



Comhairle Cathrach Chorcaí Cork City Council

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



11/12/2025

RE: Section 5 Declaration R992/25. 9, The Heights, Broadale, Maryborough Hill, Cork. T12 AW9N

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 06th of October 2025.

The Question before the Planning Authority was whether the construction of a 1.2m boundary wall/fence to the front of the dwelling development and, if so, is it exempted development?

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 1.2m boundary wall/fence to the front of the dwelling at 9 The Heights, Broadale, Maryborough Hill, Cork, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT**.

Is mise le meas,

Anthony Angelini

Anthony Angelini
Assistant Staff Officer
Planning & Integrated Development
Cork City Council



We are Cork.

Application type	SECTION 5 DECLARATION
Question	<i>Is the construction of a 1.2m boundary wall/fence to the front of the dwelling development and, if so, is it exempted development?</i>
Location	9 The Heights, Broadale, Maryborough Hill, Cork
Applicant	Brian McNamara (owner)
Date	24/02/2026
Recommendation	Is development and is 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 details of the proposed development *"Is the erection of a 1.2m hi "smartfence" wall to the front of my dwelling an "exempted development"?"*

It is considered that 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 1.2m boundary wall/fence to the front of the dwelling development and, if so, is it exempted development?

3. SITE DESCRIPTION

The subject property is a single storey, detached dwelling in the Sustainable Residential Neighbourhoods zoning area. The area is predominantly residential in nature.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development comprises the construction of a 1.2m high post & infill fence to the front of the existing property. The fence/wall would not exceed 1.2m in height to the front of the dwelling.

5. RELEVANT PLANNING HISTORY ON SUBJECT SITE

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”*.

Article 9

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

Schedule 2, Part 1, Class 5

Exempted Development — General

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<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</i></p>	<ol style="list-style-type: none"> 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> 2. <i>Every wall other than a dry or natural stone</i>

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

The provisions of Article 9 ‘Restrictions on exemption’ are noted.

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,

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/fence to the front of the existing dwelling, it is clear that a new boundary wall constructed to the front 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).

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

Section 4(1)

It is not considered 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/fence 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).

It is considered 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.

Restrictions on exemption

It is not considered that any apply in this instance.

CONCLUSION

Is exempted development

8. ENVIRONMENTAL ASSESSMENT

The provisions of sections 4(4), 4(4A) and 177U(9) of the Act are noted 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

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 1.2m boundary wall/fence to the front of the dwelling at 9 The Heights, Broadale, Maryborough Hill, Cork, Cork **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT.**



Eoin Cullinane
Executive Planner

11/12/2025

The Development Management Section,
Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall
Anglesea Street,
Cork.

19/9/25

Ref: Section 5 Declaration Application for Boundary Fence at 9 The Heights, Broadale, Maryborough Hill, Cork, T12 AW9N.

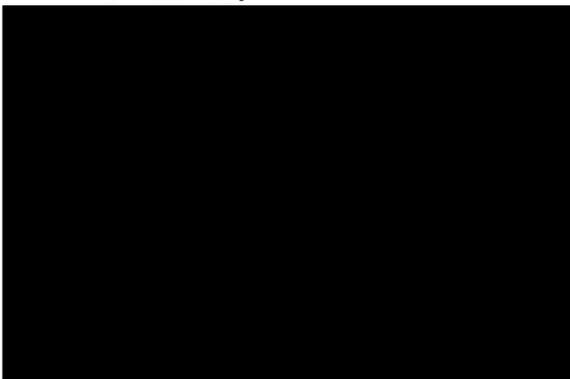
A Chara

Please find attached in connection with above listed, two copies;

1. A3 1:1000 Land Registry Compliant Map indicating my dwelling location outlined in Red .
2. A4 1:200 Site Layout Map indicating my dwelling location and scale/scope of proposed front boundary.
3. A 4 Photographic Perspectives from Western and Eastern aspects indication existing and proposed elevations in relation to proposed front elevation boundary.
4. A4 drawing of modular single typical elevation of proposed boundary component.
5. Application Form.

We would add that this is our preferred design for boundary enclosure as it avoids more invasive excavations that would require movement of public electrical and gas mains which straddle our front boundary historically and is in keeping with the varied fences, walls and enclosures that permeate the surrounding 'Heights' neighbourhood .

Yours Sincerely



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: 021-4924029

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Brian Mc Namara

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

9, THE HEIGHTS, BROADALE, MARYBOROUGH
HILL, CORK, T12 AWSN

3. 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 ERECTION OF A 1.2m hi "SMARTFENCE"
WALL TO THE FRONT OF MY DWELLING
AN 'EXEMPTED DEVELOPMENT.'

