## Comhairle Contae Chorcaí Cork County Council

Mark Sexton, c/o Liam Harrington, Harrington O' Flynn Consulting Engineers, 16 Roselane, Ballinacurra, Midleton, Co. Cork. Pleanáil agus Forbairt, Halla an Chontae, Bóthar Charraig Ruacháin, Corcaigh T12 R2NC. Fón: (021) 4276891 R-phost: planninginfo@corkcoco.ie Suíomh Gréasáin: www.corkcoco.ie Planning & Development, County Hall, Carrigrohane Road, Cork T12 R2NC. Tel (021) 4276891 Email: planninginfo@corkcoco.ie Web: www.corkcoco.ie



30th December, 2024

REF: D/283/24 LOCATION: No. 3 Kilmore, Ballynakilla East, Newtownshandrum, Co. Cork

#### RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000

Dear Sir,

On the basis of the information and plans submitted by you on 26<sup>th</sup> November 2024 the Planning Authority having considered whether the installation of a concrete post and timber fence to the existing western boundary 22m in length from rear of property at **No. 3 Kilmore, Ballynakilla East, Newtownshandrum, Co. Cork** is or is not development and is or is not exempted development has declared that it is **not exempted development.** 

#### **Reason for Decision**

The Planning Authority in considering this referral had particular regard to:

- The particulars received by the Planning Authority on 26<sup>th</sup> November 2024
- Sections 1, 2, 3, 4 and 6 of the Planning and Development Act 2000 (as amended)
- Class 5 of Schedule 2, Part 1 Exempted Development of the Planning and Development Regulations 2001 (as amended)
- Conditions of Planning Permissions 02/471, 03/2419 and 04/7888, and
- Article 9 Restrictions on exemption of the Planning and Development Regulations 2001 (as amended)

And Whereas the Planning Authority hereby concludes that:

The proposal to install a new concrete post and timber fence 1.8m in height to the existing western boundary (22m in length) at Site No. 3, Kilmore, Ballynakilla Eas, Newtownshandrum, contravenes





condition no. 6 of PI. ref 04/7888. The replacement boundary fence is therefore development and is **not exempted development**.

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Yours faithfully,

Shaw

PIO TREACY, ADMINISTRATIVE OFFICER PLANNING DEPARTMENT

In order to process your query, it may be necessary for Cork County Council to collect Personal information from you. Such information will be processed in line with our privacy statement which is available to view at <a href="https://www.corkcoco.ie/privacy-statement-cork-county-council">https://www.corkcoco.ie/privacy-statement-cork-county-council</a>

#### D/283/24 – Section 5 Declaration

A Section 5 declaration is sought by Harrington O Flynn Consulting Engineers on behalf of Mark Sexton in respect of the installation of a new concrete post and timber fence to the existing western boundary 22m in length from rear of property at No. 3 Kilmore, Ballynakilla, Co. Cork.

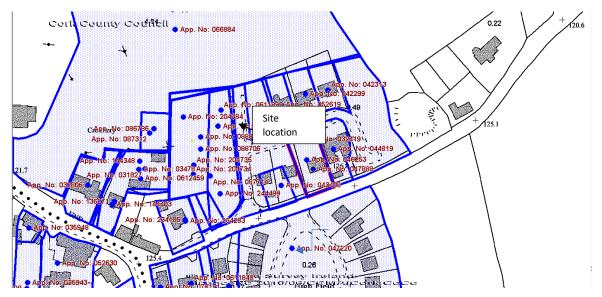


Plate 1: Subject Site Location

#### Question subject of the Section 5

On the basis of the information submitted the question to be addressed under this request is as follows:

"Whether the installation of a new concrete post and timber fence to the existing western boundary 22m in length from rear of property *is development and is or is not exempted development.* 

The site comprises a dormer dwelling and is bound by two dormer dwellings to the east and a single storey dwelling to the west. The eastern boundary comprises a plastered concrete block boundary wall. The existing western boundary comprises timber panels.

#### **Recent Planning History**

06/11899	Permission <b>granted</b> to Robert Troy for a Two storey dwellinghouse.
04/7888	Permission granted to Conor O Leary for a dwellinghouse.
03/2419	Permission granted to Robert Troy for Site development works for 15 no. dwellinghouses (change of house floor levels & alternative route for foul sewer)
02/471	Permission granted to Robert Troy for site development works for 9 no. dwellinghouses and 6 no. retirement houses.

