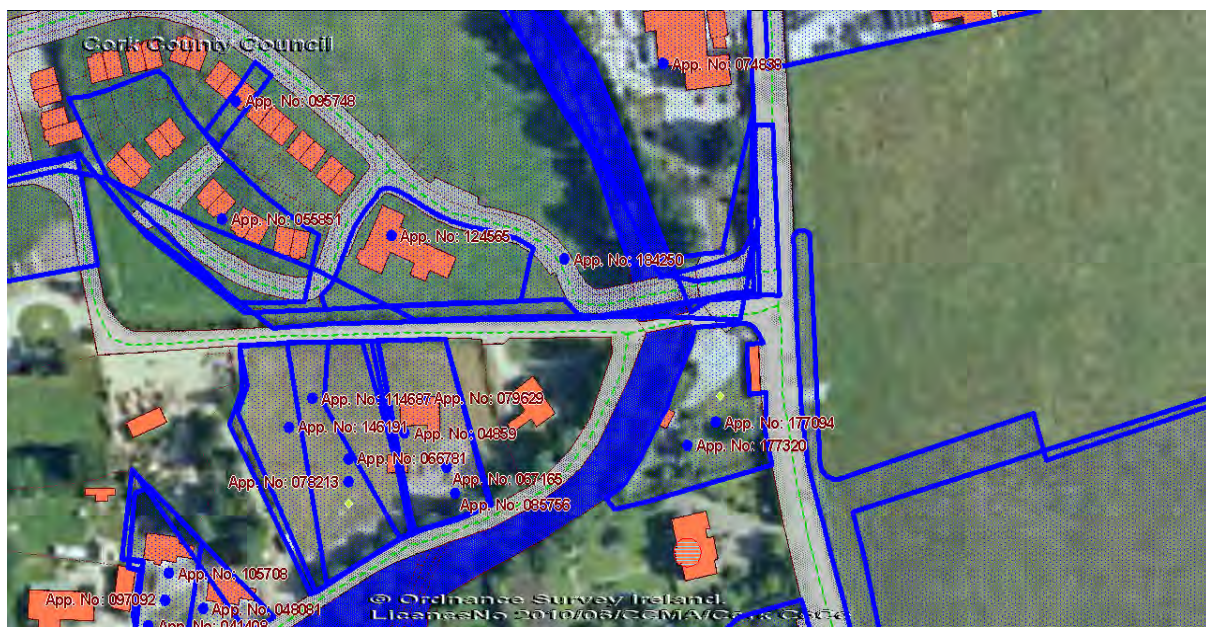
Declaration on Exempted Development under Section 5 of the Planning and Development Act 2000

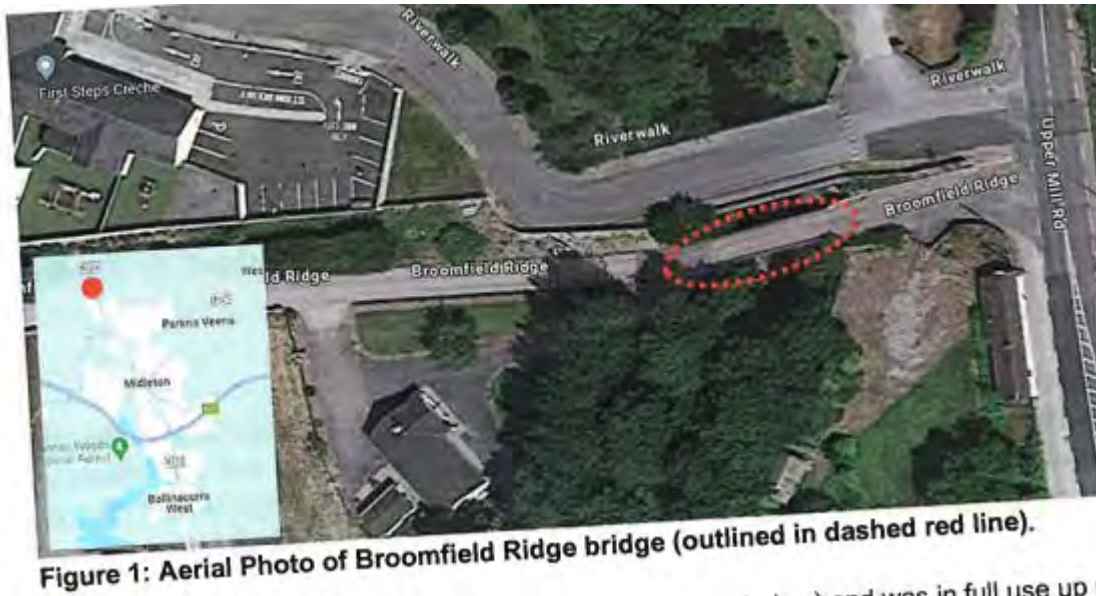
D232-24 - Repair/ Replacement of Moores Bridge, Midleton

The Question

The applicant is querying whether the repair and partial re-construction of Moore's Bridge is/ is not exempted development for the purposes of the Act

Planning History





It is stated that the bridge has been in existence pre-adoption of Planning Code (1963). This is not disputed

Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

Planning and Development Act, 2000

Section 3 (1) states:-

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

Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

S4(1)(h) “for the maintenance, improvement or 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 inconstant with the character of the structure or of neighbouring structures”

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001

Article 6(1) of the Regulations states as follows:- *“(a) Subject to article 9, development consisting 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.

