



Comhairle Cathrach Chorcaí Cork City Council

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

Sean O'Connor,
No. 11 Ard na Laoi,
Montenotte,
Cork T23 C3Y1.

23/03/2023

RE: Section 5 Declaration R767/23 11 Ard na Laoi, Montenotte,
Cork T23 C3Y1.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 06th March 2023, I wish to advise as follows:

The Planning Authority, 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 *replacement of wooden fence panels and concrete fence posts with a concrete wall 2 metres in height* at no. 11 Ard na Laoi, Montenotte **IS DEVELOPMENT** and is **NOT 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, 23rd March 2023.

Is mise le meas,

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



We are Cork.

PLANNER'S REPORT Ref. R767 / 23		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	See item 2 below	
Location	11 Ard na Laoi, Montenotte	
Applicant	Sean O'Mahony	
Date	23/03/2023	
Recommendation	Is development and is not 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:

Replacement of wooden fence panels and concrete fence posts, between back garden of No 10 and part of the driveway of No. 11

with a concrete wall 2 metres in height

Mr. McCarthy is in agreement with this proposal*

**The owner of No. 10 Ard na Laoi*

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

The proposed wall is similar to two other walls that were built in Ard na Laoi in January 1989

- (1) The rear boundary wall of numbers 49 and 50 and the public green areas*
- (2) The side boundary wall of #14 and the public footpath*

The proposed wall is to be of similar construction and height of these two walls.

3. Site Description

The property in question is a two storey detached dwelling in the Ard na Laoi estate in Montenotte. The private driveway is bound, to the south, by the rear boundary of house No. 10 within the same estate.



4. Planning History

No. 10 Ard na Laoi

06/30638 To construct an extension to the porch and garage at front of dwelling
Outcome Granted 19/06/2006

No. 11 Ard na Laoi

15/36317 Construction of a bay window to the front elevation of the existing dwelling
Outcome Granted 28/05/2015

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
<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>	<p>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.</p> <p>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.</p> <p>c. No such structure shall be a metal palisade or other security fence.</p>

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 work 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 replacement wall 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 Class 5 exemption, set out above, allows certain types of development within the curtilage of a house. This includes concrete block or mass concrete walls.

The replacement wall bounds the driveway to the front of the house at No. 11 Ard na Laoi. The Condition and Limitations set out in Column 2 of the exemption set out under Class 5. Item no. 1 states that the height of any such structure (in this instance a concrete wall) *in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*

The proposed replacement wall is stated to be 2 metres in height. As the wall is to the front of the house and is over 1.2 metres in height this exemption does not apply.

The proposed development therefore is not exempted from the requirement for planning permission.

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 —

Replacmenet of wooden fence panels and concrete fence posts with a concrete wall 2 metres in height at No. 11 Ard na Laoi, Montenotte is development and is not exempted development

Is development and is not exempted development in accordance with Article 6 of the *Planning and Development Act 2000* (as amended).



Martina Foley
Executive Planner

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie
Fón/Tel: 021-4924564/4321
Líonra/Web: 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

N. 11 ARD-NA-LAOI, MOUNTENOTTE, CORK T23 C3Y1

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.

REPLACEMENT OF WOODEN FENCE
PANELS AND CONCRETE FENCE POSTS,
BETWEEN BACK GARDEN OF NO 10 AND
PART OF THE DRIVEWAY OF NO 11
WITH A CONCRETE WALL
2 M IN HEIGHT

MR MCCARTHY* IS IN AGREEMENT WITH THIS PROPOSAL
* THE OWNER OF NO 10 ARD-NA-LAOI

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

THE PROPOSED WALL IS SIMILAR TO
TWO OTHER WALLS THAT WERE BUILT IN ARD-
NA-LAOI, IN JANUARY 1989

(1) THE REAR BOUNDARY WALL OF NO'S 49 AND 50
AND THE PUBLIC GREEN AREA

(2) THE SIDE BOUNDARY WALL OF NO 14
AND THE PUBLIC FOOTPATH

THE PROPOSED WALL IS TO BE OF SIMILAR
CONSTRUCTION AND HEIGHT OF THESE 2 WALLS

DEVELOPMENT MANAGEMENT
CCP

06 MAR 2023

CORK CITY COUNCIL

3. 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)	
_____	_____	
_____	_____	
_____	_____	

4. APPLICANT/ CONTACT

Name of applicant (print)	
Applicants Address	
Person/Agent acting on behalf of the Applicant (if any):	
Address:	
Telephone:	
Fax:	
E-mail address:	
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. 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 and address of the owner if available		

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

Signature: 

Date: 6th MARCH 2023

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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, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