#### East of site

04/3408 Permission granted to Tanikos Ltd for 2 no. dormer dwellings.

West of site

04/4819 Permission granted to St. Joseph's Foundation Dwellinghouse for people with special needs, garage, entrance and ancillary works

#### 1. STATUTORY PROVISIONS

The following statutory provisions are relevant to this referral case;

#### Planning and Development Act 2000, as amended

Section 2(1) states as follows:-

"In this Act, except where the context otherwise requires – 'development' has the meaning assigned to it by Section 3 ..."

Section 3 (1) states as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of 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) identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, 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.

#### Planning and Development Regulations, 2001 as amended

Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-"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(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

Restrictions on exemption. 9. (1) 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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

#### 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.

#### Conditions and Limitations

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.

#### <u>Assessment</u>

I note the details and drawings submitted as part of the application.

The proposed boundary treatment is considered 'development' in accordance with Section 3 (1) of the Planning and Development Act, 2000.

The proposals include the replacement of the boundary fence between the properties from the front elevation of the existing dwelling to the end of the site on Ballinakill road with 1.8m high concrete post, gravel board and timber infill panel fence. The proposal would appear to fall within the confines of Class 5 of Schedule 2, Part 1 Exempted Development of the Planning and Development Regulations, 2001 as amended as the proposal boundary fence does not exceed and does not comprise metal palisade or a security fence.



Proposed location of the (22m c.) 1.8m ht. Concrete post and timber fencing

Figure-1-Existing-western-boundary

I have reviewed the conditions of the planning permissions pertaining to the site which include 02/471, 03/2419 and 04/7888 and set out the conditions pertaining to boundary treatment below.

Conditions of both Pl. Ref 03/2419 and 04/7888 include a condition that specifically states 'that front boundary walls/fences or any other structures' cannot avail of the exempted provisions of the Planning and Development Regulations, 2001 and requires prior grant of approval. The proposal does not relate to front boundary treatment so this condition is not applicable.

I have reviewed condition no. 6 of PI Ref 04/7888 which refers to screen walls in agreed durable material, 1.8m in height and suitably capped and rendered, plastered or dashed shall be provided. The design, locations and extent of walling shall be submitted to and agreed with the Council's Planning Officer before development is commenced. Given the proposal is not a wall, it is restricted by Article 9 of the Planning and Development Regulations 2001 as amended which sets out that

1) 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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

The proposed boundary treatment contravenes condition no.6 Pl. Ref 04/7888 and is therefore deemed not exempt.

Conditions 5 and 6 of Pl. Ref 04/7888 refer to boundary treatment.

5	Notwithstanding the exempted development provisions of the Planning & Development Regulations 2001, as amended, front boundary walls/fences or any other structures shall not be provided on the site save with the prior grant of Approval of the Planning Authority.	In the interests of residential amenity and because it is considered that the erection of walls/fences or other structures warrant the making of an application for and the grant of Approval.
6	Screen walls, in agreed durable material, 1.8m in height and suitably capped and rendered, plastered or dashed shall be provided. The design, locations and extent of walling shall be submitted to and agreed with the Council's Planning Officer before development is commenced.	In the interests of residential amenity.

Conditions of Pl. ref 03/2419 referring to boundary treatment.

ALL FRONT BDY WALLS/FENCES SAME FINISH Front boundary walls and screen/fences shall be the same design, construction and finish throughout the development.	In the interests of orderly development and visual amenity.
NO WALLS/FENCES WITHOUT PRIOR APPROVAL Notwithstanding the exempted development provisions of the Local Government (Planning &	In the interests of residential amenity and because it is considered that the erection of walls/fences or other structures warrant the making of an application for and the grant of Approval.
Development) Regulations 1994, as amended, front boundary walls/fences or any other structures shall not be provided on the site save with the prior grant of Approval of the Planning Authority.	

Conditions of Pl. ref 02/471 referring to boundary treatment.

Screen walls, in agreed durable material, 2m in height and suitably capped and rendered, plastered or dashed shall be provided. The design, locations and extent of walling shall be submitted to and agreed with the Council's Planning Officer before development is commenced.

