

Comhairle Cathrach Chorcaí Cork City Council

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

Nicholas Moriarty
11 The Circle
Broadale,
Maryborough Hill,
Douglas,
Cork

13/08/2020

**RE: Section 5 Declaration R577/20 11 The Circle,
Broaddale, Maryborough Hill, Douglas, Cork**

Dear Mr. Moriarty

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

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of a boundary wall to the side of the dwelling at 11 The Circle, Broadale, Maryborough Hill, Douglas, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Yours sincerely

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT
Ref. R 577/20

Cork City Council
Development Management
Strategic Planning and
Economic Development

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	Nicholas Moriarty (owner)
Date	13/08/2020
Recommendation	Is development and is exempted development

This report is to be read in conjunction with previous planning report, dated 09/07/2020, which requested further information.

1. FURTHER INFORMATION ASSESSMENT

Further Information was requested on 09/07/2020. A response to same was received on 21/07/2020. There were 2 (two) No. items of further information requested.

- 1) The applicant is requested to submit a site layout plan showing details of the proposed boundary wall ensuring that the height of any such structure shall not exceed 2 metres to the side and rear of the dwelling house and 1.2 metres forward of the front building line of the dwelling house.*

The applicant has confirmed that the boundary wall will not exceed a height of 2 metres to the side and rear of the dwelling house and 1.2 metres forward of the front building line of the dwelling house. This response is considered acceptable.

- 2) The applicant is requested to confirm that no alteration to the existing vehicle entrance is proposed as part of this application and that, should it be proposed to widen the existing vehicle entrance, planning permission would be sought for same.*

The applicant has confirmed that there will be no alteration to the vehicle entrance as part of these proposed works and has confirmed that they are aware that any alteration to the vehicle entrance would require a planning permission application.

2. ADDITIONAL ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,
- to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the response to the further information relating to the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required.**

Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the response to the further information relating to the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required.**


3. RECOMMENDATION

In view of the above and having regard to —

- Sections 2, 3, and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

the planning authority considers that —

the construction of a boundary wall to the side of the dwelling at 11 The Circle, Broadale, Maryborough Hill, Douglas, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT.**



Eoin Cullinane
Assistant Planner
12/08/2020

Land Registry Compliant Map



National Mapping Agency

CENTRE COORDINATES:
ITM 571752.568111

PUBLISHED: 07/05/2020
ORDER NO.: 50119130_1

MAP SERIES: 1:2,500
MAP SHEETS: 6428-D

"A" > 1.2 metres forward of front Building line of Dwelling House.

