



Comhairle Cathrach Chorcaí Cork City Council

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

Katherine Fitzpatrick
Ciaran Wilkenson
1 The Circle
Broadale
Maryborough Hill
T12DK5K

20/01/2022

**RE: Section 5 Declaration R702/22 – 1 The Circle,
Broadale, Maryborough Hill**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

the Planning Authority considers that —

The construction of a boundary wall to the side of the dwelling as development and is **not exempted development**

Is misa le meas,

Kerry Bergin
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

Application type	SECTION 5 DECLARATION
Question	<i>Is the construction of a boundary wall to the side of the dwelling development and, if so, is it exempted development?</i>
Location	11 The Circle, Broadale, Maryborough Hill, Douglas, Cork
Applicant	C Wilkinson (owner)
Date	20/01/2022
Recommendation	Constitutes development; is not exempted development

INTERPRETATION

In this report 'the Act' means the Planning and Development Act, 2000 as amended and 'the Regulations' means the Planning and Development Regulations, 2001 as amended, unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION APPLICATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

The question to the planning authority is not framed using the phrasing of section 5. The applicant states in the request, *"Is the repositioning of a boundary wall at 1 The Circle, Maryborough Hill to enclose our entire plot exempted from planning permission?"*.

In my opinion the intention of the request is clear, and that it is entirely reasonable to consider the question before the planning authority as being:

Is the construction of a boundary wall to the side of the dwelling development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a two-storey, semi-detached dwelling in the Existing Built Up Area zoning area. The area is predominantly residential in nature. The area of land to which the wall pertains comprises an open piece of landscaped green space with tree planting.

4. DESCRIPTION OF THE DEVELOPMENT

Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5(1)

See section 1 of this report.

6.2 Planning and Development Regulations 2001 to 2018 as amended

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

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

(Article 6) Schedule 2, Part 1, Class 5

Classes 1-8 relate to development within the curtilage of a house and Class 5 relates to “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”.

Article 9

Article 9 sets out restrictions on exemptions specified under Article 6.

Schedule 2, Part 1, Class 5

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 5 <i>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</i></p>	<p>1. <i>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.</i></p>

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(1)

I do not consider that the proposal comes within the scope of section 4(1) of the Act.

Section 4(2)

It is therefore necessary to consider whether the proposed boundary wall comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word ‘or’ in section 4(3).

I consider that Article 6 and **Class 5** applies, as the development is for the construction of a boundary wall within or bounding the curtilage of a house. However, the proposed boundary wall would consist of the fencing or enclosure of land habitually open to or used by the public, the proposed development.

Restrictions on exemption

Given that the proposed boundary wall would consist of the fencing or enclosure of land habitually open to or used by the public, I consider that the following restrictions apply in this instance.

Article 9 Restrictions on exemption.

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

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

As the boundary wall in the proposed position would result in the enclosure of any land habitually open to or used by the public, the development is not considered to be exempt.

CONCLUSION

Constitutes development, is not exempted development.

Gillian Tyrrell
Assistant Planner
13.01.2022

04 JAN 2022

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCILStrategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021 4924564/4521

Líonra/Web: www.corkcity.ie

CORK CITY COUNCIL

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)**1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT**1 THE CIRCLE, BROADALE
MARYBOROUGH HILL T12 DK5K**2. QUESTION/ DECLARATION DETAILS****PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:***Sample Question:* Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*Note: only works listed and described under this section will be assessed under the section 5 declaration.*IS THE REPOSITIONING OF ~~OO~~ A BOUNDARY
WALL AT 1 THE CIRCLE, MARYBOROUGH HILL
TO ENCLOSE OUR ENTIRE PLOT EXEMPTED
FROM PLANNING PERMISSION?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:*(Use additional sheets if required).*WE ARE LOOKING FOR EXEMPTION TO MOVE
OUR BOUNDARY WALL TO ENCLOSE OUR ENTIRE
PLOT AS WE ARE EXPERIENCING SOME
ANTI SOCIAL BEHAVIOR ON THE ~~NEIGHBOURHOOD~~
UNENCLOSED PIECE OF GROUND.WE ALSO HAVE CONCERNS ABOUT LIABILITY
ON THE UNENCLOSED PLOT, CHILDREN
FROM THE AREA TEND PLAY AND
GATHER IN THIS SECTION OF GROUND.
SEE ATTACHED PLANS.SEE PHOTO A AND B FOR A
SIMILAR RELOCATION OF THE BOUNDARY WALL
AT OUR NEIGHBOURS ACROSS THE ROAD.

