



# Comhairle Cathrach Chorcaí Cork City Council

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

Stephen Lane,  
18 Senandale,  
Cloghroe,  
Cork T23 W860.

29/08/2023

**RE: Section 5 Declaration R797/23 18 Senandale, Cloghroe, Cork  
T23 W860.**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 01<sup>st</sup> August 2023, I wish to advise as follows:

In view of the above and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),

The Planning Authority considers that –

the *reconstruction of an existing extension (which has planning permission)* at 18 Senandale, Cloghroe, 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, 29<sup>th</sup> August 2023.



**We are Cork.**

Is mise le meas,

A handwritten signature in cursive script, appearing to read "Kate Magner".

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

<b>PLANNER'S REPORT</b>		Cork City Council Culture, Community and Placemaking
<b>Ref. R797/23</b>		
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Is the re-construction of an existing extension (which has planning permission) development and if so, is it exempted development.</i>	
<b>Location</b>	18 Senandale, Cloghroe, Cork T23 W860	
<b>Applicant</b>	Stephen Lane	
<b>Date</b>	28/08/2023	
<b>Recommendation</b>	<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 Q2 of the application form:

*Is the reconstruction of an existing extension (which has planning permission) development and if so, is it exempted development.*

### Additional Details Regarding Question/ Works/ Development

The applicant refers to a previous grant of planning permission (96/2214) on the site where permission was granted to retain garage conversion and extension to dwelling including new garage.

The applicant states '*we are proposing to demolish and rebuild the same structure as the walls and roof have no insulation and make the rest of the house cold.*'

It would appear from the documentation submitted that the proposal includes the following:

- Demolition of existing garage (permitted under 96/2214)
- Reconstruction of the same structure with insulation
- Extend footprint of structure to the rear
- Insertion of window on the front elevation of the reconstructed garage (currently a garage door)

### 3. SITE DESCRIPTION

The subject site is located in Senandale, an existing housing development in Cloghroe located off the R617 road. The subject site comprises a detached dwelling with side extension (converted garage) and garage.

### 4. PLANNING HISTORY

#### Subject Site

96/2214 – Permission granted to retain garage conversion and extension to dwelling including new garage.

### 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 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 3**

Classes 1-8 relate to development within the curtilage of a house and Class 3 relates to *"construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure."*

**Exempted Development — General**

**Schedule 2, Part 1, Class 3**

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><b>CLASS 3</b></p> <p><i>The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</i></p>	<ol style="list-style-type: none"> <li>1. <i>No such structure shall be constructed, erected or placed forward of the front wall of a house.</i></li> <li>2. <i>The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</i></li> <li>3. <i>The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</i></li> <li>4. <i>The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</i></li> <li>5. <i>The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</i></li> <li>6. <i>The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</i></li> </ol>

Class 50 relates to demolition of buildings.

**Schedule 2, Part 1, Class 50**

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><b>CLASS 50</b></p> <p>(a) <i>The demolition of a building, or buildings, within the curtilage of–</i></p> <p>i) <i>A house,</i></p> <p>ii) <i>An industrial buildings</i></p> <p>iii) <i>A business premises, or</i></p> <p>iv) <i>A farmyard complex</i></p> <p>(b) <i>The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</i></p>	<ol style="list-style-type: none"> <li>1. No such building or buildings shall abut on another building in separate ownership.</li> <li>2. The cumulative floor area of any such building, or buildings, shall not exceed: <ol style="list-style-type: none"> <li>a) In the case of a building, or buildings within the curtilage of a house, 40 square metres, and</li> <li>b) in all other cases, 100 square metres.</li> </ol> </li> <li>3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</li> </ol>

**6. ASSESSMENT**

The purpose of this report is to assess whether or not the matter in question constitutes development and whether it falls within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

**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 proposal 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.'*

The demolition and reconstruction of the existing garage includes an act of construction and falls within the definition of 'works'. Therefore, the proposal constitutes development within the meaning of the Act.

**CONCLUSION: Is development**

## 6.2 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).

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

### Section 4(1)

I do not consider 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 proposal 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).