#### <u>Conclusion</u>

**WHEREAS** a question has arisen as to *Whether the* installation of a new concrete post and timber fence to the existing western boundary 22m in length from rear of property

is development and is or is not exempted development:

AND WHEREAS Cork County Council, in considering this referral, had regard particularly to –

- (a) Sections 1,2, 3, 4 and 6 of the Planning and Development Act, 2000, as amended
- (b) Class 5 of Schedule 2, Part 1 Exempted Development of the Planning and Development Regulations, 2001 as amended.
- (c) Condition of Planning permission refs. 02/471, 03/2419 and 04/7888, and
- (d) Article 9 Restrictions on exemption of the Planning and Development Regulations, 2001 as amended.

The Planning Authority has concluded that:

The proposal to install a new concrete post and timber fence 1.8m in height to the existing western boundary (22m in length) at Site No. 3, Kilmore, Ballynakilla Eas, Newtownshandrum, contravenes condition no. 6 of Pl. ref 04/7888. The replacement boundary fence is therefore development and is <u>not</u> exempted development.

Geal Dunne

*Carol Dunne Executive Planner* 20/12/2024

Ahen ausi

Louise Ahern A/Senior Executive Planner 20/12/2024



16 Roselane, Ballinacurra, Midleton, Co. Cork.

Tel: 021-4636760 Fax: 021-4636701

Cork County Council, Planning Department, County Hall, Co.Cork.

20-11-2024

7

Ŧ

Planning Ref No. 04/7888. Condition No.6 of the Grant of Planning Permission

#### Re: Site No. 3, Kilmore, Ballynakilla East, Newtownshandrum

#### **Applicant :- Mark Sexton**

Dear Sir/Madam,

Please find attached the following Section 5 application form

If you have any further queries, do not hesitate to contact me.

Yours Sincerely,

Jay O'Connell MCIOB, Arch. Tech Harrington O'Flynn Ltd.

16 ROSELANE BALLINACURRA, MIDLETON, COCCORK. TEL: 021-4636760 FAX: 021-4636701 59 THE SPIRES CARRIGNAFOY, COBH, CO. CORK. TEL: 021-4815644 FAX: 021-4815644



## CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION



### You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want

- In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required: A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural
  - Details of existing and proposed levels
  - Details of fill material and duration of fill.

### DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at http://www.corkcoco.ie/Privacy-Policy or hardcopy from our offices at County Hall, Carrigrohane Road, Cork,

Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A - CONTACT DETAILS) 1.

Planning Departmen MARK SEXTON 26 NOV 2024 Cork County Council County Hal Cork 2.

POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF

NO.3 KILMORE, BALLYNAKILLA EAST, NENTONNSHANDRUM, CO. CORK,

#### 3. **QUESTION/DECLARATION DETAILS:**

1

3

Please state the specific question for which a Declaration of Exemption is sought Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

INSTALL A NEW CONCRETE POST AND TIMBER FENCE TO THE EXISTING 70 WESTERN BOUNDARY 22m in Levery FROM REPR OF NOPERTY Dw6 2100-01

#### **APPLICATION DETAILS:** 4.

3

.

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m<sup>2</sup>)

(a) Floor area of existing/proposed structure(s):	
(b) If a domestic extension is proposed, have any previous extension/sfunctures been erected at this location after 1 <sup>st</sup> October, 1964 (including those for which planning permission has been obtained):	Yes No No If yes, please provide floor areas (m <sup>2</sup> ) and previous planning reference(s) where applicable:
<ul> <li>(c) If a change of use of land and/or building(s) is proposed, please state the following:</li> <li>Existing/previous use</li> </ul>	Proposed use MA.
(d) Are you aware of any enforcement proceedings connected to this site?	Yes No V If yes, please state relevant reference number(s):

#### LEGAL INTEREST OF APPLICANT IN THE LAND/STRUCTURE: 5. Diance tick

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner	B. Other
Where legal interest is "Other", please state your interest in the land/structure:		
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):		

#### PROTECTED STRUCTURE DETAILS / ARCHITECTURAL CONSERVATION AREA: 6. Is this a D

is this a Protected Structure/Proposed P	
Structure: Yes No	
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 best or issued for the property by the Planning Authority: Yes No	f requested
If yes, please state relevant reference No. N/A	
Is this site located within an Architectural Conservation Area (ACA), as designated in the Development Plan? Yes No	e County