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

Signature: E. Wilkinson

Date: 20 / 12 / 21

.....

ADVISORY NOTES:

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

The application should 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 Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

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

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

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

Projection: RECT1916_1m_Transverse_Mercator
Historic OS Latest Edition

Data Source/Reference:

CH074

Revision Date = 31-Dec-1928

Survey Date = 31-Dec-1928

Levelled Date = 31-Dec-1928

CH075

Revision Date = 31-Dec-1929

Survey Date = 31-Dec-1929

Levelled Date = 31-Dec-1929

CH086

Revision Date = 31-Dec-1928

Survey Date = 31-Dec-1928

Levelled Date = 31-Dec-1928

CH087

Revision Date = 31-Dec-1929

Survey Date = 31-Dec-1929

Levelled Date = 31-Dec-1929

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Ordnance Survey maps never show legal property boundaries,
nor do they show ownership of physical features.

GENERAL DRAWING NOTES:

1. Drawing to be used for Planning Permission purposes
only and not to be used for Construction.
2. Drawing based on Ordnance Survey Maps, all setting out
dimensions to be confirmed by Contractor prior to
commencement of works.
3. Drawing is not to be scaled.
4. All dimensions are in millimetres unless noted otherwise.
5. All levels are in metres unless noted otherwise.
6. All areas are in square metres unless noted otherwise.
7. Figured dimensions only to be used.
8. All dimensions to be site checked.
9. Service Providers to be contacted for locations of utilities
to the area of works prior to any excavations.
10. Detail Design and Certification by Others.