As set out in section 2 above, the proposal includes the following:

- Demolition of existing garage (permitted under 96/2214)
- Reconstruction of same structure with insulation
- Extend footprint of structure to the rear
- Insertion of window on the front elevation of the reconstructed garage (currently a garage door)

I consider that article 6 and Class 3 and Class 50 applies, as the proposal relates to the demolition of an existing garage and the reconstruction of the same structure.

#### Demolition of existing garage

It is stated that the floor area of the existing garage is 330sq. ft. (30m<sup>2</sup>). I am satisfied that the extent of demolition falls within the conditions/ limitations of Class 50 and consider the demolition works to be exempted development.

#### Reconstruction of same structure with insulation and extension of footprint to the rear (incl. insertion of window on front elevation)

It is stated that the floor area of the existing garage is 330sq. ft. (30m<sup>2</sup>). The area of the proposed structure (reconstruction of existing garage with extension to footprint) is stated as being 380sq. ft. (35m<sup>2</sup>). The proposed reconstruction of the garage structure is assessed against Class 3 and its conditions/ limitations below.

#### Condition 1

*No such structure shall be constructed, erected, or placed forward of the front wall of a house.*

#### Assessment

The existing garage is not forward of the front wall of a house. It is stated that it is proposed to rebuild the same structure. Based on the information provided, the proposal accords with the condition.

#### Condition 2

*The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.*

Assessment

The stated area of the proposed structure (reconstruction of existing garage with extension to footprint) is 380sq. ft. (35m<sup>2</sup>). This exceeds the 25m<sup>2</sup> limitation. The proposal does not adhere to this condition/limitation and therefore constitutes development that is not exempted development.

Condition 3

*The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*

Assessment

It is not clear from the information submitted if the proposal would reduce the amount of private open space to less than 25 square metres.

Condition 4

*The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*

Assessment

It is proposed to insert a window on the front elevation of the reconstruction structure (currently there is a garage door on the front elevation of the existing structure). No details of the window or any external finishes has been submitted with the section 5 application.

Condition 5

*The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

Assessment

The existing structure comprises a flat roof. No details of the height of the proposed structure have been provided by the applicant.

Condition 6

*The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

Assessment

The existing structure is a garage. The applicant could be requested to confirm that the structure will not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the existing house.

**7. RECOMMENDATION**

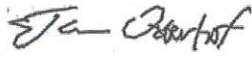
In view of the above and having regard to –

- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority considers that –



The re-construction of an existing extension (which has planning permission) at 18 Senandale, Cloghroe, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



---

Jan Oosterhof  
A/ Executive Planner

28/08/2023

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

Community, 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. NAME OF PERSON MAKING THE REQUEST

Stephen Lane

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

18 Senandale  
C Loghroe Cork. T23  
W860

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 the re-construction of an existing extension (which has planning permission) development and if so, is it exempted development?

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**  
(Use additional sheets if required).  
Cork County Council planning no. = 96/2214  
This shows the granting of planning for a "new garage..." in 1996.  
we are proposing to demolish and rebuild the same structure as the walls and roof have no insulation and make the rest of the house cold.

✓ = 1 additional sheet overleaf

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

If so please supply details:

NO

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?

If so please supply details:

96/2214 = Cork County Council

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	380 sq ft
(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 checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) 330 sq ft
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle) N/A	Proposed/existing use (please circle) N/A