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Post & Infill is preferred to strip
foundation & wall due to ESB &
NATURAL GAS PIPEWORK ALONG FRONT
ELEVATION.

GREY TONES & 1.2m hi layout blends
with surrounding FINISHES.

4. Are you aware of any enforcement proceedings connected to this site?
 If so please supply details:

NO

5. Is this a Protected Structure or within the curtilage of a Protected Structure?

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?

6. Was there previous relevant planning application/s on this site?

If so please supply details:

7. 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)

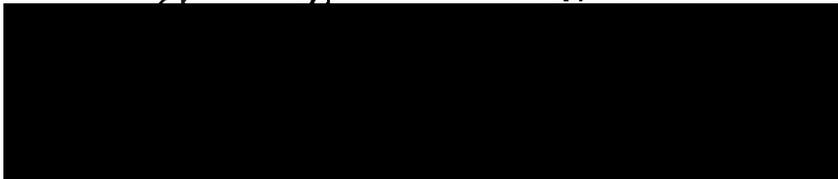
(a) Floor area of existing/proposed structure/s	<u>N/A</u>
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input type="checkbox"/> 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)

7. LEGAL INTEREST

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 in question		
If you are not the legal owner, please state the name of the owner if available		

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

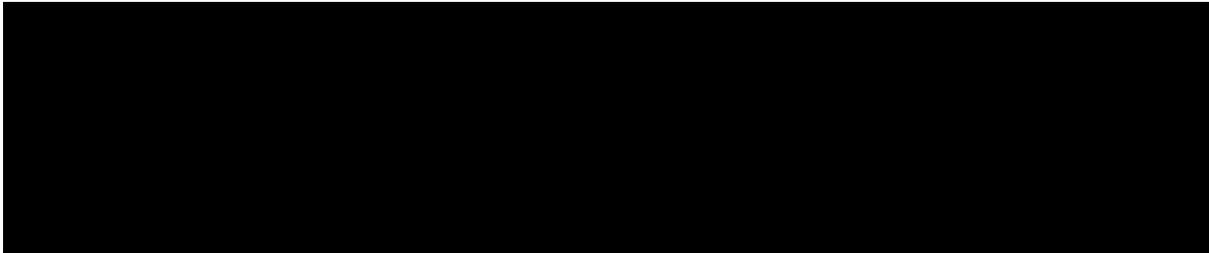
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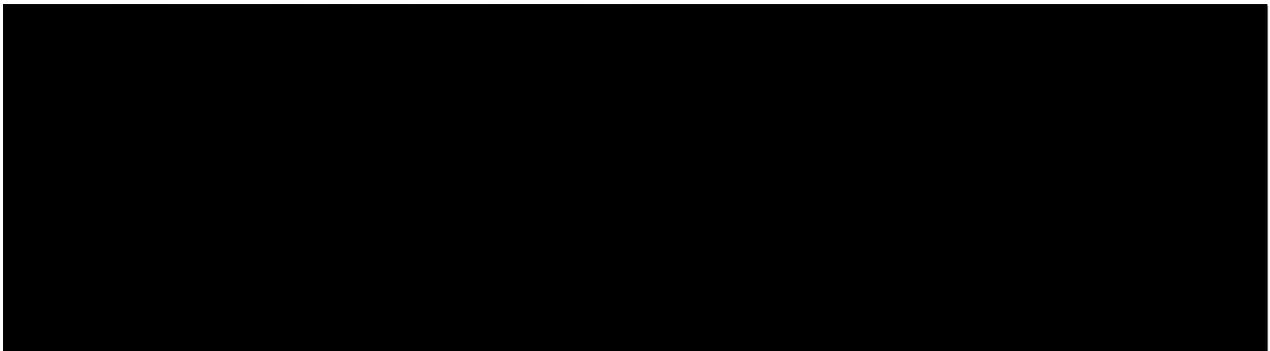
CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

9. Applicant:



10. Person/Agent acting on behalf of the Applicant (if any):



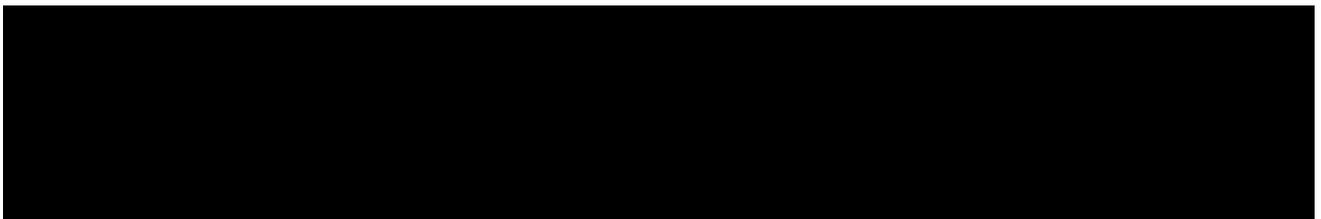
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
---	---

11. Owner Details (if the applicant above is not the legal owner):

<i>Name(s)</i>	_____ N.A.
<i>Address</i>	_____ W.A.