"B" → Height of wall to 0-m @ Maximum of 2 metres
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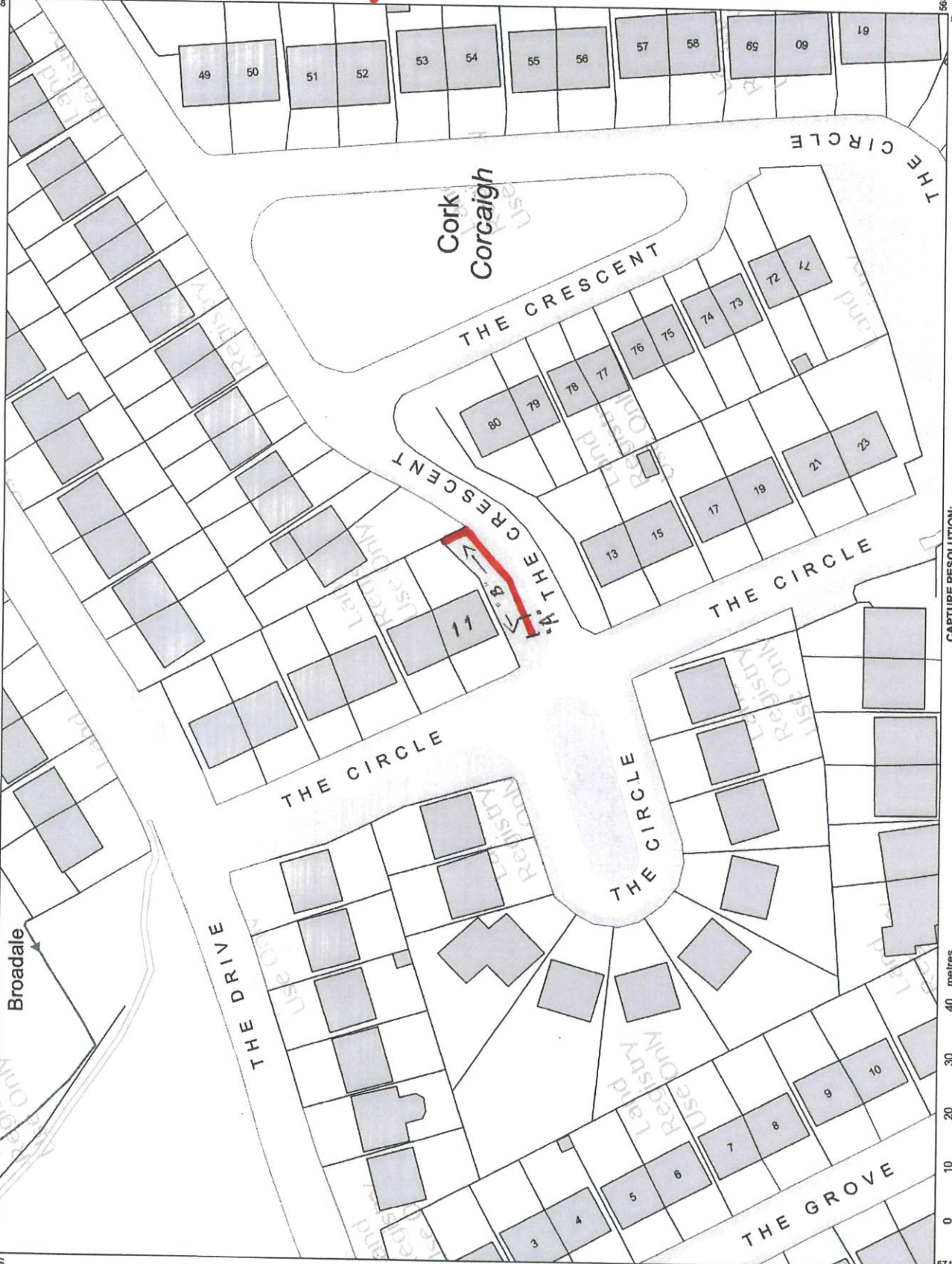
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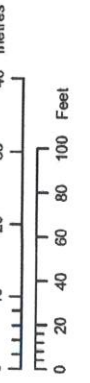


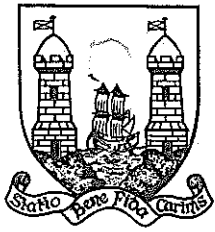
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OUTPUT SCALE: 1:1,000





Comhairle Cathrach Chorcaí Cork City Council

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

Nicholas Moriarty
11 The Circle
Broadale
Maryborough Hill
Douglas
Cork

13/07/2020

**RE: Section 5 Declaration R577/20 - 11 The Circle,
Broadale, Maryborough Hill, Douglas**

A Chara,

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

It is recommended that the following further information be sought:

1. The applicant is requested to submit a site layout plan showing details of the proposed boundary wall ensuring that the height of any such structure shall not exceed 2 metres to the side and rear of the dwelling house and 1.2 metres forward of the front building line of the dwelling house.
2. The applicant is requested to confirm that no alteration to the existing vehicle entrance is proposed as part of this application and that, should it be proposed to widen the existing vehicle entrance, planning permission would be sought for same.

Is misa le meas,

Kerry Bergin

Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

PLANNER'S REPORT
Ref. R 577/20

Cork City Council
Development Management
Strategic Planning and
Economic Development

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	Nicholas Moriarty (owner)
Date	09/07/2020
Recommendation	Further Information Required

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, "I wish to knock the existing side wall on my property and rebuild, to the same specification, at the boundary of my site as shown on the attached PRA Map. Please confirm that this can be done without planning permission and advise if there are any requirements I should be aware of before proceeding".

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.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of a six (6) foot dashed wall with a redbrick top of approximately 21m to the side and rear of the existing property.

5. RELEVANT PLANNING HISTORY

None

6. LEGISLATIVE PROVISIONS

6.1 Planning and Development Act, 2000 as amended

Section 2(1)

"exempted development" has the meaning specified in section 4.

"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).*

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

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

Section 4(1)(h)

4.(1) The following shall be exempted developments for the purposes of this Act—

...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2)

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

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 9

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

(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”.