GRID
NORTH



NAME
CIARAN WILKINSON

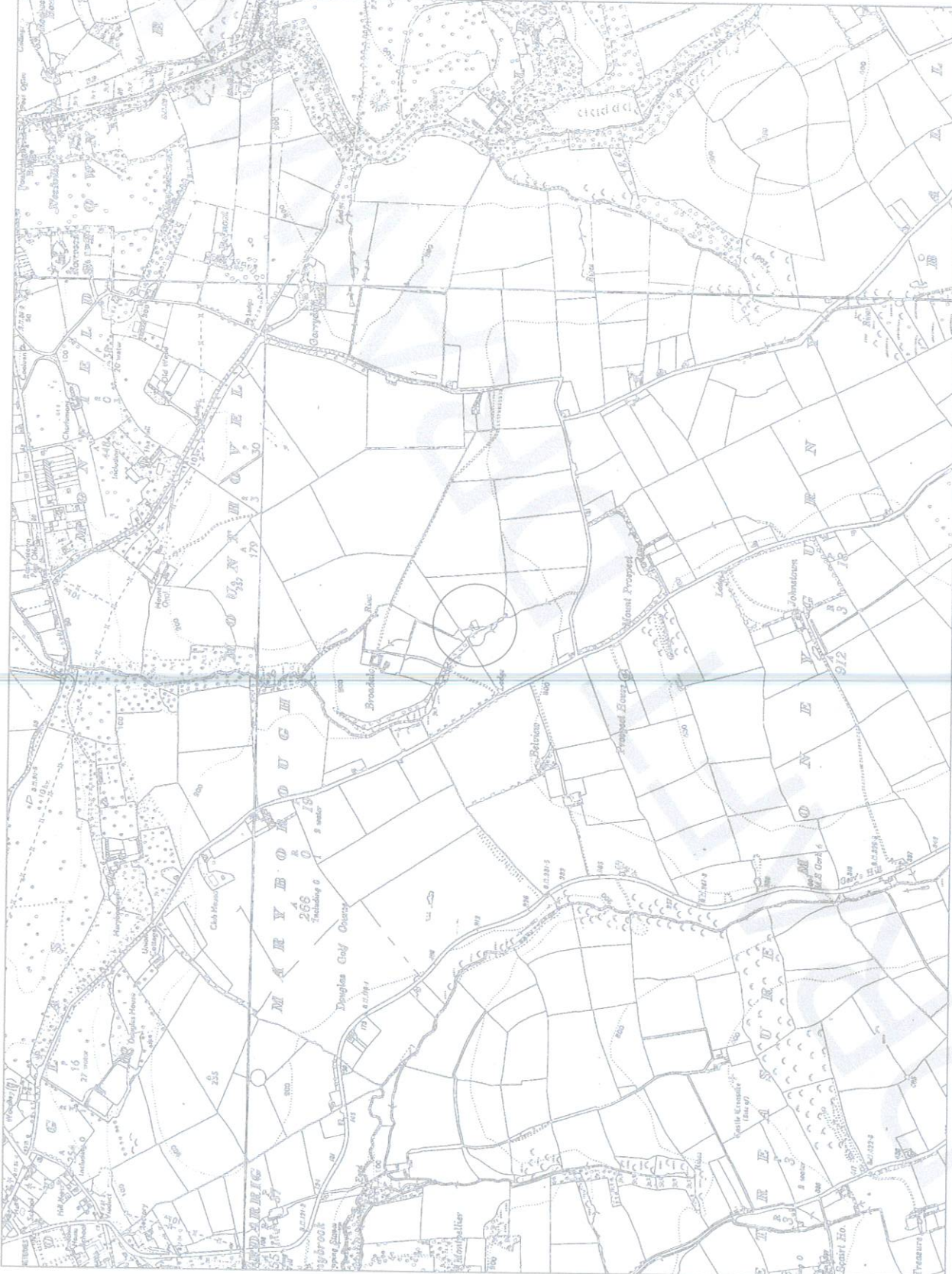
ADDRESS
1 THE CIRCLE
BROADALE
MARYBOROUGH HILL
DOUGLAS
CORK

PROJECT
PROPOSED NEW BOUNDARY WALL

DRAWING TITLE
PLACE MAP

DRAWING NUMBER
CW-001

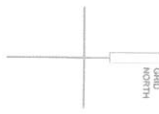
SCALE
1:10,560 (5")





Proposed - RDNCTRS_11th_Township_Municipal
 Map Series 1 Map Sheets
 1:1,000 (Scale)
 1:1,000 (Scale)
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GENERAL DRAWING NOTES:
 1. Drawing to be used for Planning Permission Purposes
 2. Drawing based on Ordnance Survey Maps, all existing cut and levels to be confirmed by Contractor prior to commencement.
 3. All levels are in metres unless noted otherwise.
 4. All levels to be checked on site.
 5. All levels to be checked on site.
 6. All levels to be checked on site.
 7. Figured dimensions only to be used.
 8. Survey provided for site contact for locations of utilities to the area of works prior to any excavation.
 9. Detail Design and Certification by O'Brien.
 10.



Outline of Landholding

name
CIARAN WILKINSON
 address
 1 THE CIRCLE
 BROADDALE
 MARYBOROUGH HILL
 DUBLIN 15
 DOUGLAS
 CO. DUB.
 project
PROPOSED NEW BOUNDARY WALL

