Michelle Ahern, Ballymacsliney, Midleton, Co. Cork.

7th January, 2025

REF:D/285/24LOCATION:Ballymacsliney, Midleton, Co. Cork

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

Dear Madam,

On the basis of the information submitted by you on 28th November, 2024 the Planning Authority, having considered whether the construction of a 1.5m concrete boundary/retaining wall to the rear and side of dwelling at **Ballymacsliney**, **Midleton**, **Co. Cork** is or is not development or is or is not exempted development, has declared that it is **exempted development**.

Reason for Decision

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

- Sections 2(1), 3(1) and 4(4) of the Planning and Development Act 2000, as amended.
- Articles 3, 6 and 10 and Class 5 of Schedule 2, Part 1 the Planning and Development Regulations 2001, as amended

And Whereas the Planning Authority hereby concludes that

The proposed construction of a 1.5m concrete boundary/retaining wall to the rear and side of dwelling at **Ballymacsliney**, **Midleton**, **Co. Cork** is deemed to constitute **"development"** as described under the Act, and it is deemed to constitute **"exempted development"**.

This exemption does NOT itself empower a person to carry out a development unless that person is legally entitled to do so.

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,

To reacy

PIO TREACY, ADMINISTRATIVE 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

D285-24- Boundary wall, Ballmacsliney Midleton

The Question

The applicant is querying whether the construction of a 1.5m concrete boundary/ retaining wall to the rear and sideof a dwelling is/ is not exempted development for the purposes of the Act

Planning History



Pl Ref No. 19/6152- Permission granted to current applicant to construct a dwelling house

Statutory Provisions

I consider the following statutory provisions relevant to this referral case: <u>Planning and Development Act, 2000</u>

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".

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.

CLASS 5

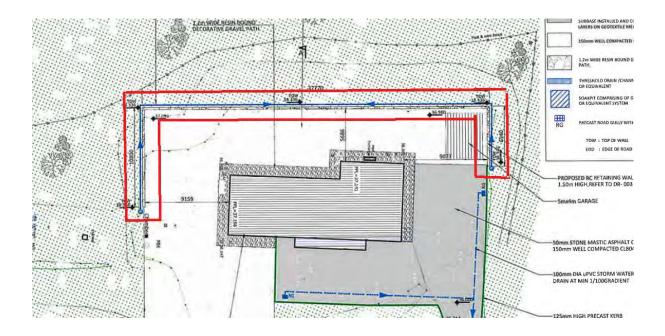
The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete. 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

3.No such structure shall be a metal palisade or other security fence.

Application detail

The proposal involves the construction of a 1.5m high concrete retaining wall to the rear and sides of the dwelling house. The wall extends an overall distance of 55m (see area highlighted in red on image below)



Assessment

Construction of a boundary wall constitutes "development" for the purposes of the Act. Class 5 of the P&DR 2001(as amended) allows construction of a concrete wall up to 2m in height to the rear/ side of the property (as in this instance). The wall does not extend beyond the front plane of the dwelling (which would necessitate a reduction in height to 1.2m). As such, the proposal appears to adhere to this exemption class. I do note the submitted sectional drawing refers to a 1.4m wall whereas the main proposal indicates 1.5m. In any event, up to 2m can be constructed

Restrictions on Exemption

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, the proposed boundary wall is not something that would trigger requirement for EIAR. Similarly the propsoal does not give rise to any increased/ negative impacts on Natura 2000 sites thus no new AA issues arise

Article 9 restrictions

The proposal would not appear to be de-exempted by any of the A9 restrictions.

The conclusions in relation **to AA and EIA set out above** refer in the context of Article 9(1)(a) (viiB) and 9(1)(c).

