



# Comhairle Cathrach Chorcaí Cork City Council

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

Daniel Butler,  
Pine Grove,  
Lota,  
Glanmire,  
Cork.

10/11/2022

RE: Section 5 Declaration R743/22 Pine Grove, Lota, Glanmire  
Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 17<sup>th</sup> October 2022, I wish to advise as follows:

The Planning Authority, 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 and 9 of the Planning and Development Regulations 2001 (as amended),

It is considered that *“improvement/upgrade to existing vehicular and pedestrian entrance at rear of Pine Grove, Lota, Glanmire, Cork is an exempted development”*

**IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT** in accordance with Article 6 of the Planning and Development Act 2000 (as amended).

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, 10<sup>th</sup> November 2022.

Is mise le meas,

**Kate Magner**  
Development Management Section  
Community, Culture and Placemaking Directorate  
Cork City Council



We are Cork.

<b>PLANNER'S REPORT</b> <b>Ref. R743 / 22</b>		Cork City Council Culture, Community and Placemaking
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	See item 2 below	
<b>Location</b>	Pine Grove, Lota, Glanmire	
<b>Applicant</b>	Daniel Butler	
<b>Date</b>	07/11/2022	
<b>Recommendation</b>	Is development and is exempted development	

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 Q2 of the application form:

*Is the improvement / upgrade to existing vehicular and pedestrian entrance at rear of Pine Grove, Lota, Glanmire, Cork an exempted development.*

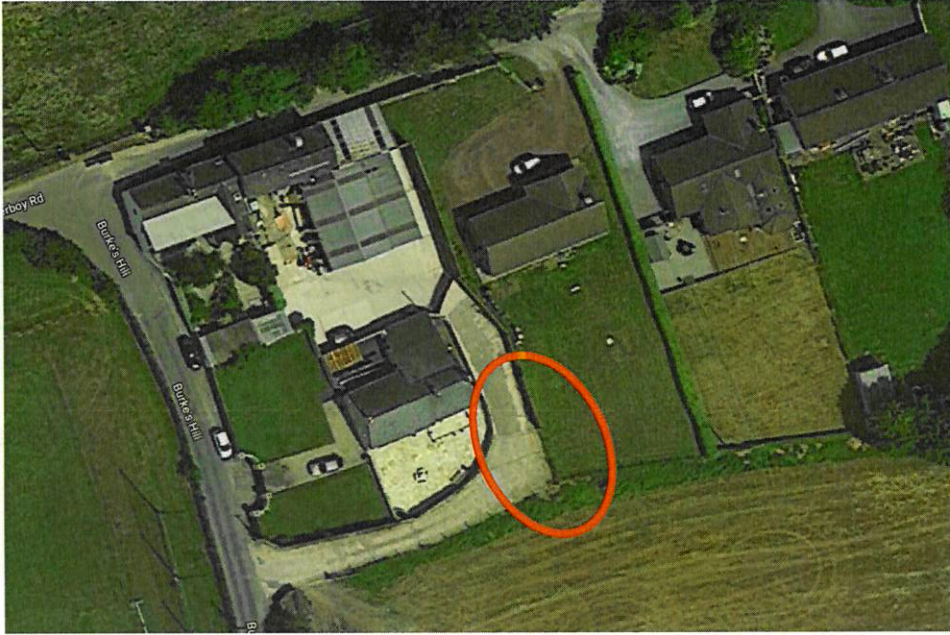
Under the Additional Details section the application form states the following:

- *Purpose of development is to maintain and complete property boundary to prevent other vehicles accessing Pine Grove, Lota.*
- *All works will be constructed entirely within boundary of Pine Grove, Lota.*
- *No obstruction will be caused by gates. All gates will open into Pine Grove property only, as per existing gate.*
- *General upgrade of entrance area.*
- *Development is already approved to be exempted by Cork County Council.*

### 3. Site Description

The property in question is a bungalow in its own grounds with principle entrance to its north, onto a public local road. The site is bound by a similar residence to the east, agricultural lands to the south and a former traditional farmyard and dwelling to the west. The former yard and outbuildings are currently the site of a car repair business.

The application indicates that there is an existing right of way to the south west of the site, to the south of the adjoining property. It also states that there is an existing gate from the subject site to allow access from this right of way.



#### 4. Planning History

There is one planning application associated with the subject site as follows:

<b>08/8520</b>	New vehicular access, driveway, front boundary walls, piers and gates to serve dwellinghouse
<b>Outcome</b>	Granted 16/03/2022

Additionally there is a previous Section 5 Determination (**Ref. No. D222/12**), made by Cork County Council on 17/10/2012. It concluded that the:

*proposal for the improvement / upgrade to the existing vehicular and pedestrian entrance at Pine Grove, Lota, Glanmire, Co. Cork is exempted development having regard to the provisions of Class 5, Schedule 2, Part 1 of the Planning and Development Regulations 2001.*

A review of the plans provided indicates that they accord with those submitted with the current Section 5 application.

#### 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(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 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,*
- (ii) consist or comprise the formation layout or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width,*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

**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.

**SCHEDULE 2, ARTICLE 6, PART 1, Exempted Development – General**

Column 1 Description of Development	Column 2 Conditions and Limitations
<b>CLASS 5</b> <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>	a. 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. b. 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. c. No such structure shall be a metal palisade or other security fence.

**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.’.

I consider that the proposed new gateway constitutes works and therefore is development.

## 6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. I note that the applicant has not set out any rationale for under which provision of the Act or of the Regulations they consider the development to be exempt.

The proposed development appears to accord with the Class 5 exemption set out above. A review of land registry mapping indicates that there is a right of way associated with the adjoining lands. It does not however set out the details of same. It is therefore unclear whether there is legal access to the proposed gate.

There is, however, no limitation in Class 5 relating to whether the land outside of the curtilage of the dwelling, to which a gate connects to a public road, is in the ownership or control of the applicant.

I note that the application form states that ‘Development is already approved to be exempted by Cork County Council’. Details relating to this conclusion to this 2012 declaration are set out in section 4 above. Recent case law, specifically *Narconon Trust v An Bord Pleanála*, emphasises the importance of not re-assessing previously issued section 5 determinations.

Given the above I am satisfied that the proposed development is exempted development, in accordance with the previously issued determination.

## 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 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**

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

It is considered that the –

*improvement / upgrade to existing vehicular and pedestrian entrance at rear of Pine Grove, Lota, Glanmire, Cork is an exempted development*

is development and is exempted development in accordance with Article 6 of the *Planning and Development Act 2000* (as amended).



Martina Foley  
Executive Planner

17 OCT 2022

Community, Culture  
and PlacemakingOMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCILCommunity, Culture & Placemaking Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.R-Phost/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924709

Líonra/Web: [www.corkcity.ie](http://www.corkcity.ie)**SECTION 5 DECLARATION APPLICATION FORM**  
under Section 5 of the Planning & Development Acts 2000 (as amended)**1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT**

PINE GROVE, LOTA, GLANMIRE, CORK.

**2. QUESTION/ DECLARATION DETAILS**

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Is the improvement/upgrade to existing vehicular and pedestrian entrance at rear of Pine Grove, Lota, Glanmire, Cork an exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- Purpose of development, to maintain and complete property boundary, to prevent other vehicles accessing Pine Grove, Lota.
- ALL works at entrance will be constructed entirely within boundary of Pine Grove, Lota.
- NO obstruction will be caused by gates. ALL gates will open INTO Pine Grove property only, as per existing gate.
- General upgrade of entrance area.
- Development is already approved to be exempted by Cork County Council.

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

If so please supply details:

4. 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?  No

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

If so please supply details:

Planning Application - deemed invalid 15/9/22 Reg No. T.P. 22/41393

6. **APPLICATION DETAILS**

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

(a) Floor area of existing/proposed structure/s	
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 <sup>st</sup> October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input checked="" 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
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name and address of the owner if available		

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

Signature: Daniel Butler

Date: 12<sup>th</sup> October 2022



## CONTACT DETAILS

### 9. Applicant:

<b>Name(s)</b>	Daniel Butler
<b>Address</b>	Pine Grove, Lota, Glanmire, Cork. _____ _____

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

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

---

### 11. 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.

Tel. No. [REDACTED] \_\_\_\_\_

Mobile No. \_\_\_\_\_

Email Address: \_\_\_\_\_

For Office Use Only:

File Ref. No. R7H3/22.

### **ADVISORY NOTES:**

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

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.**

- 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/gdpr/>.**

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

# Comhairle Contae Chorcaí Cork County Council

Daniel Butler,  
Pine Grove,  
Lota,  
Glanmire,  
Co. Cork.

17<sup>th</sup> April 2012

REF: D222/12 – Daniel Butler  
LOCATION: Pine Grove, Lota, Glanmire, Co. Cork

**RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000-2011**

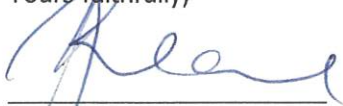
Dear Sir,

On the basis of the information and plans submitted by you on the 20<sup>th</sup> March, 2012, and provided that the works are carried out in strict accordance with such plans, the Planning authority declares that your proposal for the improvement/upgrade to the existing vehicular and pedestrian entrance **at Pine Grove, Lota, Glanmire, Co. Cork is exempted development** having regard to the provisions of Class 5, Schedule 2, Part 1 of the Planning & Development Regulations 2001.

Please note that any material departure from the proposals as submitted may remove the development from the Exempted category and require the submission of an application for Permission under the Act.

*This exemption does NOT itself empower a person to carry out a development unless that person is legally entitled to do so.*

Yours faithfully,



JAMES KEANE,  
SENIOR EXECUTIVE OFFICER,  
PLANNING DEPARTMENT.

An Rannóg Pleanála,  
Halla an Chontae,  
Bóthar Charraig Ruacháin, Corcaigh.  
Fón: (021) 4276891 • Faics: (021) 4867007  
R-phost: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Suíomh Gréasáin: [www.corkcoco.ie](http://www.corkcoco.ie)  
Planning Department,  
County Hall,  
Carrigrohane Road, Cork.  
Tel (021) 4276891 • Fax (021) 4867007  
Email: [planninginfo@corkcoco.ie](mailto:planninginfo@corkcoco.ie)  
Web: [www.corkcoco.ie](http://www.corkcoco.ie)



Surveyed 1975  
Revised 2007  
Levelled 1968

# Urban PLACE Map



73399  
171343  
73153  
171343

171675  
73399  
73153  
171675

Sports Ground

Sports Grounds

Tanks

FRONT ENTRANCE ↑

PINE GROVE

Existing Right of Way shown coloured yellow

## Improvement / Upgrade to existing Vehicular and Pedestrian Access to rear at :

Pine Grove, Lota, Glanmire, Co.Cork for: Mr.& Mrs. D. Butler

Title: **Site Location Plan**  
Scale: 1:1000 Date: Jan. 2012

Drawings prepared by E.O'Riordan M.Inst.C.E.S.  
Ellan Vannin, Station Road, Carrigaline, Co.Cork

### ITM CENTRE PT. COORDS

571465,573338

### DESCRIPTION

### MAP SHEETS

1:1000  
6338-25

Reg. No.  
Planning Department  
**03 FEB 2012**  
Cork County Council  
County Hall  
Cork.



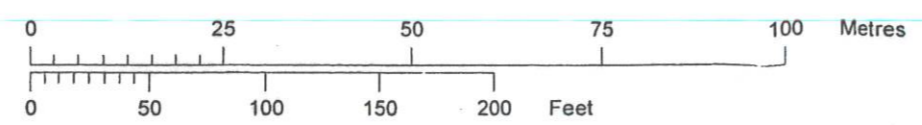
Produced by National Map Services,  
Unit 7, South Ring Business Park,  
Kinsale Road,  
Co. Cork  
On behalf of Ordnance Survey Ireland,  
Phoenix Park, Dublin 8.

Sáraíonn atáirgeadh neamhúdaraithe cóipcheart Shuirbhéireacht Ordanáis Éireann agus Rialtas na hÉireann.  
Unauthorised reproduction infringes Ordnance Survey Ireland and Government of Ireland copyright.

Gach cead cosnamh. Ní ceadmhach aon chuid den fhoilseachán seo a chóipeáil, a atáirgeadh nó a tharchur in aon fhoirm ná ar aon bhealach gan cead i scríbhinn roimh ré ó úinéirí an chóipchirt. All rights reserved. No part of this publication may be copied, reproduced or transmitted in any form or by any means without the prior written permission of the copyright owners.

© Suirbhéireacht Ordanáis Éireann, 2008  
© Ordnance Survey Ireland, 2008

Scale:- 1:1,000  
Scála:- 1:1,000

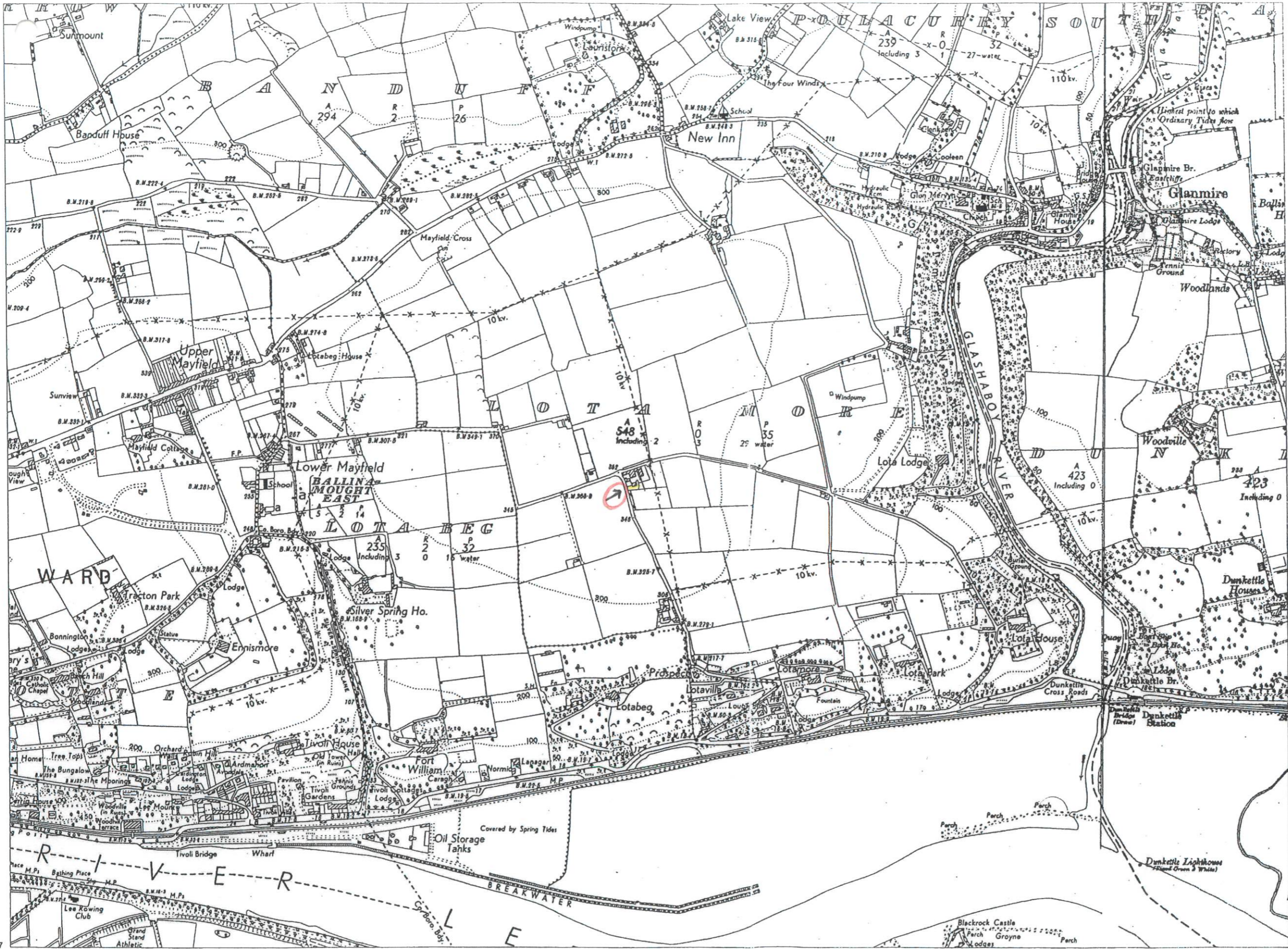


Plot Ref. No. 1319967\_1\_1  
Plot Date 30-JUL-2008



Surveyed 1841-1842  
Revised 1929-1950  
Levelled 1928-1929

# Record PLACE Map



### ITM CENTRE PT. COORDS

571465, 573338

### DESCRIPTION

### MAP SHEETS

6 inch  
CK074 CK075



Produced by National Map Services,  
Unit 7, South Ring Business Park,  
Kinsale Road,  
Co. Cork  
On behalf of Ordnance Survey Ireland,  
Phoenix Park, Dublin 8.

Sáraíonn atáirgeadh neamhúdaraithe cóipcheart  
Shuirbhéireacht Ordánais Éireann agus  
Rialtas na hÉireann.  
Unauthorised reproduction infringes Ordnance  
Survey Ireland and Government of Ireland  
copyright.

Gach cead cosnamh. Ní ceadmhach aon chuid  
den fhoilseachán seo a chóipeáil, a atáirgeadh nó  
a tharchur in aon fhoirm ná ar aon bhealach gan  
cead i scríbhinn roimh ré ó úinéirí an chóipchirt.  
All rights reserved. No part of this publication may  
be copied, reproduced or transmitted in any form  
or by any means without the prior written  
permission of the copyright owners.