#### **APPROPRIATE ASSESSMENT:** 7.

Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

#### DATA PROTECTION DECLARATION: 8.

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at http://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Plu

1 Jahren and 1	s and application by the Planning Authority
I dive manut to	0

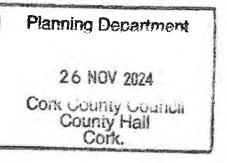
Signed	for my personal information to be processed for the purpose stated above $\Lambda\Lambda$
By Applicant Only)	May ork
Date	MARKSETTON

## GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, explicit consent to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life •
- . Sexual orientation



In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at https://www.corkcoco.ie/privacy-statement-cork-county-council or in hardcopy from any Council office;

and to having your information processed for the following purposes:

# Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	In Internet
Date	Moll Sege MARKSENTON
	18-11-2:221

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent, as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

## Please note that all information / supporting documentation submitted will be available publicly to

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

The application must 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 Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork

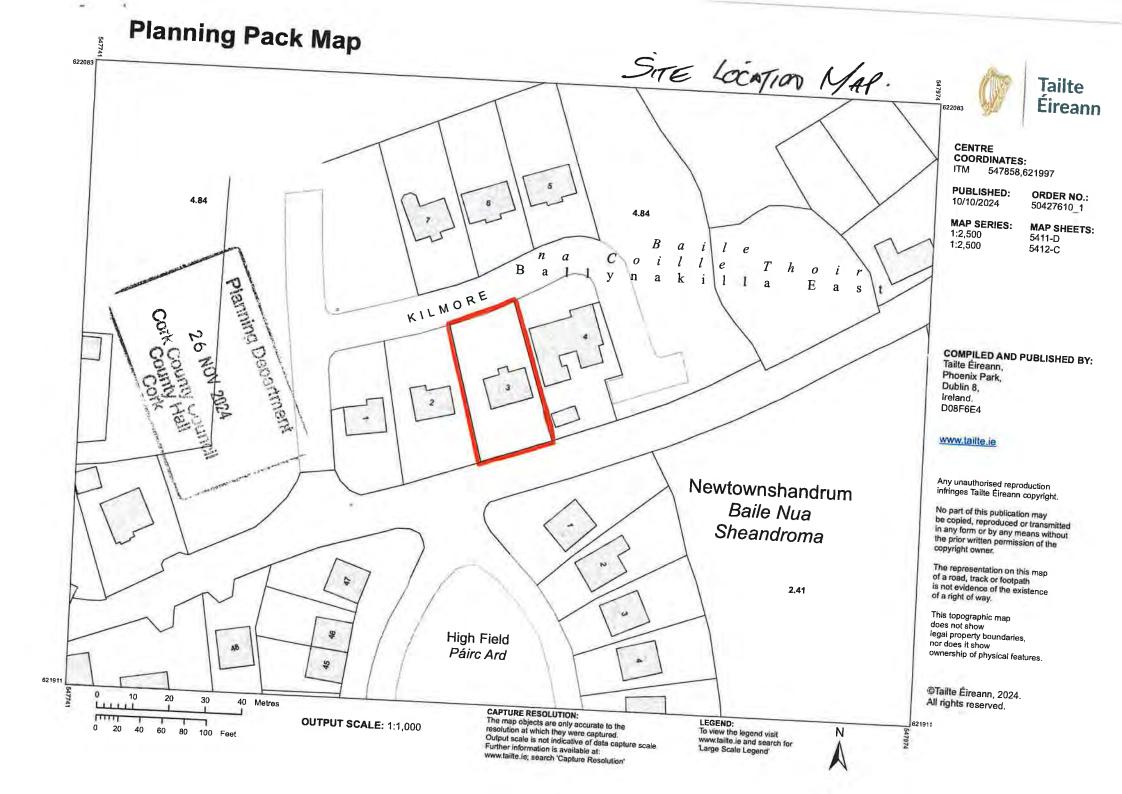
- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question
- which has arisen and on which the Declaration of Exemption is sought. Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption
- In the event that no Declaration of Exemption 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 of Exemption was due to be issued by the Planning Authority.