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: Stephen Lane

Date: 25.7.23

#### **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.

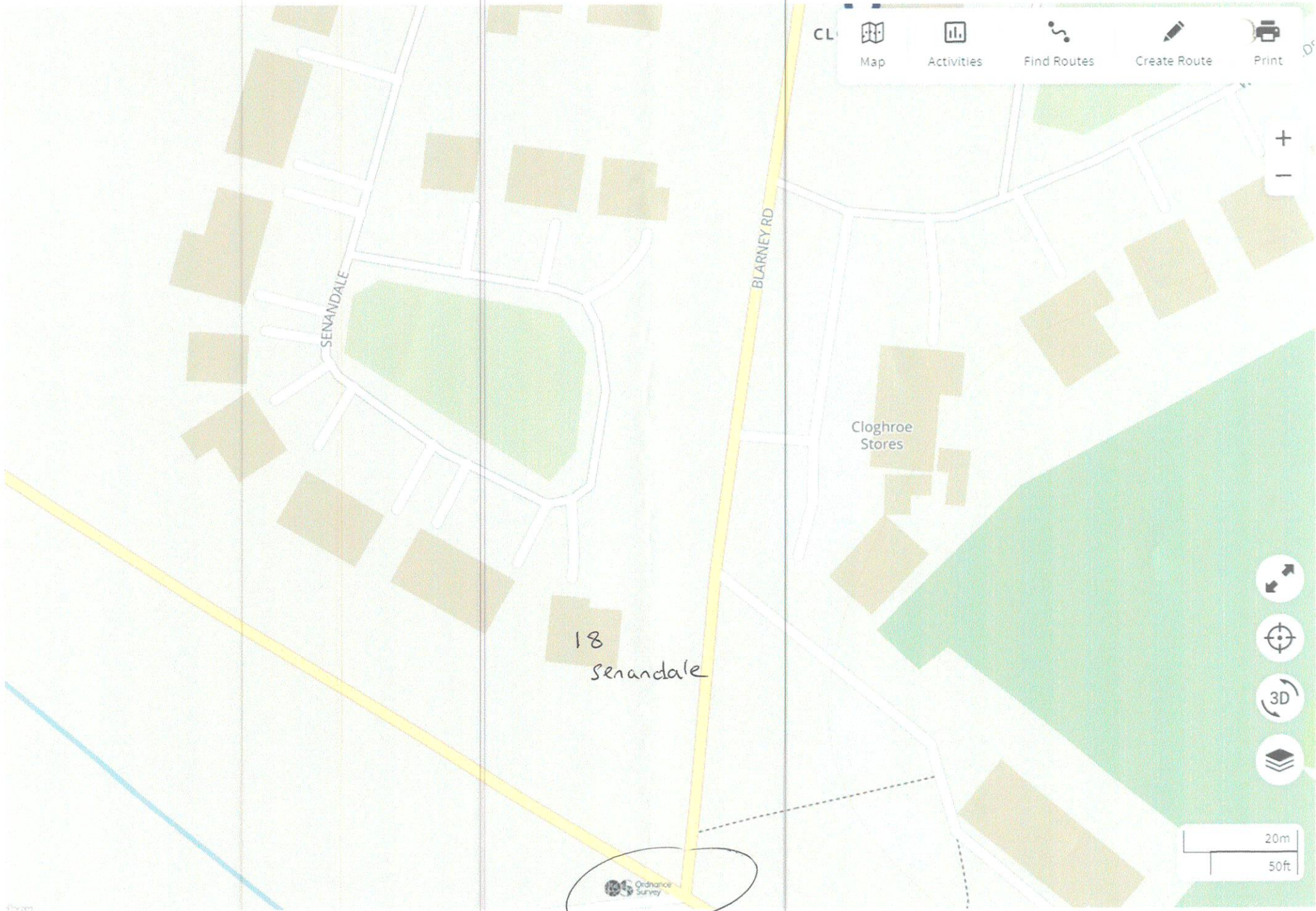
*The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation 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 protection 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.*





18  
Senandale

Cloghroe  
Stores

SENANDALE

BLARNEY RD

CL

- Map
- Activities
- Find Routes
- Create Route
- Print

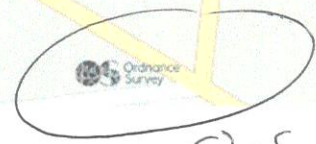
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20m

50ft



O.S. Map.