Conclusion

Therefore and having had regard to -

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

(b) Articles 3, 6 and 10 and Class 5 of Schedule 2, part 1 of the Planning and Development Regulations, 2001, as amended,

The Planning Authority has concluded that:

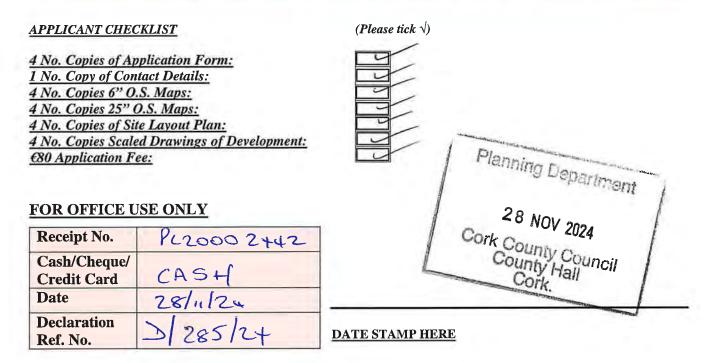
(a)the proposal constitutes "development" within the meaning of S3 of the Act

(b) The proposed retaining wall meets the provisions of Class 5 of Schedule 2, part 1 of the Planning and Development Regulations, 2001, as amended and is considered to constitute "exempted development" for the purposes of the Act

Enda Quinn Executive Planner 7/1/2025



<u>CORK COUNTY COUNCIL APPLICATION</u> 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 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

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

Ref to planning no: 196152

1. NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A - CONTACT DETAILS)

Michelle Ahern

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

Ballymacsliney, Midleton, Co Cork

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought

Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

1.301	
The proposal is for the erection of a 3m? high concrete retaining wall to the rear of my domestic dw the Structural Engineers specifications & design. I am of the opinion that these works are deemed following:	relling. This wall will be constructed as per exempted development as per the
Planning & Development Regulations 2001-2023, Part 2, Article 6, Schedule 2, Part 1, Class 5:	
Column 1, Description of Development The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gate brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	way, railing or wooden fence or a wall of
Column 2, Conditions & Limitations 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence with in front of a house, 1.2 metres.	in or bounding any garden or othe <mark>r space</mark>
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be ca or concrete block (other than blocks with decorative finish) which will be visible from any road, path space, shall be rendered or plastered.	pped and the face of any wall of concrete or public area, including public open
3. No such structure shall be a metal palisade or other security fence.	A MARKEN AND A MARKEN AND AND AND AND AND AND AND AND AND AN
Is this classed as Development and if so, is it Exempted Development under the Planning and Dev	hopm manhanng 2003 partment
	28 NOV 2024
	Cork County Council County Hall
	LOIK.

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 (m^2)

(a) Floor area of existing/proposed structure(s):	Height of wall: 1.5 , Length of Wall: 55m
 (b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1st October, 1964 (including those for which planning permission has been obtained): 	Yes No View No
(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 No Vo 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	A. Owner	B. Other
legal interest in the land or structure:		
Where legal interest is "Other", please state		Planning Department
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		28 NOV 2024
Question C in Contact Details):		
		Cork County Council
PROTECTED STRUCTURE DETAILS	ARCHITECTURAL	CONSERVATION AREA:
		UCHR.
Is this a Protected Structure/Proposed Protected	Structure or within the c	curtilage of a Protected
Structure: Yes No		
		1 20001
If yes, has a Declaration under Section 57 of the		and the second se
or issued for the property by the Planning Author	rity: Yes	No
If yes, please state relevant reference No		
Is this site located within an Architectural Conse	rvation Area (ACA), as	designated in the County
Development Plan? Yes	No	

7. APPROPRIATE ASSESSMENT:

Would the proposed development require an appropriate assessment because	se it would	be likely to
have a significant effect on the integrity of a European 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 <u>http://www.corkcoco.ie/privacy-statement-cork-county-council</u> 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)	Nichelle Breen	
Date	17th November 20	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	Michelle Aberr	
Date	17th Walenbere 2024	

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: <u>planninginfo@corkcoco.ie</u> or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: <u>westcorkplanninginfo@corkcoco.ie</u> 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 <u>Planning and Development Acts 2000</u>, <u>as amended</u> and the Regulations made thereunder:

Signed (Applicant or Agent as appropriate)	Alichalle Aborn
Date	17th November 2024

[Planning Department
	28 NOV 2024
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Land Registry

County Cork

Folio 187899F

Part 3 - Burdens and Notices of Burdens

No.		Particulars
1	07-SEP-2021 D2021LR122621N	Covenant by Michelle Ahern with John Patrick Ahern for her heirs, executors and assigns, to erect and maintain a boundary fence as specified in Instrument No. D2021LR122621N between the property herein and the property comprised in folio CK24525.
		1901:

