



# Comhairle Cathrach Chorcaí Cork City Council

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

Sonia Forde,  
59 Glencurrig,  
South Douglas Road,  
Cork

21st September 2021

**RE: R684/21 – Section 5 Declaration**

**Property: North Monastery Primary School, North Monastery Road, Cork**

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I wish to advise having regard to –

- Section 3(1) of the Planning and Development Act, 2000, as amended
- Article 5(i) of the Planning and Development Regulations, 2001, as amended, in relation to the definition of a school

It is considered that use of two classrooms at North Monastery Primary School for a pre-school is **not development**.

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Yours faithfully,

Aine O'Leary  
Assistant Staff Officer  
Community, Culture and Placemaking  
Cork City Council



We are Cork.

## SECTION 5 DECLARATION – PLANNER’S REPORT

**File Reference:** R684/21

**Description:** Whether the use of two classrooms in North Monastery Primary School for pre-school is or is not development and is or is not exempted development?

**Applicant:** Sonia Forde

**Location:** North Monastery Primary School, North Monastery Road, Cork

### 1. Purpose of Report

Under Section 5 of the Planning and Development Act, 2000 (as amended), if any question arises as to what, in any particular case, is or is not development and is or is not exempted development within the meaning of the 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 applicant has submitted this referral in order to satisfy Tusla’s requirements for registering preschools.

### 2. Site Location

The subject site is located in Classrooms 305 & 306 of the North Monastery Primary School, in the northern suburbs of Cork City.

### 3. The Question before the Planning Authority

Whether the use of two classrooms in North Monastery Primary School for pre-school is or is not development and is or is not exempted development?

The information given is as follows:

- Pre-school is operating from the primary school.
- The building pre-dates the 1960 planning applications.
- No structural works required to existing primary school classrooms.
- There is no increase in floorspace.
- 3-4 staff members, max 20 children in each room.
- Opening hours are 9-3pm.
- There is an afterschool homework club for 1 hour provided for junior and senior infants when needed.
- The building is not a protected structure.
- The floor area of each classroom is 47.6 sq m.

### 4. Planning history

The website for Bishopstown Boys School (and Bishopstown Girls School) states that the school commenced in 1964.

### 5. Planning legislation

#### 5.1 Planning and Development Act 2000 (as amended)

### Section 2(1)

In this Act, except where the context otherwise requires—

“exempted development” has the meaning specified in section 4

“use”, in relation to land, does not include the use of the land by the carrying out of works thereon.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

(a) Where the context so admits, includes the land on, in or under which the structure is situated....

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

### 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, as amended.

### Section 4(3)

A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

## **5.2 Planning and Development Regulations 2001 (as amended)**

### Article 5

‘school’ has the meaning assigned to it by the Education Act 1998.

### Article (10)

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2)(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

### Schedule 2

#### *Part 4 Exempted Development – Classes of Use*

## Class 8

Use –

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

### 5.3 Education Act, 1998

Under Section 2 of Part 1 in this Act, except where the context otherwise requires, “school” means an establishment which:

- a) provides primary education to its students and which may also provide early childhood education, or
  - b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,
- but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991.

## 6. Assessment

### 6.1 Development

The established use of the site is educational, with a specific main purpose for the provision of primary school education. The school opened in the 19<sup>th</sup> century. The school buildings are large in scale and approximately 280 pupils attend the primary school.

The applicant has outlined that she operates a pre-school school from two of the classrooms. The Pre-school is a sessional facility, with 40 pupils and 3/4 staff.

The first issue for consideration is whether or not the matter at hand is ‘development’, which is defined in the Act as comprising two chief components: ‘works’ and / or ‘any material change in the use of any structures or other land’. No works have taken place so the referral is solely confined to the ‘use’.

The pre-school use caters for pre-school children and provides children with early learning prior to entering the primary school environment. The definition of school in the Education Act is an establishment which provides primary education to its students and which may also provide early childhood education (emphasis added). There is a change of use in that a different cohort is being catered for within the classroom with its own specific curriculum. It remains as an education use and the character of the existing land use will not be substantially altered. The footprint of the buildings remain the same – and the operation of the pre-school has not resulted in extensions for an additional classroom. The hours of operation are consistent with those of the primary school. Having regard to the scale of the Montessori school in the context of the primary schools on the site, it is not considered that there is an intensification of use.