drawing title
SITE LOCATION MAP
 drawing number
CW/002
 scale
 1:1,000

Projection: REACT05_Inst_Transverse_Mecator

Map Series | Map Sheets
1:2,500 | 6428 D3 Annual / Copyright

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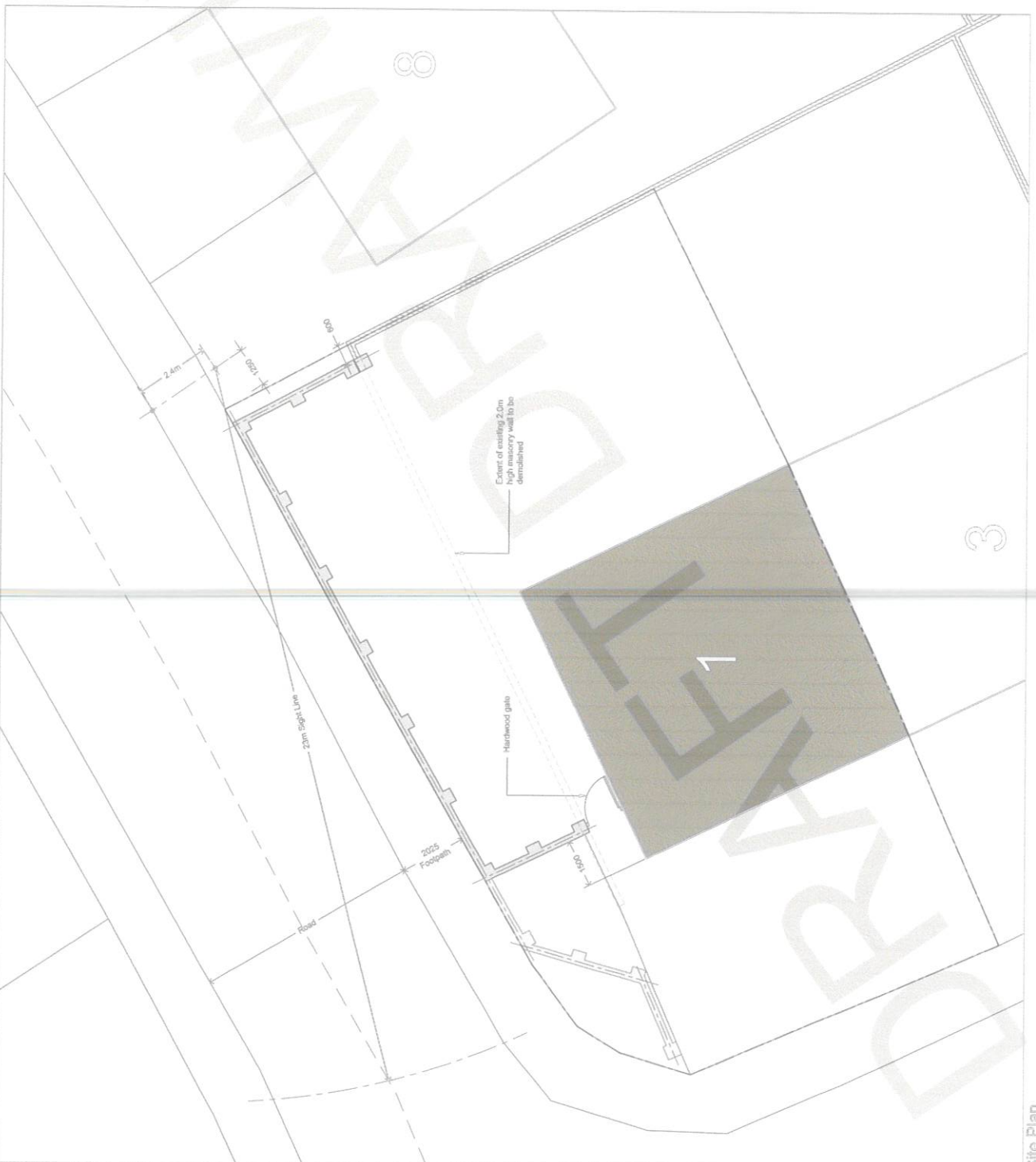
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Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

GRID NORTH



BOUNDARY WALL LEGEND:

- Outline of Linetholding
- Fairing with brick coping and dashed finished.
- Proposed 2.0m max. high masonry wall to be demolished. Fairfaced finish to public face, all to match existing.
- Proposed 1.2m max. high masonry wall. Brick coping, dashed finished to each face, all to match existing.