Assessment

Having regard to the questions posed, the proposal constitutes “development” as set out under S3 of the Planning and Development Act 2000 in that “works” are proposed to be carried out on the site. The question therefore is whether or not these “works” constitute “exempted development” for the purposes of the Act

The applicant has outlined in writing the extent of the works required to repair/ replace elements of the bridge which were damaged in recent flood events. No supplementary drawings have been submitted to illustrate. It is stated that the scope of work involves removing of the footing/ support that was dislodged during the flood damage and provision of new flat span pre-cast concrete deck structure spanning the two remaining supports. The new bridge deck will be placed at the same level as the original (or can be adjusted if required by the PA). It is stated that total replacement works account for less than 50% of the overall bridge structure.

At the outset, it would appear the extent of works proposed could fall under the scope of S4(1)(h). This section deems works *“for the maintenance, improvement or 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 inconstant with the character of the structure or of neighbouring structures”*. It would appear based on a reading of the details that the bridge “character” would not be altered to any significant degree however a full set of drawings would be required to accurately determine same.

It is important to note that a separate Section 50 consent may be required from the OPW under the Arterial Drainage Act, 1945, for construction/alterations works on bridges or culverts (including reconstruction or restoration). The applicant may need to contact the OPW on this matter as achieving a S50 consent may require an alternative design solution. The CFP engineer has commented on this issue and has expressed the view that any replacement structure at this location will likely need to be significantly larger and higher than the existing Broomfield Ridge Bridge and would be likely to be similar in scale to the adjacent Tir Cluain access bridge. This is related to wider flood risk concerns in this area. While this is a speculative viewpoint, it does suggest that this question would need to be considered in more detail by the applicant as there may be design ramifications that would need to be factored in

There is also another complicating matter. In this regard I refer to report of the A/County Engineer John Slattery (see appendix A) on the historical status/context of the bridge.

“During the development of the adjoining Tir Cluain housing estate, a request for Section 50 consent under the Arterial Drainage Act ‘45 was submitted to the OPW by the Tir Cluain developer. The submission included for the construction of the new bridge serving Tir Cluain and the removal of Moore’s Bridge. Consent was granted on that basis. However, the private bridge was never removed. Moore’s Bridge is therefore Section 50 noncompliant.”

Moore’s Bridge collapsed during Storm Babet. It is currently restricting the hydraulic capacity of the river channel. The County Solicitor’s office is currently engaging with a solicitor representing Mr. Garde with a view towards the removal of Moore’s Bridge..”

As per the detail above, it appears the subject bridge was required to be removed as part of the S50 consent that was acquired to facilitate construction of the adjoining Tir Cluain Bridge. The subject bridge was not removed therefore exists in contravention of the S50 consent. The question therefore is whether or not this breach of a separate consent renders the subject bridge structure “unauthorised” for the purposes of the Planning Code. Please note however that an “unauthorised structure” is defined under that act as a structure other than –

(a) a structure which was in existence on 1 October 1964

The subject bridge was in existence prior to 1 October 1964 but its removal was required as part of consent issued by a separate state agency (OPW). If this structure should not legally be in existence as per that separate code, then there is a question as to whether or not the S5 referral before CCC can be considered as to do so would imply a tacit acceptance of an illegal entity. Legal opinion may be required to fully confirm/ refute this position

On this question of the legality of the structure, it also appears its removal may also have been a requirement of the planning consent granted for the original Tir Cluain development permitted under 04/6170. Tir Cluain is a housing development constructed on neighbouring lands. Unfortunately, this file was damaged in the Co. Hall flood of 2009 thus no record of the final drawings exists. Notwithstanding the CFP engineer has provided Taking In Charge drawings which show an arrangement at the access bridge which includes for the removal of the Broomfield Ridge (Moore’s) Bridge and a reconfiguring of the pre-existing access/egress (see image below). Again, this calls into question the validity/status of the bridge structure within a planning framework



Figure 2: Tir Cluain Taking in Charge drawing (zoomed in to show revised access/egress arrangement and private bridge removed)

Article 9 Restrictions

Restrictions on exemptions are listed under Article 9 of the Regulations. These would not apply in the case of a consideration under S4

AA/ EIA

Section 4(4) of the Act essentially de-exempts any development which attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA).

In relation to EIA, part 2 of schedule 5 lists development which may require EIA for the purposes of part 10 of Part 10 of the Planning and Development Act.

Having considered that detail I am satisfied the proposal does not trigger any requirement for mandatory or sub-threshold EIA.

In relation to AA, the proposal would involve construction works on a bridge where a direct hydrogeological link to Natura 2000 sites exists. AA screening would likely need to be provided by applicant for review

Conclusion

In considering this referral, and in particular having regard to the site history and the legal status of the subject bridge whereby its removal was required as part of an outstanding OPW S50 consent process, the Planning Authority would appear precluded from making a determination in this instance pending a resolution of the status of the structure.

Enda Quinn
Executive Planner
17/6/2024



Thomas Watt
Senior Executive Planner
17/06/24

Appendix A

Hi Enda,

Some background on this. Moore's Bridge is a private bridge serving a private laneway. Its construction predates '64.

During the development of the adjoining Tir Cluain housing estate, a request for Section 50 consent under the Arterial Drainage Act '45 was submitted to the OPW by the Tir Cluain developer. The submission included for the construction of the new bridge serving Tir Cluain and the removal of Moore's Bridge. Consent was granted on that basis. However, the private bridge was never removed. Moore's Bridge is therefore Section 50 noncompliant.

Moore's Bridge collapsed during Storm Babet. It is currently restricting the hydraulic capacity of the river channel. The County Solicitor's office is currently engaging with a solicitor representing Mr. Garde with a view towards the removal of Moore's Bridge. Cork County Council has a grant allocation from the DHLGH for the removal of the bridge only. Though the County Solicitor's office, Cork County Council has offered to remove the collapse bridge and provide a permanent connection between the Tir Cluain access road and the private laneway, at no cost to Mr. Garde or those accessing their property from the private laneway.

It is the intention of Cork County Council to remove the bridge this summer, by agreement or otherwise if required.

Regards,

John.

Seán Ó Slatara | Innealtóir Contae Gníomach

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john.slattery@corkcoco.ie | www.corkcoco.ie

Tairseach na gcustaiméirí: www.yourcouncil.ie

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Customer Portal: www.yourcouncil.ie



Smaoinigh ar an timpeallacht sula ndéanann tú an ríomhphost seo a phriontáil. Please consider the Environment before printing this mail.

Report - Coastal & Flood Projects Department

Reference: D/232/24
Applicant: Paul Moore and John Garde
Location: Broomfield Ridge Bridge, Knockgriffin, Midleton, Cork

1. Scope of Report

Review of the above application by Coastal and Flood projects. The proposed development is the reconstruction of the damaged Broomfield Ridge Bridge (also known as Moore's Bridge).

2. Background

Broomfield Ridge Bridge is a private bridge serving a private laneway. Its construction date is noted in the application documents as being 1963. The bridge is understood to be owned by Mr John Garde, with a number of private property owners on the adjacent laneway having a right of way over the bridge, including (though not limited to) Mr Paul Moore. Mr Garde and Mr Moore are the applicants in the current application.

During the development of the adjoining Tir Cluain housing estate (planning granted under Planning 04/6170), a request for Section 50 consent under the Arterial Drainage Act 1945 was submitted to the OPW by the Tir Cluain developer. The submission included for the construction of the new bridge serving Tir Cluain and the removal of Moore's Bridge. Consent was granted on that basis. However, the private bridge was never removed. Moore's Bridge is therefore Section 50 noncompliant, as is the adjacent Tir Cluain Bridge.

CFP has requested that the Section 50 documentation be made available by OPW and are awaiting a response.

Separately, CFP is aware that a letter of objection submitted in relation to CCC planning application 14/4270 (planning extension of 04/6170) states that the removal of the bridge in question was a condition of the original planning in 2004.

Unfortunately, it appears that the planning file for 04/6170 was damaged in the flooding of County Hall in 2009, and no records are available (to my understanding) which would confirm the consented site layout. Notwithstanding this, the images below are from Taking In Charge drawings provided to CFP by the Planning Directorate, and these show an arrangement at the access bridge which includes for the removal of the Broomfield Ridge (Moore's) Bridge and a reconfiguration of the pre-existing access/egress.

This objection, and the drawings provided at Taking in Charge stage raise queries around the planning status of the existing bridge.

3. Review of application

3.1 Legislation referred to in application

The application contends that the proposed repair and partial reconstruction constitutes exempted development under 4(1)(h) of the Planning & Development Acts.

Part 4(1)(h) includes the following category of development as being exempted development: *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;*

The application also contains relevant extracts from the Planning and Development Regulations, including the following restrictions on exemption, under Article 9(1)(a) of the Regulations – i.e. a development shall not be exempted development where the development would:

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

And

(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,

3.2 Impact of works on external appearance

No details as to the proposed works are provided, in particular no drawings of the proposed bridge deck are provided, and it is not possible based on the information provided to conclude whether the works will materially affect the external appearance of the structure.

The applicant's agent states that *"the new bridge deck will be placed at the same level as the original bridge or can be placed at a slightly higher level if required/sought by the planning authority"*. It is important to note that Section 50 consent from the OPW under the Arterial Drainage Act, 1945, for construction/alterations works on bridges or culverts (including reconstruction or restoration). Accordingly, any works to this damaged bridge will require Section 50 consent from the OPW. While this is a separate process, and without wishing to pre-empt the outcome of the OPW's assessment of any such application, it is my opinion that in order for Section 50 consent to be granted any replacement structure at this location will need to be significantly larger and higher than the existing Broomfield Ridge Bridge and would be likely to be similar in scale to the adjacent Tir Cluain access bridge. (See figures 3 and 4 overleaf which illustrate the difference in height and scale between the private bridge and the Tir Cluain bridge). It is extremely unlikely that a like-for-like replacement of the bridge could secure Section 50 consent.

It is therefore recommended that the applicant should seek Section 50 approval from the OPW in the first instance, in order to fully inform the design of the proposed works.

If a higher bridge was proposed by the applicant, and granted Section 50 consent by the OPW, it is likely that substantial engineering works (e.g. retaining walls) would be required) to provide access to the lane running south adjacent to the Owenacurra. I consider that this combined with the increase in height could lead to a material change in the appearance of the structure.

3.3 Impact of proposed works on road safety

I further consider that such an increase in elevation of the bridge deck could lead to road safety issues (i.e. endanger public safety by reason of traffic hazard), i.e. the gradient down from the replacement bridge at the public road side (i.e. the eastern side) would be excessively steep and could pose difficulty in terms of road safety (i.e. safe stopping before entry onto the public road).



Figure 3: View from South East of damaged bridge (November 2023) with Tir Cluain Bridge in background



Figure 4: View from west over damaged Broomfield Ridge Bridge with Tir Cluain bridge to left of picture

3.4 Status of existing structure

Finally, and as outlined in the preceding discussion on background, the existing bridge is not compliant with a consent under Section 50 of the Arterial Drainage Act (and perhaps is not compliant with previous grant of planning also) and accordingly could be considered to be an illegal development.

4. Conclusion

Taking all of the above into account, I recommend **refusal** of the current application, given the limited information available on the proposed works and the non-compliance of the existing bridge with a previous consent granted under Section 50 of the Arterial Drainage.