12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.



For Office Use Only: File Ref. No. _____

ADVISORY NOTES:

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

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

Please email planning@corkcity.ie with any queries.

- 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

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-info/data/>

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



Drawings Prepared by

Michael Pierce B.Eng

Date: 13/5/25

9 The Heights, Broadale,
Maryborough Hill,
Cork

T12 AW9N

Existing Front Elevation. EAST



9 The Heights, Broadale,
Maryborough Hill,
Cork
T12 AW9N
Existing Front Elevation. WEST

Drawings Prepared by
Michael Pierce B.Eng
Date: 19/9/25

Drawings Prepared by

Michael Pierce B.Eng

Date: 15/3/26



Proposed New Front Elevation Enclosure

“Smartfence” Post & Panel.

Colour: Merlin Grey

Height: 1200mm.

Panel Sections 1800mm. wide X 1200mm hi.

9 The Heights, Broadale,

Maryborough Hill,

Cork

T12 AW9N

Proposed Front Elevation. EAST

Drawings Prepared by

Michael Pierce B.Eng

Date: 19/9/25



Proposed New Front Elevation Enclosure

"Smartfence" Post & Panel.

Colour: Merlin Grey

Height: 1200mm.

Panel Sections 1800mm. wide X 1200mm hi.

9 The Heights, Broadale,

Maryborough Hill,

Cork

T12 AW9N

Proposed Front Elevation.

WEST

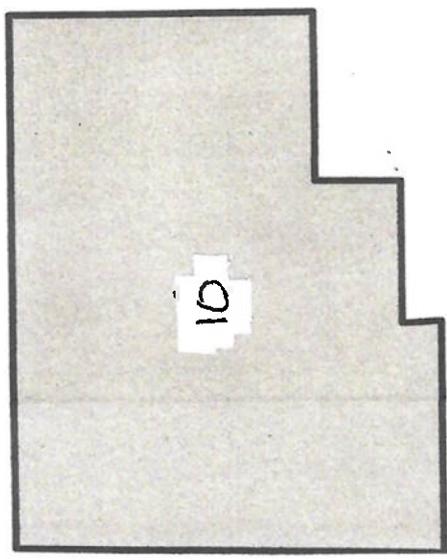
Site Layout Plan 1:200

DWELLINGS AT
9 THE HEIGHTS
MARYBOROUGH HILL
CORK OUTLINE 14

RED

Drawings Prepared by
Michael Pierce B.Eng
Date: 19/9/25

Date: 19/9/25



3000-4000mm hi
coniferous trees at
ADJACENT COMMON
BOUNDARY.



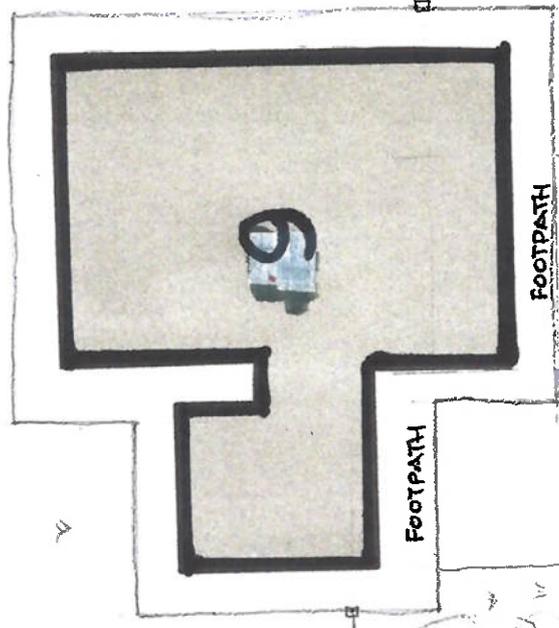
← THE HEIGHTS →



POST & INFILL at
ADJACENT BOUNDARY
1500mm hi x 1800mm wide

PROPOSED
NEW FRONT BOUNDARY 1200mm hi
OUTLINE IN YELLOW

← THE HEIGHTS →



FOOTPATH

FOOTPATH

DRIVEWAY

LAWN

ESB
JUNCTION
BOX

GAS
METER
BOX

14,850

2880

← 2270



CENTRE COORDINATES:
ITM 571703.568301

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19/08/2025

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1:2,500

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**Dwelling at 9 The Heights,
Broadale,
Maryborough Hill,
Cork
T12 AW9N
Site 'A' Outlined in Red.**