Schedule 2, Part 1, Class 5

Exempted Development — General

<p style="text-align: center;">Column 1 Description of Development</p>	<p style="text-align: center;">Column 2 Conditions and Limitations</p>
<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 decorative finish, other concrete blocks or mass concrete.</i></p>	<ol style="list-style-type: none"> <li data-bbox="774 1630 1417 1771">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> <li data-bbox="774 1809 1417 2018">2. <i>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</i>

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
	<p><i>space, shall be rendered or plastered.</i></p> <p>3. <i>No such structure shall be a metal palisade or other security fence.</i></p>

7. ASSESSMENT

7.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’.

‘Works’ is defined in section 3(1) of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. In relation to proposed boundary wall to the side and rear of the existing dwelling, it is clear that a new boundary wall constructed to the side and rear of a dwelling house comprises ‘works’. As the proposal comprises ‘works’, it is clearly therefore ‘development’ within the meaning of the Act.

CONCLUSION Is development

7.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines ‘exempted development’ as having ‘the meaning specified in section 4’ of the Act (which relates to exempted development).

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 to the side and rear of the house.

Having assessed the proposed development against Class 5 and its conditions and limitations I find as follows:

Condition / Limitation 1

Further information is required to clearly show the extents of the proposed new boundary wall and to ensure that the proposed wall does not exceed 2 metres to the side and rear of the house and 1.2 metres for the extents of the wall forward of the front building line of the house.

Condition / Limitation 2

The proposed finishes are to match that of the existing wall.

Condition / Limitation 3

The proposed finishes are to match that of the existing wall and will not be a metal palisade or other security fence.

Note:

It is noted that the application form states that the proposed works are to allow for additional car-parking to the existing dwelling. Further information should be sought to confirm that no widening of the vehicle entrance is permitted by the application and that if the vehicle entrance is proposed to be widened that planning permission would be required for same.

Restrictions on exemption

I do not consider that any apply in this instance.

CONCLUSION

Further Information Required

8. ENVIRONMENTAL ASSESSMENT

I note the provisions of sections 4(4), 4(4A) and 177U(9) of the Act which state,

Section 4(4),

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 4(4A)

Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
- (b) as respects which an environmental impact assessment or an appropriate assessment is required,*

to be exempted development.

Section 177U(9)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

8.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that **environmental impact assessment is not required**.

8.2 Screening for Appropriate Assessment

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly it is considered that **appropriate assessment is not required**.

9. RECOMMENDATION

It is recommended that the following further information be sought:

1. The applicant is requested to submit a site layout plan showing details of the proposed boundary wall ensuring that the height of any such structure shall not exceed 2 metres to the side and rear of the dwelling house and 1.2 metres forward of the front building line of the dwelling house.
2. The applicant is requested to confirm that no alteration to the existing vehicle entrance is proposed as part of this application and that, should it be proposed to widen the existing vehicle entrance, planning permission would be sought for same.



Eoin Cullinane
Assistant Planner
09/07/2020

11 MAY 2020

Strategic Planning & Economic
Development Directorate

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

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

Fón/Tel: 021-4924762

Líonra/Web: www.corkcity.ie

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

11 The Circle, Broadale, Maryborough Hill, Douglas, Cork. T12 AHV0

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.

I wish to knock the existing side wall on my property and rebuild, to the same specification, at the boundary of my site as shown on the attached PRA Map. Please confirm that this can be done without planning permission and advise if there are any requirements I should be aware of before proceeding-----

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The existing wall was erected by the developer of the Broadale Site but it is not at the boundary of my site as identified in the attached. As with most residential estates, parking is an issue and as my children buy cars I primarily want to extend the driveway area to mitigate the impact on on-street parking. A neighbour of mine carried out a similar exercise 2 years ago and I want to ensure that I go about this correctly in the interests of maintaining good neighbourly relationships etc. The existing wall is a 6 foot dashed wall with redbrick top and I would construct the new wall to the same size and specification-----

3. Are you aware of any enforcement proceedings connected to this site? No
 If so please supply details:

4. Is this a Protected Structure or within the curtilage of a Protected Structure? n/a

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?

5. Was there previous relevant planning application/s on this site?
 If so please supply details:

6. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	c. 21 metre x 2 metre wall
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) _____
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
_____	_____
_____	_____
_____	_____

8. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <u>YES</u> <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: Nicholas Maniatis
 Date: 11/5/2020

- 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.