© Suirbhéireacht Ordánais Éireann, 2008  
© Ordnance Survey Ireland, 2008

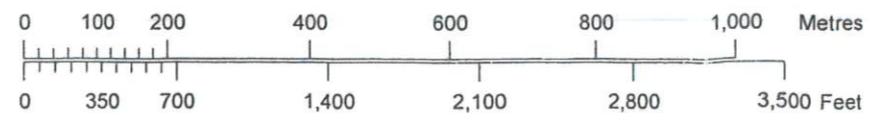
74575

74575

71977

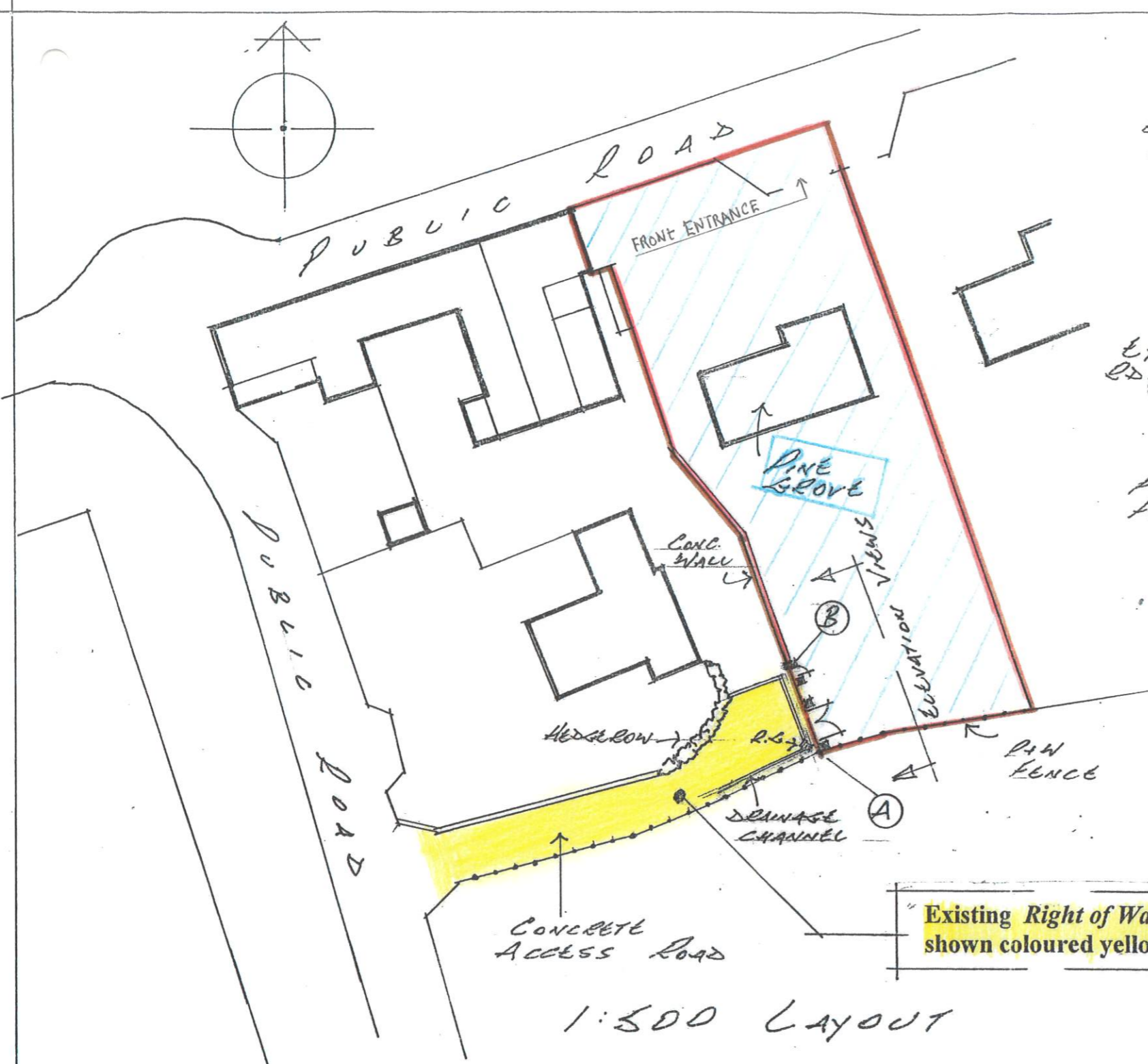
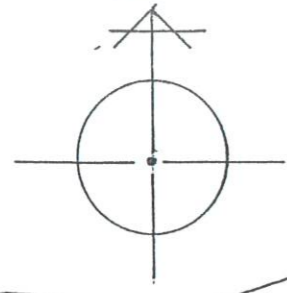
71977

