



Comhairle Cathrach Chorcaí Cork City Council

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

Fabio Carollo and Aoife McCarthy,



09/04/2025

RE: Section 5 Request.
R933/25: 232 Pearse Road, Ballyphehane

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on the 26th of March 2025, I wish to advise as follows.

The Planning Authority has been tasked with determining whether raising the current property boundary wall height from 1.5m to 2m is development and potentially exempted development.

The first issue for consideration is whether or not the matter at hand is 'development'.

- a) 'Development' as defined in the Act (3)(1) comprises two possible chief components: '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'. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

The query relates to increasing the height of the wall from 1.5m to 2 which involves physical construction of additional blocks on top of the existing structure. This can therefore be defined as works and development.



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Cork City Council

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The second issue for consideration is whether or not the matter at hand constitutes 'exempted development'.


- b) The existing boundary wall is covered by the grant of permission received under TP TP22/41589. This specifically sought permission for the removal of hedging and fencing and the construction of a 1.5m block wall. As the block wall is covered by a condition and the proposed works would contravene same, the carrying out of the development of raising the block wall to 2m would therefore not be exempted development.

In view of the above and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Article 9 and of the Planning and Development Regulations 2001 (as amended),

It is considered that "raising the current property boundary wall height from 1.5m to 2m" **IS DEVELOPMENT** and is **NOT EXEMPTED DEVELOPMENT**.

Is mise le meas,


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



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PLANNER'S REPORT	
Ref. R933/25	
Application type	Section 5 Declaration
Description	<i>Is raising the current property boundary wall height from 1.5m to 2m development and if not is it exempted development?</i>
Location	232 Pearse Road, Ballyphehane
Applicant	Fabio Carollo and Aoife McCarthy.
Date	25/07/2025
Recommendation	<i>Is Development and is NOT Exempted Development</i>

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

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

In framing the question to the planning authority, the applicant states in Q3 of the application form:

Is raising the current property boundary wall height from 1.5m to 2m development and if not is it exempted development?

3. Site Description

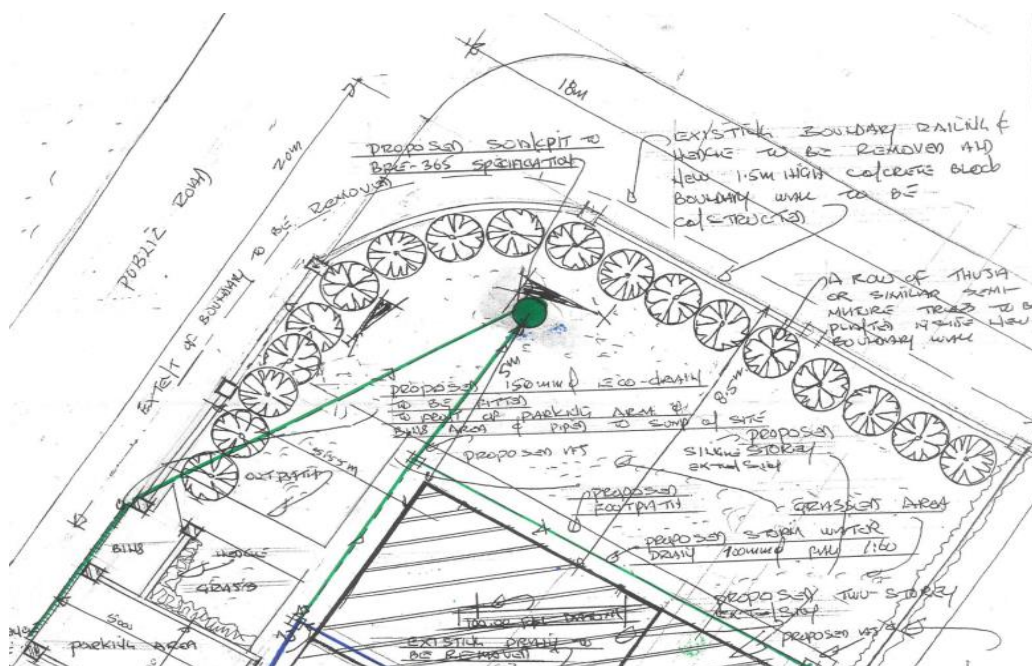
The application site is an existing 2-storey semi-detached corner unit which received permission for an extension to the side under TP22/41589. The Section 5 application concerns the raising of the existing property boundary wall height from 1.5m to 2m.