Signed

Alice Riordan

Alice Riordan
Senior Executive Engineer, Coastal and Flood Projects, 31-05-2024



CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

(Please tick ✓)

- 4 No. Copies of Application Form:**
- 1 No. Copy of Contact Details:**
- 4 No. Copies 6" O.S. Maps:**
- 4 No. Copies 25" O.S. Maps:**
- 4 No. Copies of Site Layout Plan:**
- 4 No. Copies Scaled Drawings of Development:**
- €80 Application Fee:**

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FOR OFFICE USE ONLY

| | |
|-------------------------------------|------------|
| Receipt No. | PL20002382 |
| Cash/Cheque/ Credit Card | CHEQUE |
| Date | 22/5/24 |
| Declaration Ref. No. | D/232/24 |

DATE STAMP HERE

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 3rd 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 <http://www.corkcoco.ie/Privacy-Policy> 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 dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

4. 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 metres (m²)

| | |
|---|--|
| (a) Floor area of existing/proposed structure(s): | N/A |
| (b) If a domestic extension is proposed, 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 <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable: |
| (c) If a change of use of land and/or building(s) is proposed, please state the following: Existing/previous use _____ _____ | Proposed use _____ _____ |
| (d) Are you aware of any enforcement proceedings connected to this site? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s): |

5. LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE:

| | | |
|---|---|-----------------------------------|
| 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: | | |
| If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details): | Please note that John Garde is the legal owner of the bridge and Paul Moore has a right of way over the bridge. | |

6. PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA:

| |
|---|
| Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| 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 <input type="checkbox"/> No <input type="checkbox"/> |
| If yes, please state relevant reference No. _____ |
| Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |

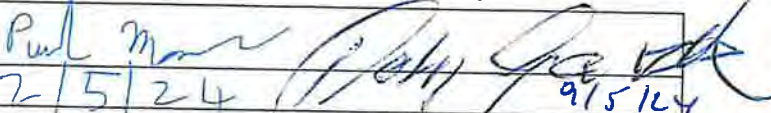
7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

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 <http://www.corkcoco.ie/privacy-statement-cork-county-council> 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) |  |
| Date | 2/5/24 9/5/24 |

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 <https://www.corkcoco.ie/privacy-statement-cork-county-council> 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 |  |
| Date | 2/5/24 9/5/24 |

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 will be available publicly to view at the Planning Authority offices.

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 Planning and Development Acts 2000, as amended and the Regulations made thereunder:**

| | |
|---|---|
| Signed <i>(Applicant or Agent as appropriate)</i> |  Tom Halley (Agent) |
| Date | 15/05/2024 |

14th May 2024

The Secretary,
Planning Department,
Cork County Council,
County Hall,
Cork.

Re: Section 5 Declaration request seeking confirmation that the repair and partial reconstruction of part of Broomfield Ridge bridge that was damaged by flooding is exempted development.

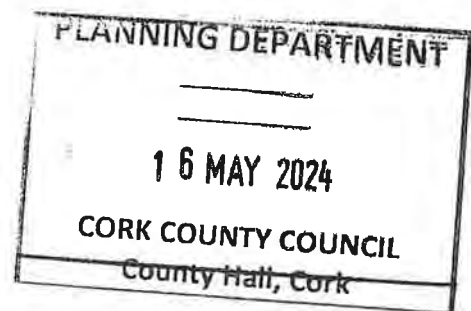
Dear Sir/Madam,

We McCutcheon Halley, 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf of Paul Moore and John Garde both with an address at Knockgriffin, Midleton, Cork. Please note that John Garde is the owner of the bridge and Paul Moore has a right of way/access over Broomfield Ridge bridge¹ (the bridge) which is the subject of this declaration request (outlined in red in the attached site location maps – see Appendix 1).

Our clients request a declaration in accordance with Section 5 of the Planning and Development Act 2000 (PDA), seeking confirmation that the repair and partial reconstruction of part of Broomfield Ridge bridge that was damaged by flooding is exempted development and does not therefore require planning permission on the basis that the works constitute exempted development under Section 4(1)(h) of the PDA.

This declaration request is set out under the following headings:

- 1.0 Context
- 2.0 Planning Legislation and Regulations
- 3.0 Precedent Case Law/Section 5 Referrals
- 4.0 Assessment
- 5.0 Conclusion



¹ John Garde is the owner of Broomfield Ridge bridge and Paul Moore and other residents in the area have a right of way/access over the bridge.

www.mhplanning.ie

McCutcheon Halley is a limited partnership registered under the Limited Partnerships Act, 1907, registration no. LP512. Registered in Ireland No. 326490.
Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCutcheon, BA(Econ) DipTP DipGIS MIPI (Chairman), Tom Halley, BA(Mod), MRUP BSc ARCH(Hons) Cert. Civil Eng. MIPI.

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T. +353 (0)21 420 8710
E. info@mhplanning.ie

1.0 Context

Broomfield Ridge bridge is located in the townland of Knockgriffin in the northern environs of Midleton Town. The bridge serves a number of residential properties in Broomfield Ridge (including John Garde's dwelling house) and Paul Moore's house and farm.