Scale:- 1:10,560  
Scála:- 1:10,560

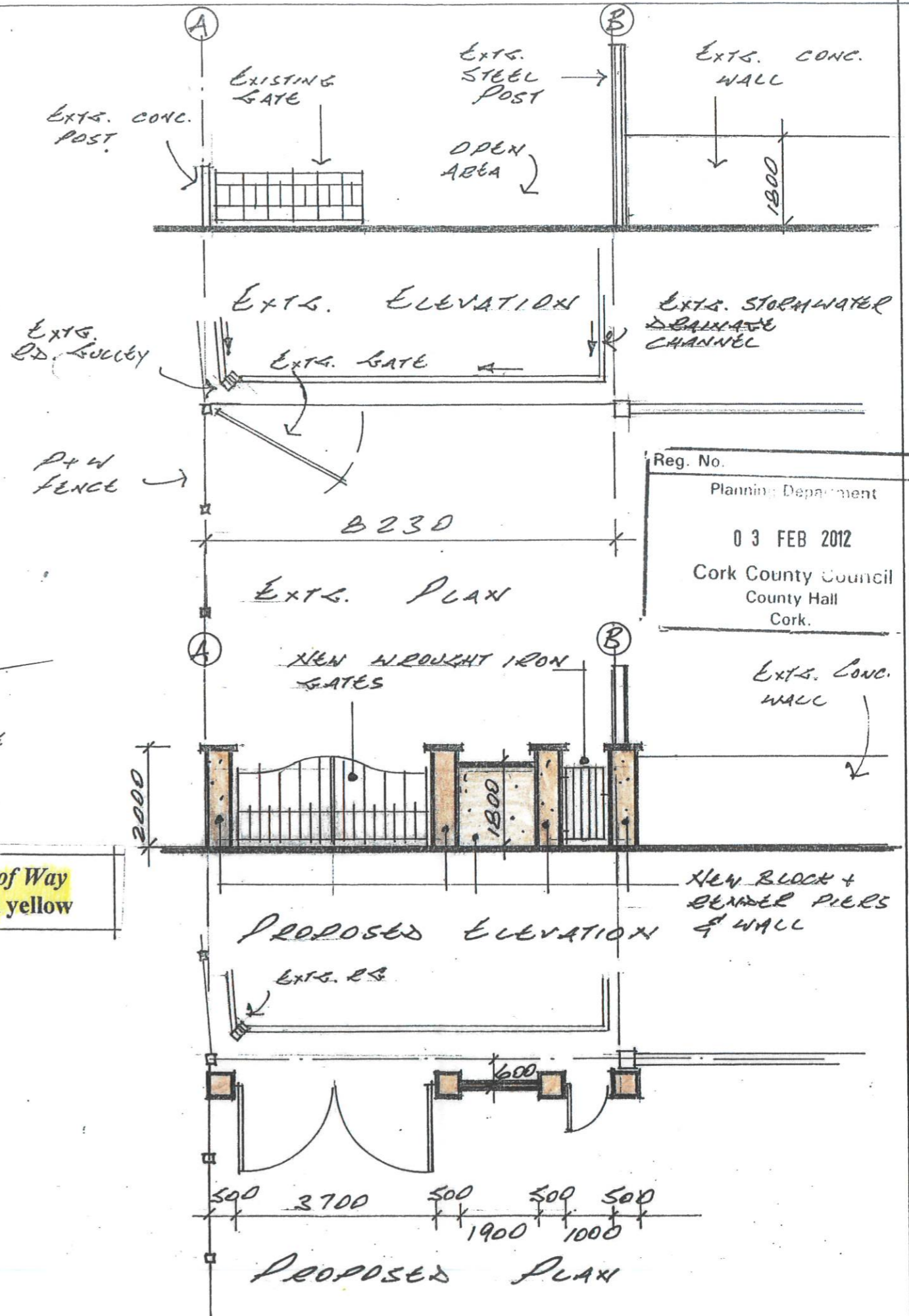


Plot Ref. No. 1319967\_1  
Plot Date 30-JUL-2008





1:500 LAYOUT



Reg. No.  
 Planning Department  
 03 FEB 2012  
 Cork County Council  
 County Hall  
 Cork.

**Improvement / Upgrade to existing Vehicular and Pedestrian Access to rear at :**

Pine Grove, Lota, Glanmire, Co.Cork for: Mr.& Mrs. D. Butler

Title: Site Layout, Plan & Elevations  
 Scales: 1:500 & 1:100 Date: Jan. 2012

Drawings prepared by E.O'Riordan M.Inst.C.E.S.  
 Ellan Vannin, Station Road, Carrigaline, Co.Cork