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We request that you read these as they contain important information about how we process personal data.

Registry Compliant Map



CENTRE COORDINATES:
ITM 571752,568111

PUBLISHED: 07/05/2020
ORDER NO.: 50119130_1

MAP SERIES: 1:2,500
MAP SHEETS: 6428-D

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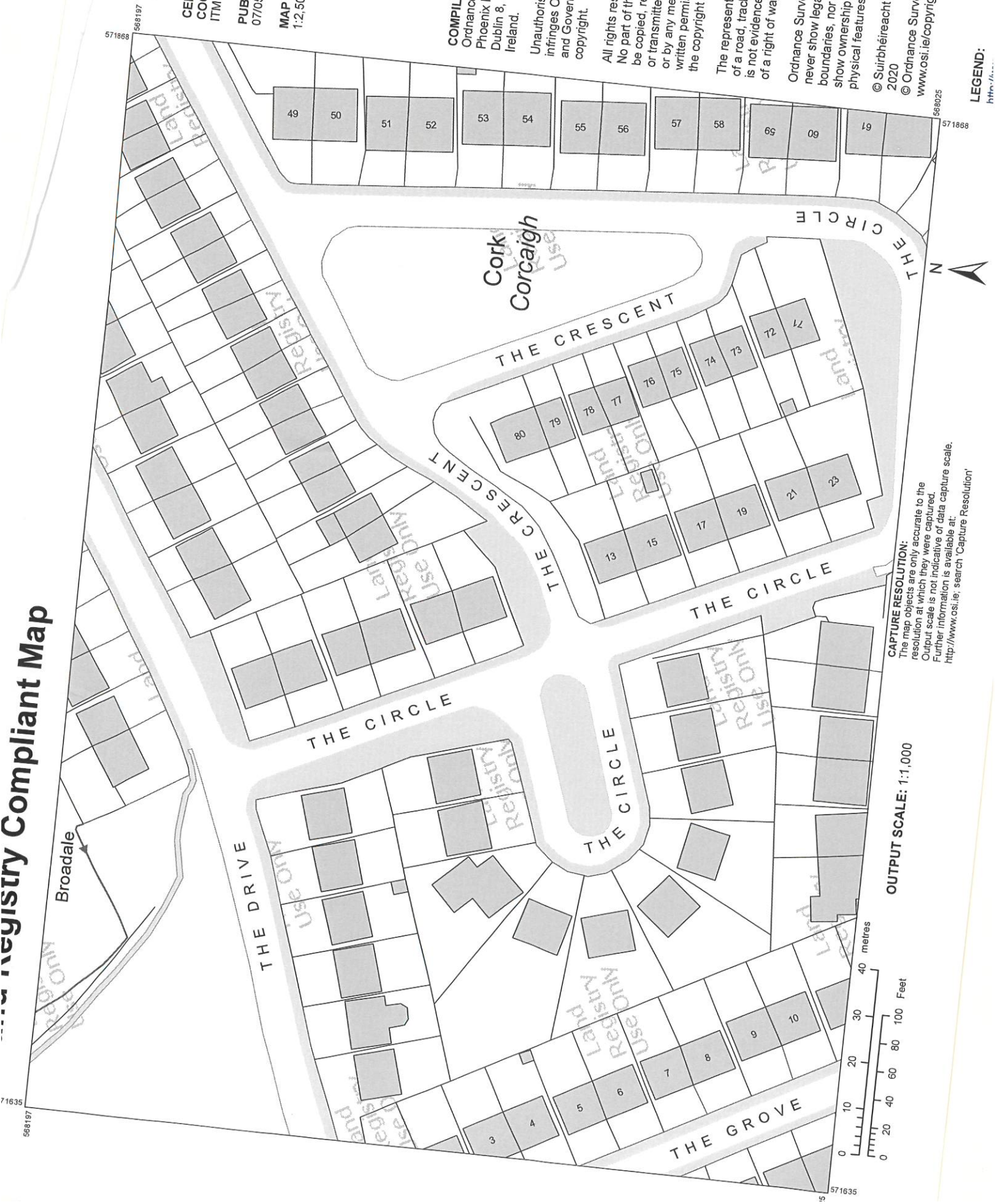
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11 The Cir - Google Maps

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