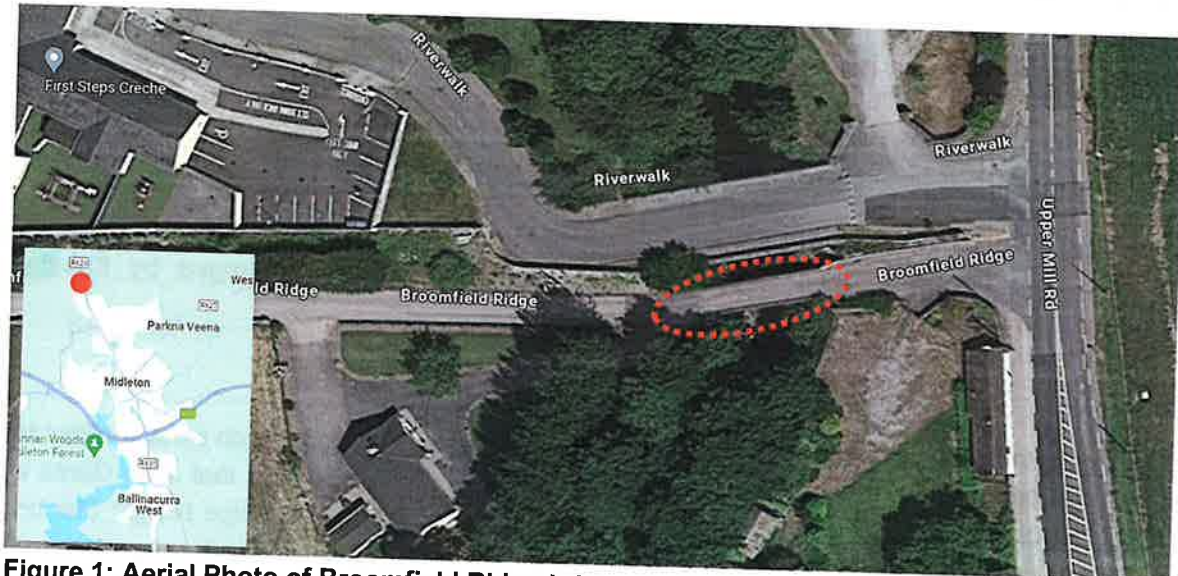


Figure 1: Aerial Photo of Broomfield Ridge bridge (outlined in dashed red line).

The bridge was constructed pre-1963 (see LHS in Figure 2 below) and was in full use up until the flood event of October 2023 last, when part of the bridge was damaged by a flood which occurred in town. The extent of damage is outlined in Figures 2 and 3 below. For health and safety reasons access to the damaged bridge is now restricted, as the central span and footing of the bridge was damaged/displaced during the October 2023 flood event causing part of the bridge to collapse and most of the handrail was also removed.



Figure 2: Photo of Knockgriffin viewed from South.

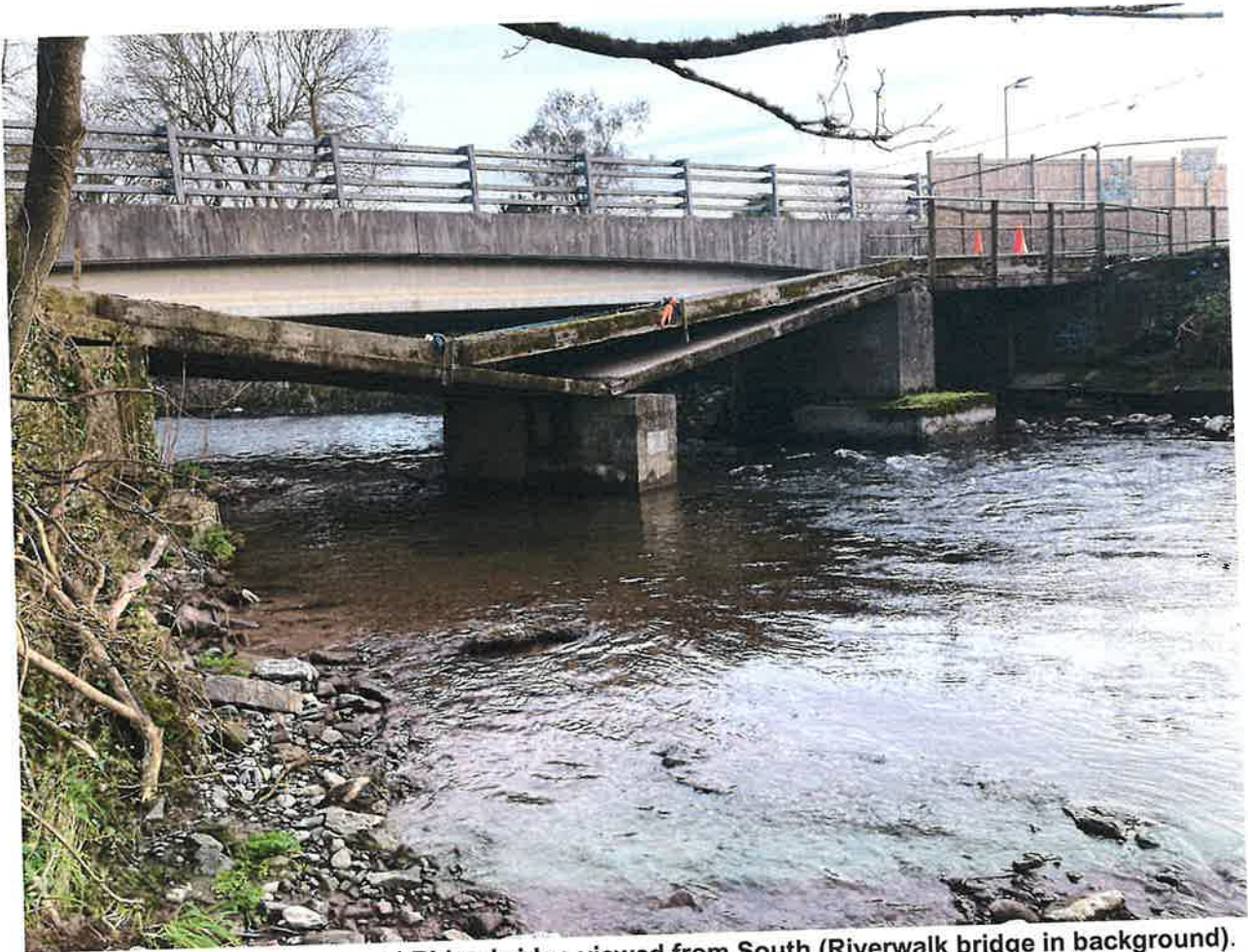


Figure 3: Damaged Broomfield Ridge bridge viewed from South (Riverwalk bridge in background).

2.0 Planning Legislation and Regulations

In order to assess whether the repair/reconstruction works to Broomfield Ridge bridge are exempted development or not, regard must be had to the Planning and Development Acts 2000-2019 (PDA) and the Planning and Development Regulations 2001-2019. The principal provisions of both the Acts and Regulations are outlined below:

2.1 Planning and Development Acts 2000-2019

Section 2 of the 2000 Planning and Development Act, as amended (PDA), includes the following definitions which are of relevance to this assessment:

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“Alteration” includes

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

“Land” includes any structure and any land covered with water (whether inland or coastal);

“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) of the PDA defines “Development” as, ‘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 of the PDA refers to ‘Exempted Development’ and subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act, including subsection (1)(h) which includes:

‘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’.

2.2 Planning and Development Regulations 2001-2019

Article 6 of Part 2 of the Regulations provides that subject to Article 9(1)(a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. Article 9(1)(a) lists the exceptions where development would not be exempted development (by virtue of Article 6).

Article 9 of Part 2 of the Regulations include a number of restrictions on exemptions including sub-article (1) which states that development to which article 6 relates shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would include the following:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users;
- (iv) ... comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed

(viiB) ... development that would be likely to have a significant effect on the integrity of a European site...

(viiC) ... development that would be likely to have an adverse impact on a natural heritage area...

(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,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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,

(xi) obstruct any public right of way,

(xii) consist of or comprise the carrying out of works to the exterior of a structure within an architectural conservation area...

3.0 Precedent Case Law and Section 5 Declarations/Referrals

3.1 Relevant Case Law

There are a number of precedent cases which have been determined by the Courts which deal with similar issues to those raised in this instance, including the following:

McCabe v CIE

McCabe v CIE (2006) IEHC 356 concerned the 'renewal and reconstruction of a railway bridge', which involved a brick/stone arch bridge structure being replaced with a flat span pre-cast concrete deck structure. The new bridge deck was placed at a higher level than the original arch bridge (in order to allow the safe passing of high sided vehicles underneath) and pre-cast concrete elements (replacing the previous brick/stone) were used to enable fast reconstruction of the bridge. The stability of the railway embankments was also enhanced by extending the parapet walls on each side of the bridge. It was accepted by all parties involved in the case that the works carried out were not only to the interior of the structure but that they had also affected its external appearance.

In his judgement, Mr Justice Herbert stated, inter alia, that the extent of renewal/reconstruction would be an important part of his assessment:

"In my judgement the renewal or reconstruction of a part or of parts of the bridge would be covered by the provisions of s.4(1)(h) of the Act of 2000, provided that the extent of that renewal or reconstruction was not such as to amount to the total or substantial



replacement or rebuilding of the original structure. The question is one of fact and degree whether in the instant case the original railway under-bridge has been so changed by the works that one could not reasonably conclude that it remains the same bridge even though with some alterations, improvements or indications of maintenance work” (emphasis added).²

Mr Justice Herbert also stated that any alterations to a structure have to be considered objectively and taking in to consideration the structure as a whole:

“... the court must assess the character of this structure by looking objectively at the entity as a whole, taking all of the matters identified by Finlay C.J. [see below], into account. From a purely subjective point of view, one observer might consider that the character of the bridge lay in its environmental context and overall dimensions, its locus, height, width, length and the dimensions of the road opening; another might see its character in the type, cut, colour, size and placement of its structural materials and ornamental work; while yet another might see the semi-circular voussoir arches and spandrels as entirely determining its character. I find that it is all these features taken together and other features to which I have adverted and their interaction with each other which gives a structure such as this its character ... I find for the reasons I have stated that there is no objective basis for considering that one particular type of opening rather than another should be regarded in itself as establishing the character of this sort of bridge. I find that the works carried out by the Respondent to this bridge do not render its present appearance inconsistent with the character of the bridge. In these circumstances, I find that the development carried out by the Respondent in the instant case was “exempted development”.”

In comparison to the proportion of repair and reconstruction to Broomfield Ridge bridge, the extent of reconstruction involved in McCabe v CIE (which involved the replacement of the brick/stone arch bridge structure with a higher level flat span pre-cast concrete deck with extended parapet walls on each side of the bridge) not only comprised a substantial replacement of the existing structure, the replacement structure also took a significantly different form to that of the original structure. This legal precedent is very relevant to the bridge repair/reconstruction works in this declaration request.

Cairnduff v. O’Connell

In the Supreme Court decision in *Cairnduff v. O’Connell* [1986] I.R. 73, Judge Finlay C.J., made reference to section 4(1)(g) of the Local Government (Planning and Development) Act, 1963, (which also included similar wording to Section 4(1)(h) of the 2000-2019 PDA i.e. “which do not materially affect the external appearance of the structure so as to render such appearance inconsistent the character of the structure”), that the insertion of a window in a side wall of a three storey terrace house, the replacement of a window by a door and, the construction of a balcony and staircase for the purpose of converting it into a residence with two flats, had not so materially affected the external appearance of the structure, as to render it inconsistent with the character of the house itself or of adjoining houses. In the course of his judgment, Finlay C.J. stated that:

“... I am satisfied that the character of the structure provided for in the sub-section must relate, having regard to the provisions of the Act in general, to the shape, colour, design,

² McCabe v CIE (2006) IEHC 356, p..