4. Recent Relevant Planning History

TP22/41589: Permission granted for the following:

- (A) Retention of parking area at front of dwelling house,
- (B) Permission for alterations and extensions to dwelling house including two - storey and single - storey extensions to side, to increase width of parking area at front to accommodate 2 no. vehicles and bin storage area,
- (C) To remove existing railing/hedge boundary to front and side and construct 1.5m high concrete block wall at: 232 Pearse Road, Ballyphehane.

No.	Condition	Reason
1	The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 28/11/2022, and by further information request on 03/04/2023, and by further clarification request on 31/05/2023, except where otherwise altered or amended by conditions contained in this Schedule.	To define the scope of the permission, and to enable the planning authority to check the proposed development when completed, in the interests of proper planning and sustainable development.



5. Legislative Provisions

5.1 The Act

Section 2(1).

“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),

The following shall be exempted developments for the purposes of this Act-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 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

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.

5.2 The Regulations

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: Exempted Development General

<i>Column 1</i>	<i>Column 2 Conditions and Limitations</i>
<i>CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i>	<i>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.</i>

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (a) (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

6. ASSESSMENT

It should be stated at the outset that the purpose of this report is not to determine the acceptability or otherwise of the proposal at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘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’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘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.’.

TP22/41589 granted permission for an extension to the existing dwelling and included the removal of the existing boundary hedge and granting permission for a 1.5m boundary wall as sought by the applicant. (Details above).

The query relates to increasing the height of the wall from 1.5m to 2 which involves physical construction of additional blocks on top of the existing structure. This can therefore be defined as works and development.

6.2 Exempted development

The question presented to the Planning Authority is:

Is raising the current property boundary wall height from 1.5m to 2m development and if not is it exempted development?

The existing boundary wall is covered by the grant of permission received under TP TP22/41589. This specifically sought permission for the removal of hedging and fencing and the construction of a 1.5m block wall.

Plans and particulars were submitted relating to same and these have been detailed above. Permission was granted on the 27/06/2023. Condition No. 1 states:

No.	Condition	Reason
1	The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 28/11/2022, and by further information request on 03/04/2023, and by further clarification request on 31/05/2023, except where otherwise altered or amended by conditions contained in this Schedule.	To define the scope of the permission, and to enable the planning authority to check the proposed development when completed, in the interests of proper planning and sustainable development.

The existing development is covered by a condition of a grant of permission. Therefore, development to which article 6 relates shall not be exempted development for the purposes of the Act. As the block wall is covered by a condition and the proposed works would contravene same, the carrying out of the development of raising the block wall to 2m would therefore not be exempted development.

Note: (It is also of note that had exemptions been applicable in this case, the exemptions would have limited the height of the wall in the front of the house to 1.2m and not to the height of 2m as per the question received.)

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) 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 an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. 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 the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

8. RECOMMENDATION

The question submitted is as follows: *Is raising the current property boundary wall height from 1.5m to 2m development and if not is it exempted development?*

In view of the above and having regard to —

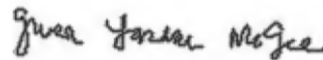
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and

- Article 9 and of the Planning and Development Regulations 2001 (as amended),

It is considered that “*the raising the current property boundary wall height from 1.5m to 2m*” is **Development** and is **NOT Exempted Development**.



Mary Doyle
Executive Planner



Gwen Jordan
Senior Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

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Cork City Council, City Hall, Anglesea Street, Cork.

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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

FABIO CAROLLO AND AOIFE MCCARTHY

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

232 PEARSE ROAD, BALLYPHEHANE, CORK CITY

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 raising the current property boundary wall height from 1.5 mt to 2.0 mt development, and if not is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The boundary block wall of our family home located in 232 Pearse Rd, Ballyphehane was built with a height of 1.5 mt as approved under planning permission no. 2241589. The boundary runs in front and to the side of the property and confines with public Pearse Rd.

Due to the vicinity to public roads, we would like to raise the existing wall height from 1.5 to 2.0 mt to ensure privacy and safety of our kids.

