

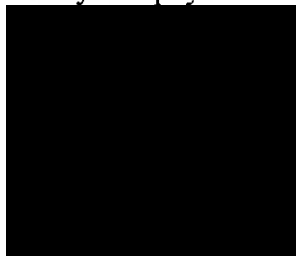


Comhairle Cathrach Chorcaí

Cork City Council

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

Ray Murphy.



04/06/2025

RE: Section 5 Request:

R949/25. 49 The Crescent, Broadale, Maryborough Hill, Cork.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on the 24th of April 2025.

The question placed before the Planning Authority were: "Is the construction of a boundary wall to the side of the dwelling development and, if so, is it exempted development?"

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.

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).



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Comhairle Cathrach Chorcaí

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Given that the proposed boundary wall would consist of the fencing or enclosure of land habitually open to or used by the public, it is considered 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.

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 49 The Crescent, Broadale, Maryborough Hill, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 06th of June, 2025.

Is mise le meas,

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



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PLANNER'S REPORT
Ref. R 949/25

Cork City
Council
Development Management
Planning & Integrated
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	49 The Crescent, Broadale, Maryborough Hill, Cork
Applicant	Ray Murphy (owner)
Date	04/06/2025
Recommendation	Is development and 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 details of the proposed development "*I wish to knock the existing side on my property and rebuild, to the same specification, at the boundary of my site as shown on the attached Ordnance Survey map. Please confirm that this can be done without planning permission and advise if there are any requirements that I should be aware of before proceeding. It is not my intention to increase the or alter the existing vehicular entrance*".

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

3. SITE DESCRIPTION

The subject property is a single storey, semi-detached dwelling in the Sustainable Residential Neighbourhoods 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 some tree planting.

4. DESCRIPTION OF THE DEVELOPMENT

The proposed development proposes the construction of a 1.2m - 2m high dashed wall with a redbrick capping to the side and rear of the existing property, to enclose an existing landscaped green area. This proposed boundary would replace an existing wall which is currently built closer to the house. The wall would not exceed 1.2m in height to the front of the dwellings building line or 2m in height to the side.

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>
<i>Development within the curtilage of a house</i>	

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

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 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).

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 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. However, it is noted that the proposed boundary wall would consist of the enclosure of land habitually open to, or used by, the public.

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, it is considered 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

Is not 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.**

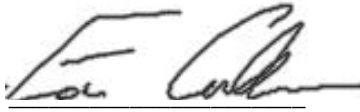
9. RECOMMENDATION

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 boundary wall to the side of the dwelling at 49 The Crescent, Broadale, Maryborough Hill, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

A handwritten signature in black ink, appearing to read 'Eoin Cullinane', written over a horizontal line.

Eoin Cullinane
A/Senior Executive Planner
04/06/2025

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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

CORK CITY COUNCIL
PLANNING & DEVELOPMENT

25 APR 2025

DEVELOPMENT MANAGEMENT

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

Fón/Tel: 021-4924709

Lionra/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

Ray Murphy

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

49 The Crescent Broadale, Maryborough Hill Douglas Cork T12 F8CC

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.

I wish to knock the existing side on my property and rebuild, to the same specification, at the boundary of my site as shown on the attached Ordnance Survey Map. Please confirm that this can be done without planning permission and advise if there are any requirements that I should be aware of before proceeding. It not my intention to increase the or alter the existing vehicular entrance.

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The existing wall was constructed by the developer of the Broadale site in 1991 but it is not at the boundary of my site as identified in the attached Land Direct map. As the ground level outside the current boundary wall is lower than the level inside it is constantly flooding when it rains. I would like to move the boundary wall out to the property boundary and raise the ground level to improve the drainage.

The original wall installed by the developer does not follow the line to the front of my house which leave the side of my house open to the public and I wish to use the construction on new wall to close off the privacy to the side of my house.

A number of neighbours in Broadale have carried out similar side wall to property boundaries and I want to ensure that I comply with the requirements in the interests of maintaining good neighbourly

relationships. The existing wall is a 1.8m (6 foot) dashed wall with red brick capping and I would propose to construct the new wall to the same specification if permitted.

4. Are you aware of any enforcement proceedings connected to this site? No

If so please supply details:

5. Is this a Protected Structure or within the curtilage of a Protected Structure? No

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? No

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	c. 30M long x 1.8M high
(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)?	No
(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 – YES ✓	B. Other
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:

Signature: 

Date: 21 April 2025



Land Registry Compliant Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 571841,568160

PUBLISHED:
02/04/2025
ORDER NO.:
50458512_1

MAP SERIES:
1:2,500
6428-D
1:2,500
6429-C

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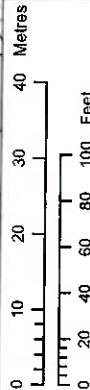
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Further information is available at:
www.tailte.ie; search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



Land Registry Compliant Map



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MAP SERIES:
1:2,500
1:2,500
6428-D
6429-C

MAP SHEETS:
1:2,500
1:2,500
6428-D
6429-C

**"A" 1.2 M FORWARD OF
FRONT OF BUILDING LINE
OF DWELLING HOUSE**

**"B" 3" 4" HEIGHT OF WALL TO
44X144 OF 2 M.**

COMPILED AND PUBLISHED BY:
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Phoenix Park,
Dublin 8,
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OUTPUT SCALE: 1:1,000