*ornamental features and lay-out of the structure concerned. I do not consider that the character of the structure within the meaning of this sub-section will depend on its particular use at any time....*³

The features outlined in the above judgement which relate to the character of the structure (i.e. shape, colour, design, ornamental features and layout) are those referenced by Mr Justice Herbert in *McCabe v CIE*.

Westmeath County Council v Moriarty

The issue of reinstating a piece of damaged property was dealt with in *Westmeath County Council v Moriarty* (July 1991, unreported) which involved the complete reconstruction of a property extensively damaged by fire⁴ and where Blayney, J. held that the reconstruction of a public house (which was destroyed by fire) constituted exempted development.

Despite the extent of damage, it was considered that the building and the established residential use could be re-instated, as it previously existed, as exempted development under Section 4(1)(h) of the Act without requiring planning permission.

The relevance and significance of the above cases are dealt with further in Section 4 of this report.

3.2 Relevant Section 5 Declarations/Referrals

There are a number of Section 5 Declarations and Referrals to An Bord Pleanála, which have been made under Section 5 of the PDA which deal with similar planning issues to this case, including cases which deal with remedial works and the reconstruction of damaged properties, including the following:

An Bord Pleanála Ref. 27.RL.2592: In this referral, the Board concluded that works of repair and renewal to a dwelling which was extensively damaged by fire, at Brockagh, Glendalough, Co. Wicklow, were exempted development on the basis that:

- (a) the works of repair and renewal to the building were of a nature and scale consistent with the purposes of maintenance, improvement or other alteration to a structure and did not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and
- (b) the works came within the exempted development provisions of section 4(1)(h) of the Planning and Development Act.

In this case the Board was satisfied that the works were exempted development under 4(1)(h) despite the fact that the Inspector considered the works to be extensive and more in line with the "replacement" of the structure as opposed to the maintenance, improvement or alteration of the structure.

In making its decision however, the Board had particular regard to sections 2, 3 and 4(1)(h) of the PDA; articles 6 and 9 of the Planning and Development Regulations, 2001; Classes 1 and 50(a)(i) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and the nature and extent

³ Cairnduff v. O'Connell [1986] I.R. 73, where Finlay C.J., p.77.

⁴ O'Sullivan and Shephard, Irish Planning Law and Practice, pg. 2/49, para. 163.

of the works carried out; and concluded that the that repair/renewal works were exempted development under Section 4(1)(h) of the PDA.

The above declarations/referrals are very relevant to the declaration sought under this submission as they establish that:

- Extensive repair and reconstruction works for the purposes of maintenance, improvement or other alteration to a structure fall within Section 4(1)(h) of the PDA provided that the works do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure;
- Extensive repair/renewal works i.e. works more in line with the “replacement” of the structure, have been considered exempted development by the Courts and An Bord Pleanála under Section 4(1)(h) of the PDA.

4.0 Assessment

In considering whether the repair/reconstruction works to the bridge serving Broomfield Ridge following the flood damage of October 2023 last, are exempted development or not, the following provisions and considerations are particularly relevant:

- **Sections 2, 3 and 4 of the PDA and in particular Section 4(1)(h);**
- **The planning history of the site;**
- **Case law and precedent referrals/section 5 declarations.**

The key consideration in this instance is whether the repair and partial reconstruction of part of Broomfield Ridge bridge is exempted development under Section 4(1)(h) of the PDA. To establish if this is the case, it is necessary to determine:

- 1) The structure and scope of works involved;
- 2) Whether the development consists of the carrying out of works for the maintenance, improvement or other alteration of the structure;
- 3) Whether the works materially affect the external appearance of the structure;
- 4) Whether the works render the appearance inconsistent with the character of the structure or of neighbouring structures;
- 5) Other considerations (e.g. Compliance with Planning Regulations)

We will deal with each of the above items as follows:

The structure and scope of works

In the first instance, it is important to establish the 'structure' for the purpose of Section 4(1)(h). In terms of the definition of structure in this instance and having particular regard to the precedents established by previous referrals/declarations, it is reasonable to conclude that the 'structure' in this instance comprises Broomfield Ridge bridge in its entirety.

The scope of works comprises the repair and partial replacement/reconstruction involve the removal of the footing/support that was dislodged during the flood damage and the provision of a new flat span pre-cast concrete deck structure spanning the two remaining footings/supports. The new bridge deck will be placed at the same level as the original bridge or can be placed at a slightly higher level if required/sought by the planning authority. The hand rail will also be repaired/replaced for health and safety reasons.

Of the original structure (including footings/foundations) the proposed replacement/reconstruction comprises less than 50% of the total structure of the bridge.

Whether the works comprise 'maintenance, improvement or other alteration of the bridge

In terms of the nature of the repair/reconstruction works involved in re-instating/replacing part of the bridge structure, it is reasonable to conclude that these repair/reconstruction works fall in to one if

not all of the categories (i.e. maintenance, improvement or other alteration) included in Section 4(1)(h).

As outlined in *McCabe v CIE* the extent of maintenance/improvement/alteration of the original structure is a key consideration under Section 4(1)(h). The standard applied by Mr Justice Herbert in *McCabe v CIE* was based on anything that did not "amount to the total or substantial replacement or rebuilding of the original structure." If this standard can be achieved, then any works for the maintenance, improvement or other alteration to a structure can be considered eligible for the exemption under Section 4(1)(h) of the PDA.