CORK CITY COUNCIL
PLANNING & DEVELOPMENT

27 MAR 2025

DEVELOPMENT MANAGEMENT

4. Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

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:

PLANNING APPLICATION NO. 2241589

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		
(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)	

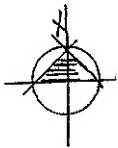
7. LEGAL INTEREST

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:

Signature: _____

Date: 13/03/2025



1:100

EXISTING 1.5 MT HIGH BLOCK BOUNDARY WALL

PUBLIC ROAD

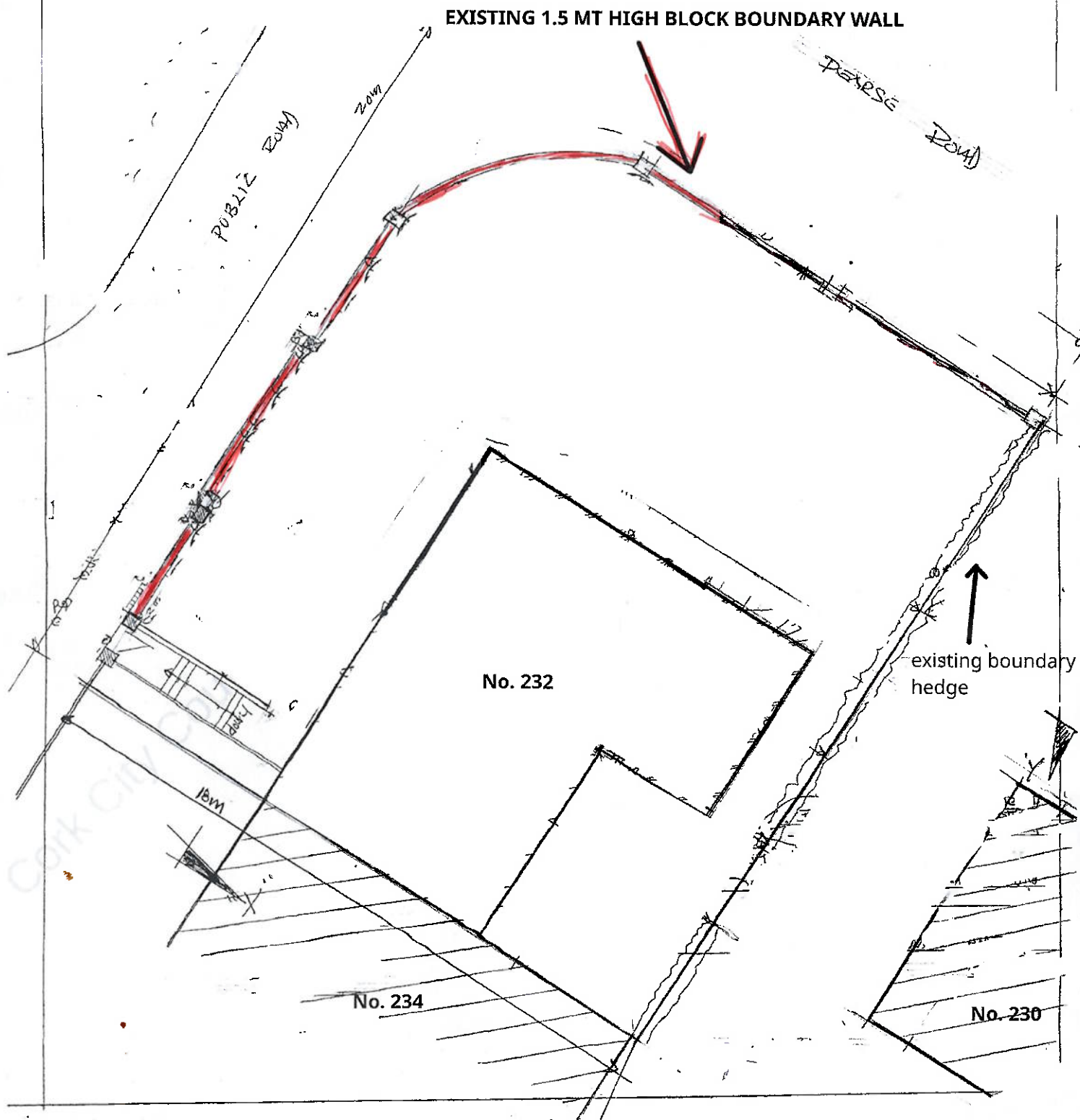
DEARSE ROAD

No. 232

existing boundary hedge

No. 234

No. 230

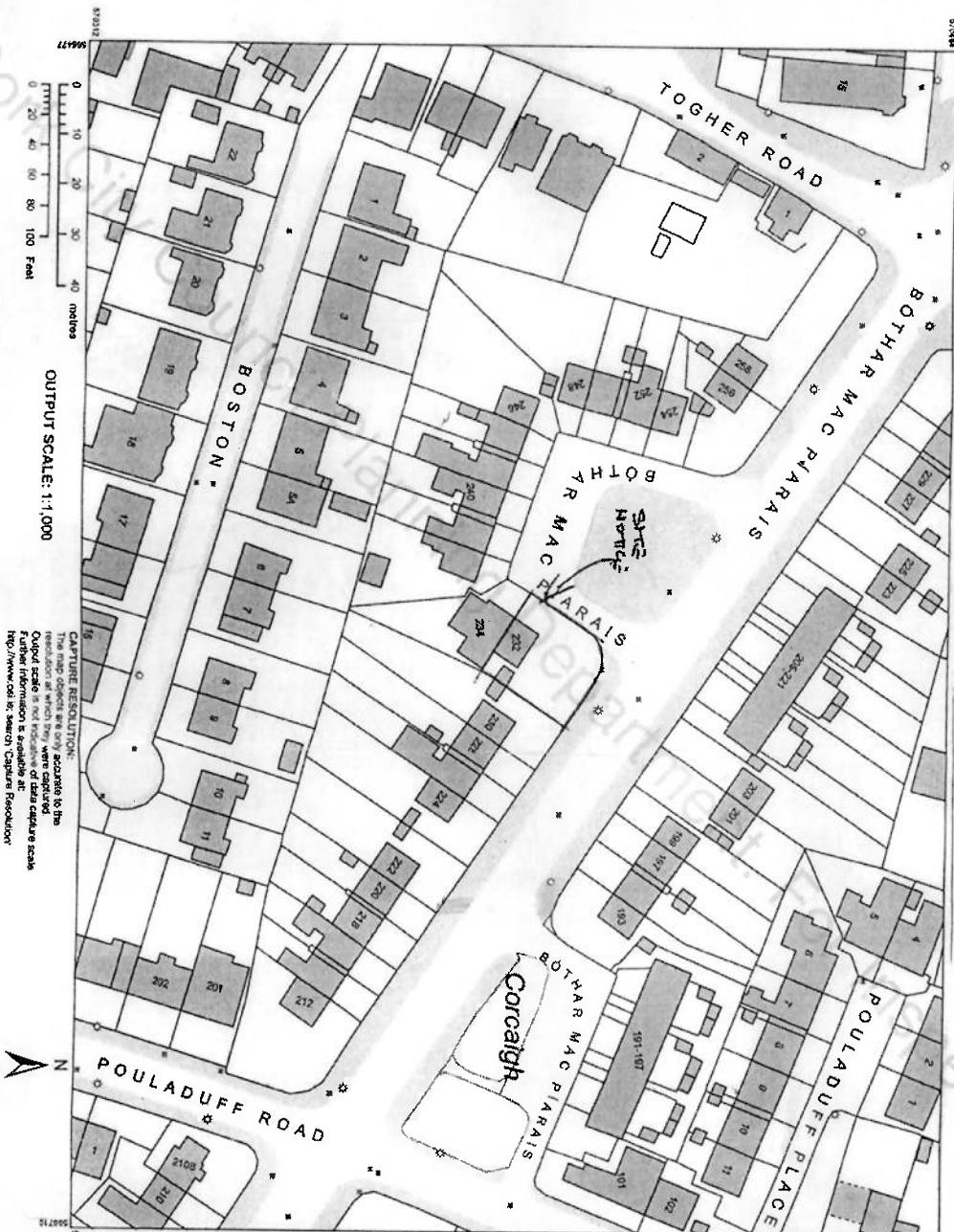


**PROPOSED ALTERATIONS AND EXTENSIONS TO SIDE OF
DWELLING HOUSE AT
232, PEARSE ROAD
BALLYPHEHANE
CORK
FOR AOIFE MCCARTHY & FABIO CAROLLO**

DATE: SEPT 2022

PATRICK A. GALVIN
PLANNING & DESIGN
UPPER BELMOUNT
INNISHANNON
CO. CORK
Tel: 021 4775079 Mobile: 086 8230343 email: kgalvin@eircom.net

Planning Pack Map



CAPTURE RESOLUTION:
The map depicts the ground as it was at the time of capture. It is not a representation of the ground as it is now. Further information is available at <http://www.osi.ie> or search 'Capture Resolution'.

OUTPUT SCALE: 1:1,000

Ordnance Survey
National Mapping Agency

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CORK CITY COUNCIL
PLANNING DEPARTMENT
28 NOV 2022
22/41589

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KC