LEGEND:
To view the legend visit www.tailte.ie and search for 'Large Scale Legend'

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured.
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Further information is available at: www.tailte.ie, search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



Drawings Prepared by

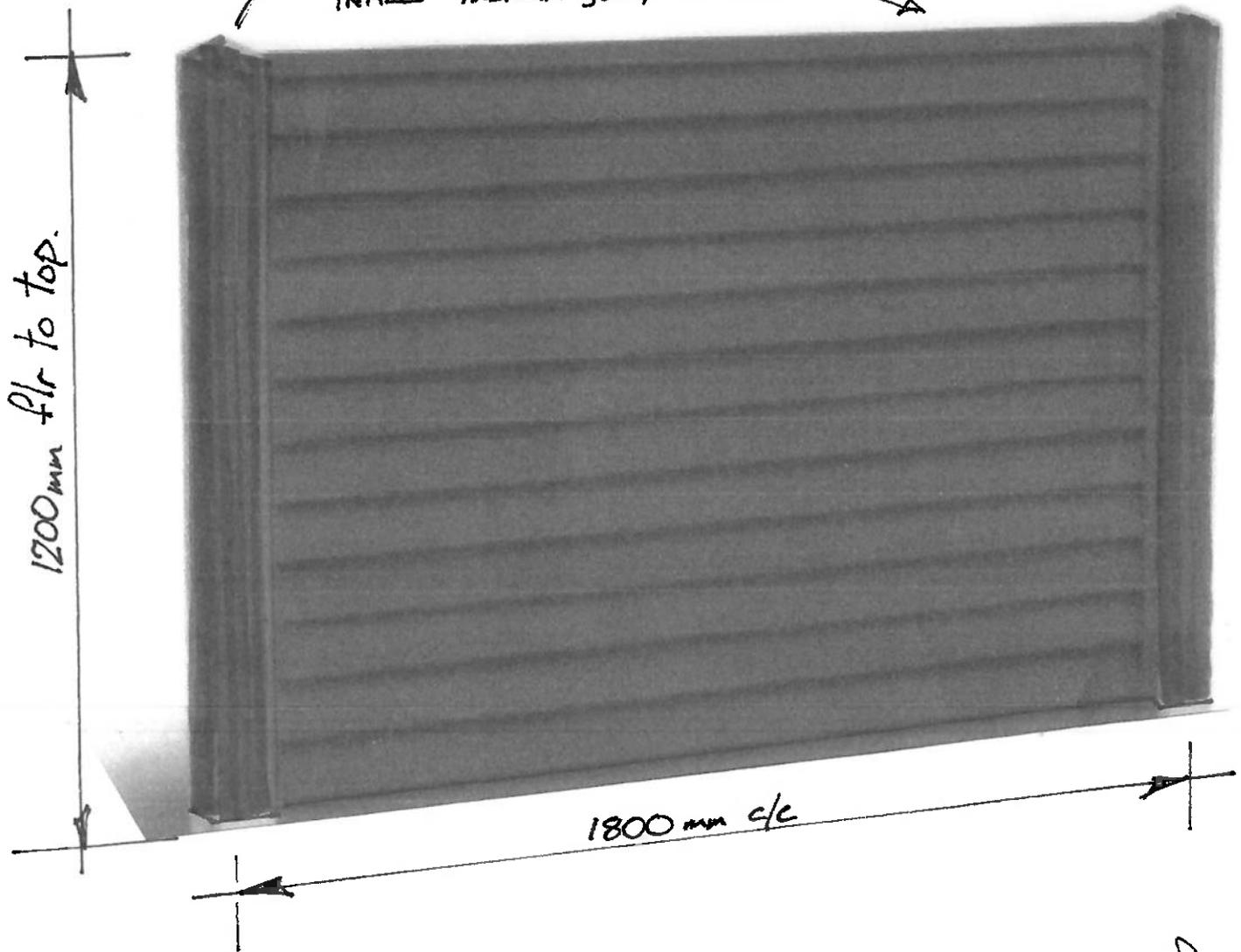
Michael Pierce B.Eng

Date: 19/9/25

PROPOSED BOUNDARY ENCLOSURE AT FRONT ELEVATION

9 THE HEIGHTS
MARYBOROUGH HILL
CORK.

CONCRETE POST FINISHED
IN 'MERLIN GREY' TO MATCH
INFILL "MERLIN GREY" PANELS



BOUNDARY MADE UP OF MODULAR 1800mm wide INFILL PANELS
BETWEEN CONCRETE POSTS.
HEIGHT LIMITED TO 1200mm ABOVE FINISHED FOOTPATH LVL.

Drawings Prepared by

Michael Pierce B.Eng

Date: 19/9/25