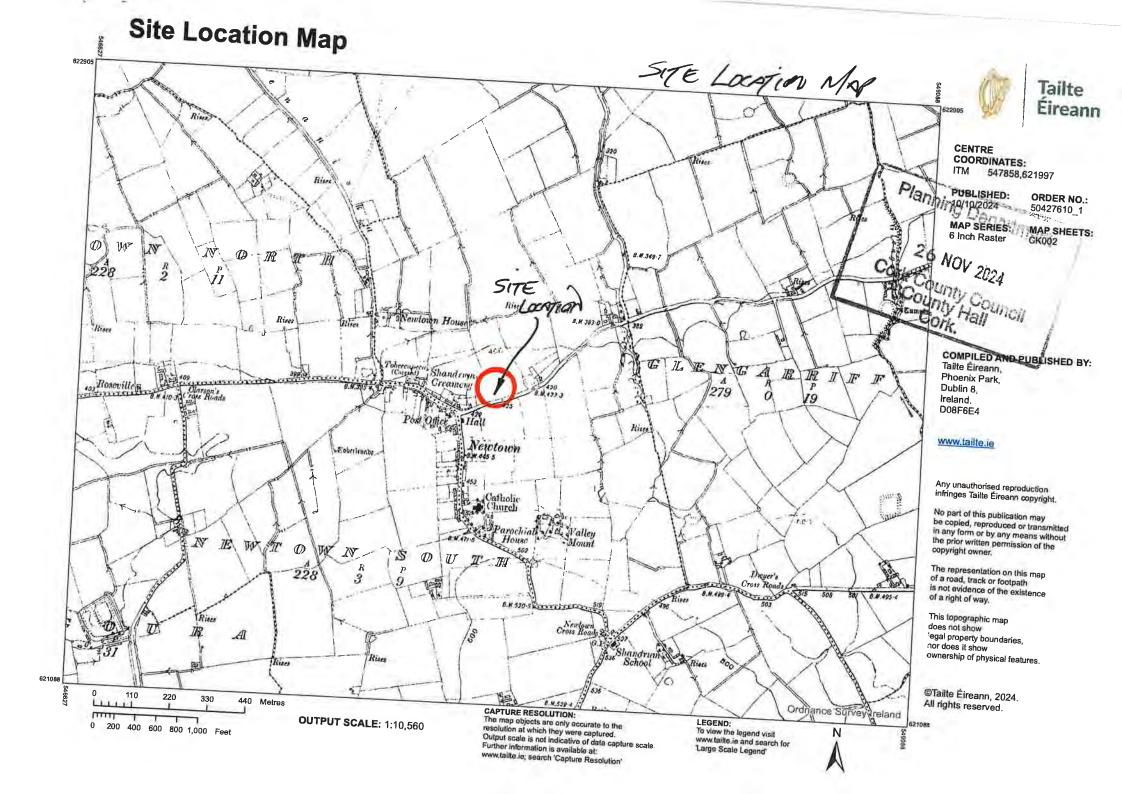
The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be 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.

I hereby declare that, to the best of my knowledge and belief, the information given in this 9. form is correct, accurate and fully compliant with the Planning and Development Acts 2000, as amended and the Regulations made thereunder:

Signed (Applicant or Agent	Tor MAGENT)
as appropriate) Date	- gu onne P.P. Applicant
	18-11-24

1.0	Planning Department	And in case of the local division of the loc
Colorado de la colora	26 NOV 2024	Carl Carlore
	Cork County Council County Hall Cork.	DICT





------ Forwarded message ------From: Lisa Morrissey < lisamorrissey96@gmail.com> Date: Tue, Oct 1, 2024 at 2:02 PM Subject: Re: Boundary Fence Proposal To: Mark Sexton <<u>markpsexton@gmail.com</u>>

It was lovely to meet you recently. That is no problem all marting Dapartmond on 2024

Lisa Morrissey.

On 30 Sep 2024, at 10:53, Mark Sexton <<u>markpsexton@gmail.com</u>> wrote:

Hello Lisa and Micheal,

Hope you are keeping well and good to meet you during the summer. As discussed, we are planning to replace the boundary fence between our properties. Our plan is to replace the fence section from the front elevation of the house back to the end of the site on Ballinakill Rd.

Our proposal is to construct a 1.8m high concrete post, gravel board and timber infill panel fence along this section as per the picture.



We need to apply for a planning amendment to construct the above and trust this proposal is ok with you.

If you could revert back to me on this please and should you wish to discuss further please contact me on 0044 7749 059 678 or markpsexton@gmail.com

Regards

Mark & June Sexton