In this instance less than 50% of the original bridge structure will be replaced/reconstructed. By comparison to the quantum of new/replacement structure involved in *McCabe v CIE* (where all of the arch and parapet of the rail bridge was replaced) and the 27.RL.2592 referral (where 100% of the floorspace was replaced), the extent of the bridge to be replaced/reconstructed amounts to less than 50% of the original bridge structure. This is substantially less than the standard applied by Mr Justice Herbert in *McCabe v CIE* (i.e. anything less than the "total or substantial replacement or rebuilding of the original structure") and can be considered eligible for the exemption provided under Section 4(1)(h) of the PDA.

Whether the works materially affect the external appearance of the structure

The proposed works will only involve the repair/reconstruction of the fabric that was damaged in the flood i.e. the removal of the footing/support that was dislodged during the flood damage and the provision of a new flat span pre-cast concrete deck structure spanning the two remaining footings/support and associated repair works.

As the repair/reconstruction will replicate the existing bridge structure that existed prior to the flood, the completed/reconstructed works will not materially affect the appearance of the structure or render the appearance inconsistent with the character of the structure/neighbouring structures and is therefore consistent with Section 4(1)(h) of the PDA.

Other Considerations

In terms of compliance with the building regulations, Schedule 2, Part 1 of the Planning Regulations includes a number of classes of exempted development including **Class 50** which includes (a) The demolition of a building or other structure, other than— (i) a habitable house, (ii) a building which forms part of a terrace of buildings, or (iii) a building which abuts on another building in separate ownership.

In this instance, it is submitted that the replacement/reconstruction of part of the bridge is covered by section 4(1)(h) of the PDA, and therefore does not rely on the exemptions included in Schedule 2, Part 1 of the Planning Regulations and are not therefore affected by the provisions of Articles 6 or 9 of the Regulations.

5.0 Conclusion

Having regard to the provisions of the Planning and Development Acts 2000-2019; the Planning and Development Regulations 2001-2019; and precedent case law and section 5 declarations/referrals cited above, it is submitted that:

- The 'structure' in this instance comprises the entire Broomfield Ridge bridge;
- The repair/reconstruction works fall in to one/all of the categories included in Section 4(1)(h) of the 2000 Planning and Development Act (as amended) i.e. maintenance, improvement or other alteration works;
- As outlined in *McCabe v CIE* the extent of maintenance/improvement/alteration of the original structure is a key consideration under Section 4(1)(h). The standard applied by Mr Justice Herbert in *McCabe v CIE* was based on anything that did not "amount to the total or substantial replacement or rebuilding of the original structure";
- The scope of repair/remedial works comprises the replacement/reconstruction of 50% of the original fabric of the bridge. This is substantially less than the precedent established in the *McCabe v CIE* case;
- The replacement/reconstruction will replicate the structure that existed prior to the flood and will not therefore materially affect the external appearance of the structure (i.e. bridge) or render the appearance of the bridge inconsistent with the character of neighbouring structures.

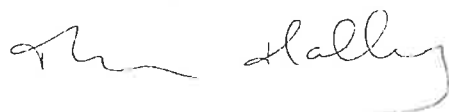
Having regard to the provisions of the Planning and Development Act, 2000 and the precedent referrals cited in this submission, it is submitted that that the repair/reconstruction of part of Broomfield Ridge bridge that was damaged by the October 2023 flood is exempted development under Section 4(1)(h) of the PDA and does not therefore require planning permission.

In accordance with the Council's requirements for Section 5 declarations please find enclosed 4 no. copies of the following:

1. This cover letter and application form which includes the applicant's name and address; the location and nature of the development;
2. The correspondence address which is: McCutcheon Halley, Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork;
3. Location Maps by McCutcheon Halley;
4. The appropriate referral fee of €80.00.

Please do not hesitate to contact us should you require any further information.

Yours sincerely,



Tom Halley
McCutcheon Halley



Legend



Site Boundary



Planning Department
 16 MAY 2024
 Cork County Council
 County Hall
 Cork

07 MAY 2024
 County Hall
 Cork

Title Water-rock, Midleton
 Site Location Map

Client Paul Moore & John Garde
 Project Knockgriffin, Midleton,
 Co. Cork

| | | | |
|------------------------------|----------------|----------|------------|
| Scale | Six Inch | Date | 07/05/2024 |
| O.S. map | CK065 CK076 | Draw No. | 2412-06 |
| | | Version | 1.1 |
| Ordnance Survey Licence No.: | EN0005416 | Drawn | TH |
| | | Checked | T.H |

McCutcheon Halley
 CHARTERED PLANNING CONSULTANTS
 Cork: 6 Joyce House, Barrack Square, Ballincollig, Cork
 Dublin: Kresion House, Arran Court, Dublin 7
 T: +353 (0)21 4208 710 F: +353 (0)21 4208 555 E: info@mhplanning.ie

PLEASE NOTE: This drawing should only be used for planning purposes. For detailed information please refer to the architectural or engineering drawings.

E587251,N575056

Legend



Area to which Declaration relates

Planning Department
16 MAY 2024
Cork County Council
County Hall
Cork

Planning Department
07 MAY 2024
Cork County Council
County Hall
Cork



E586480,N574350

Title Water-rock, Midleton, Cork
Site Location Map

Client Paul Moore & John Garde
Project Knockgriffin, Midleton Co. Cork

| | | | |
|------------------------------|------------------|----------|------------|
| Scale | 1 : 2500 | Date | 07/05/2024 |
| O.S. map | 6342-B 6342-D | Draw No. | 2412-07 |
| Ordnance Survey Licence No.: | EN0005420 | Version | 1.1 |
| | | Drawn | T.H. |
| | | Checked | T.H. |

| | | | |
|---|--------------------------------|---|---|
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| E | info@mhplanning.ie | | |

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