name
CIARAN WILKINSON

address
**1 THE CIRCLE
BROADALE
MARYBOROUGH HILL
DOUGLAS
CORK**

project
PROPOSED NEW BOUNDARY WALLS

drawing title
PROPOSED SITE PLAN

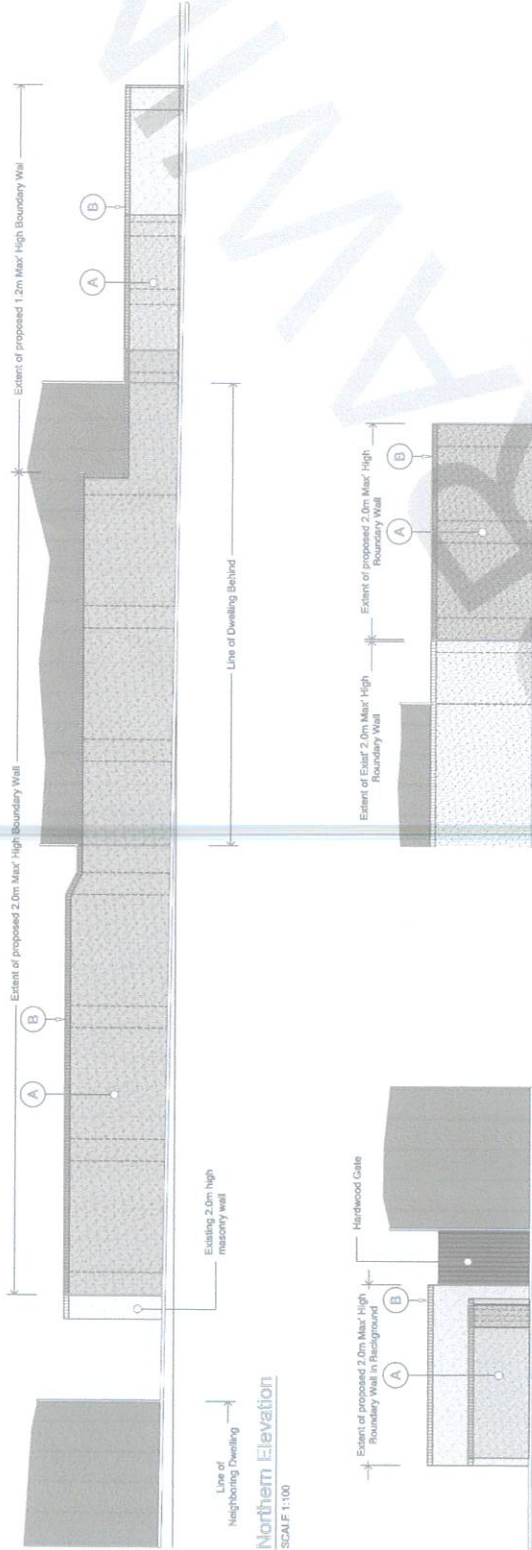
drawing number
CW-003

scale
1:125

- GENERAL DRAWING NOTES:**
- Drawing to be used for Planning Permission Purposes only and not to be used for Construction
 - Drawing based on Ordnance Survey Maps, all setting out and levels to be confirmed by Contractor prior to construction
 - Drawing is not to be scaled.
 - All dimensions are in millimeters unless indicated otherwise.
 - All levels are in meters unless noted otherwise.
 - Levels are to be finished to top of work.
 - Equal dimensions only to be used.
 - All dimensions to be site checked.
 - Service Providers to be contacted for locations of utilities to the area of works prior to any excavations.

FINISHES LEGEND:

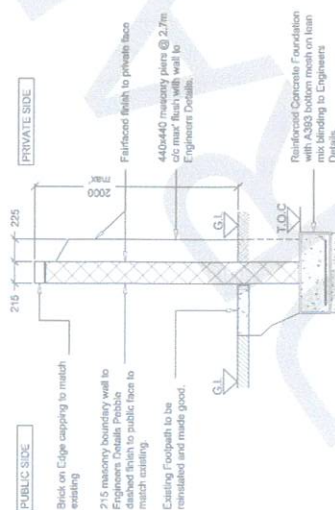
- (A) Pebble Dashed Finish to match existing
- (B) Brick Capping to match existing



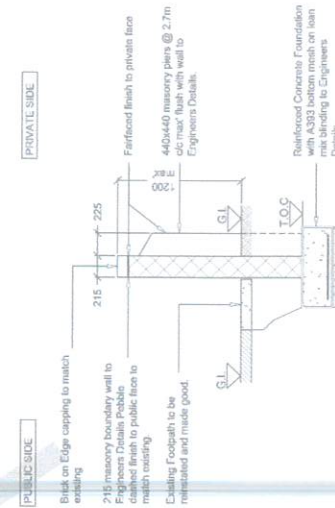
Northern Elevation
SCALE 1:100

Western Elevation
SCALE 1:100

Eastern Elevation
SCALE 1:100



Typical Section Through 2.0m High Wall
SCALE 1:50



Typical Section Through 1.2m High Wall
SCALE 1:50

ARCHITECT
CIARAN WILKINSON

address
1 THE CIRCLE
BROADDALE
MARYBOROUGH HILL
DOUGLAS
CORK

project
PROPOSED NEW BOUNDARY WALLS

drawing title
PROPOSED ELEVATIONS & SECTIONS

drawing number
CW-004

scale
1:100 + 50