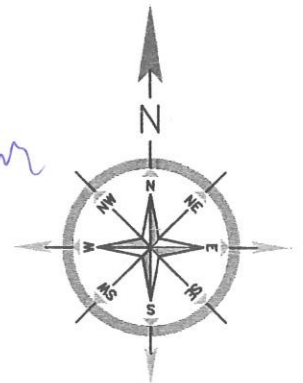
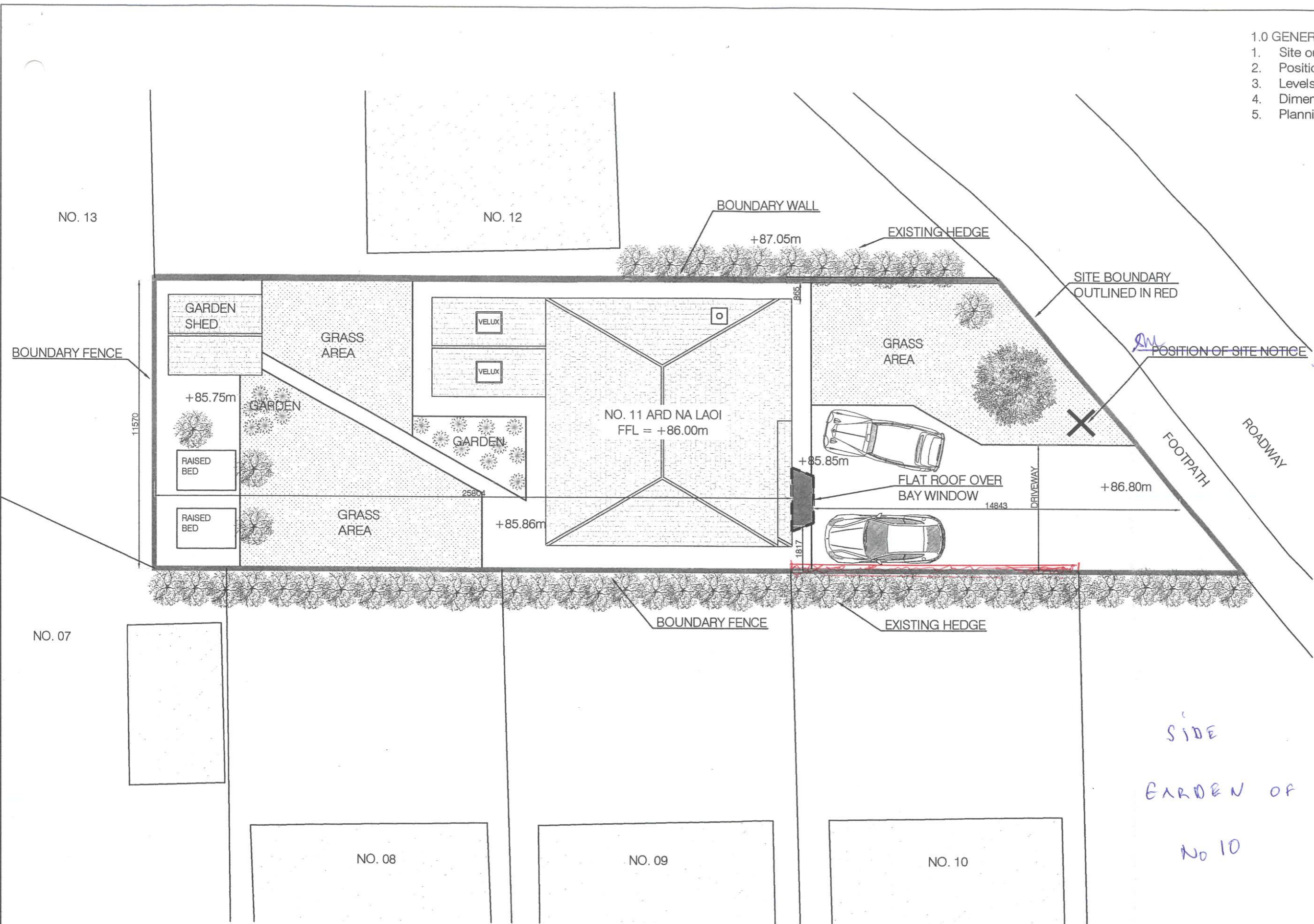
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any 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

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

- 1.0 GENERAL NOTES:
1. Site outlined in red.
 2. Position of site notice denoted with X.
 3. Levels are in meters.
 4. Dimensions are in mm.
 5. Planning drawings only.



SIDE
GARDEN OF
No 10

01 Site Layout Plan
D-AR-001 (Scale 1:150)

For Planning	A	04-03-2015	SM
Revisions	Issue	Date	By
Allen Barber Deanrock Business Park, Togher, Cork.			
Job Helen & Sean O' Mahony No. 11 Ard Na Laoi Montenotte			
Drawing Site Layout Plan			
Job No. 1505	DRG No. D-AR-001	Issue A	
Scale 1:150	Date 20-02-2015	Drawn SM	Checked RA