NEAR GARDEN

room

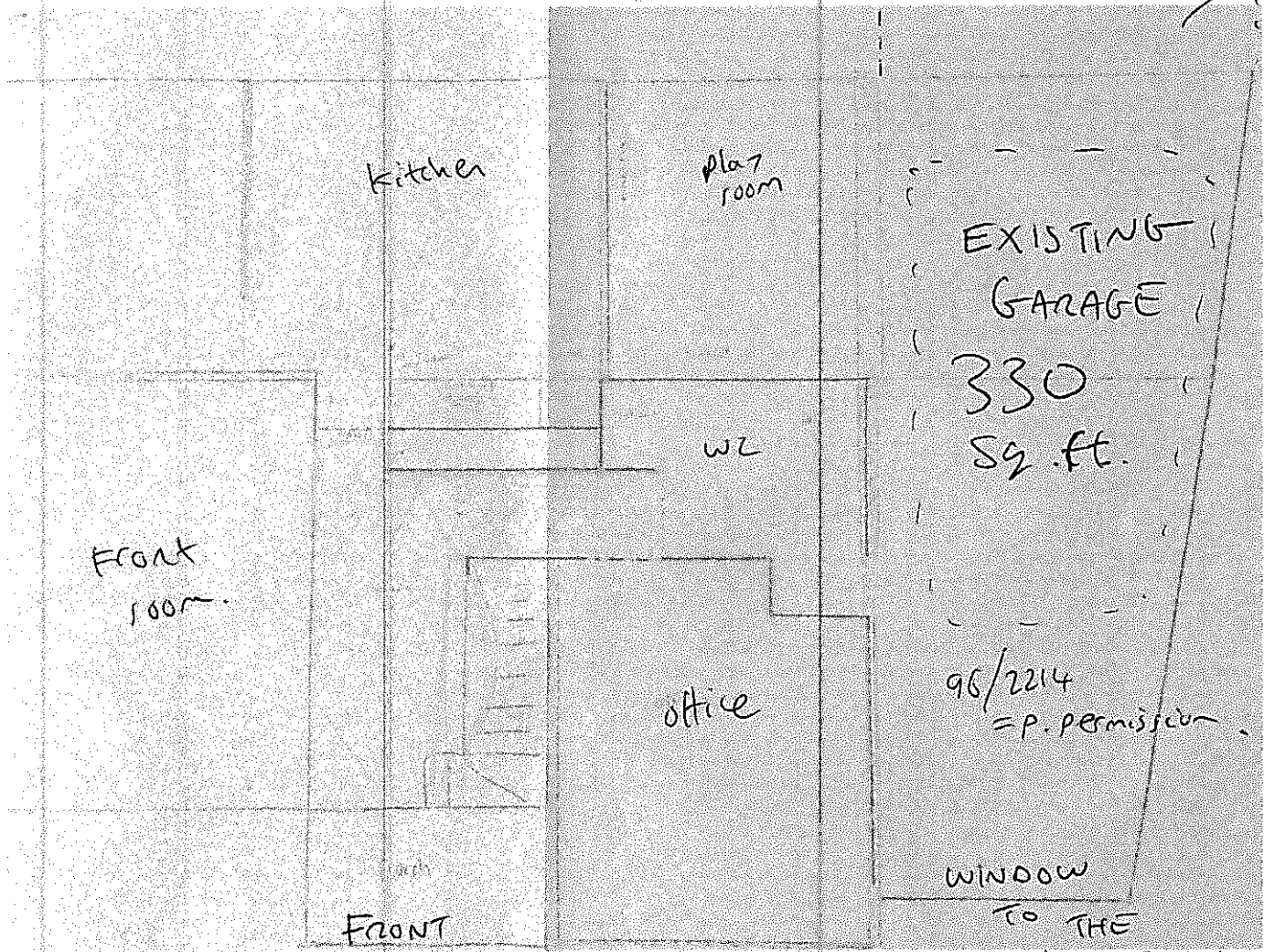
NOT overlooked



Footprint to be extended 57

50 sq-ft to the rear.

18  
SENANDALE  
CLOGHROE  
T23  
W860



96/2214  
= P. permission

WINDOW TO THE

FRONT 0002

FRONT IN NEW PLAN.

Currently = large garage door

FRONT OF HOUSE