Having regard to the long established primary school use, the definition of a school set out in the legislation, the scale of the existing primary schools on the site, and the scale and use of the pre-school which operates from two classrooms within the school premises, it is considered that the change of use is not material and is not development. The question as to whether a material change of use is exempted development does not therefore arise.

## CONCLUSION — is not development

### **6.3 Environmental Assessment & Restrictions on Exemption**

A number of restrictions on exemption are set out in Section 4(4) of the Act.

Having regard to the contents of Article 103 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 environmental impact assessment is not required.

The applicant has not submitted an appropriate assessment screening report. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of these European sites. Accordingly, it is considered that appropriate assessment is not required.

### **7. Conclusion & Recommendation**

The Planning Authority, in considering this referral, had regard particularly to –

- (a) section 3(1) of the Planning and Development Act, 2000, as amended
- (b) article 5(i) of the Planning and Development Regulations, 2001, as amended, in relation to the definition of a school

The Planning Authority has concluded that –

- (a) the established use of site is educational and a primary school
- (b) the use of a school classroom as a pre-school is a change of use
- (c) having regard to the nature and scale of the pre-school which operates from 2 no classrooms and the nature and scale of the primary schools within the site, it is considered that there are no material impacts arising and there is no material change of use
- (d) The change of use, not being material, is not development

The Planning Authority decides that use of two classrooms at North Monastery Primary School for a pre-school is not development.

03/09/21

To whom it may concern,

I have attached a section 5 application. A property search has already been carried out by your office. I have attached the response.

I would appreciate it if the attached application could be looked at as soon as possible. I understand all departments are under pressure at the moment, I am just hoping you can consider my request if at all possible.

We are a preschool and were initially told by Tusla that we were exempt from the planning permission requirement of the Tusla re-registration process because of the building type (primary school) and age of building. . We found out last week that we need to submit proof of that exemption. I have completed a property search through your office and have now been advised to submit a section 5 to get confirmation of the exemption.

At present we have not been able to open by our due date. We have children waiting to start preschool and staff waiting to see if they are going to have a job. It is completely my responsibility as the registered provider but am asking for consideration by your department so that I can advise staff and families of where we stand and act accordingly.

I have attached the application, site map and floor plan. I have outlined use, opening times, floor space, confirmed no structural work has occurred and that the facilities are in line with Tusla's regulations.

I would appreciate any advice or assistance that can be provided to me at this point,

Sonia Forde  
Registered Provider



**COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL**

Community, Culture & Placemaking Directorate,  
Cork City Council, City Hall, Anglesea Street, Cork.



**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**

North Monestery Primary School, North Monestry Road, 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.*

Pre-school operating from primary school.  
Seeking confirmation that building predates the 1960 planning regulations. and is therefore exempt from planning permission.  
Tusla requiremnt for re-registration process.

**ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:**

*(Use additional sheets if required).*

No structural works have occurred to existing primary school classrooms. No increase in floor space.  
Classroom in use for preschool. Sessional, max 3.5 hour sessions. Preschool aged children.  
3 - 4 staff members depending on numbers and needs of children. Max 20 children per room.  
Opening hours 9 to 3pm . Afterschool homework club for 1 hour provided for Junior and Senior Infants when needed.  
Have attached floor plan. Preschool occupies rooms 305 and 306.

3. Are you aware of any enforcement proceedings connected to this site?  
 If so please supply details:

No

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?

5. Was there previous relevant planning application/s on this site?  NO  
 If so please supply details:

**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	Floor area of each classroom is 47.6 sq.M
(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) _____ _____ _____

**8. LEGAL INTEREST**

Please tick appropriate box to show applicant's legal interest in the land or structure	<b>A. Owner</b>	<b>B. Other</b>
Where legal interest is 'Other', please state your interest in the land/structure in question	Registered provider for preschool operating in primary school	
If you are not the legal owner, please state the name and address of the owner if available	Edmond Rice Primary School	

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

Signature: \_\_\_\_\_ 

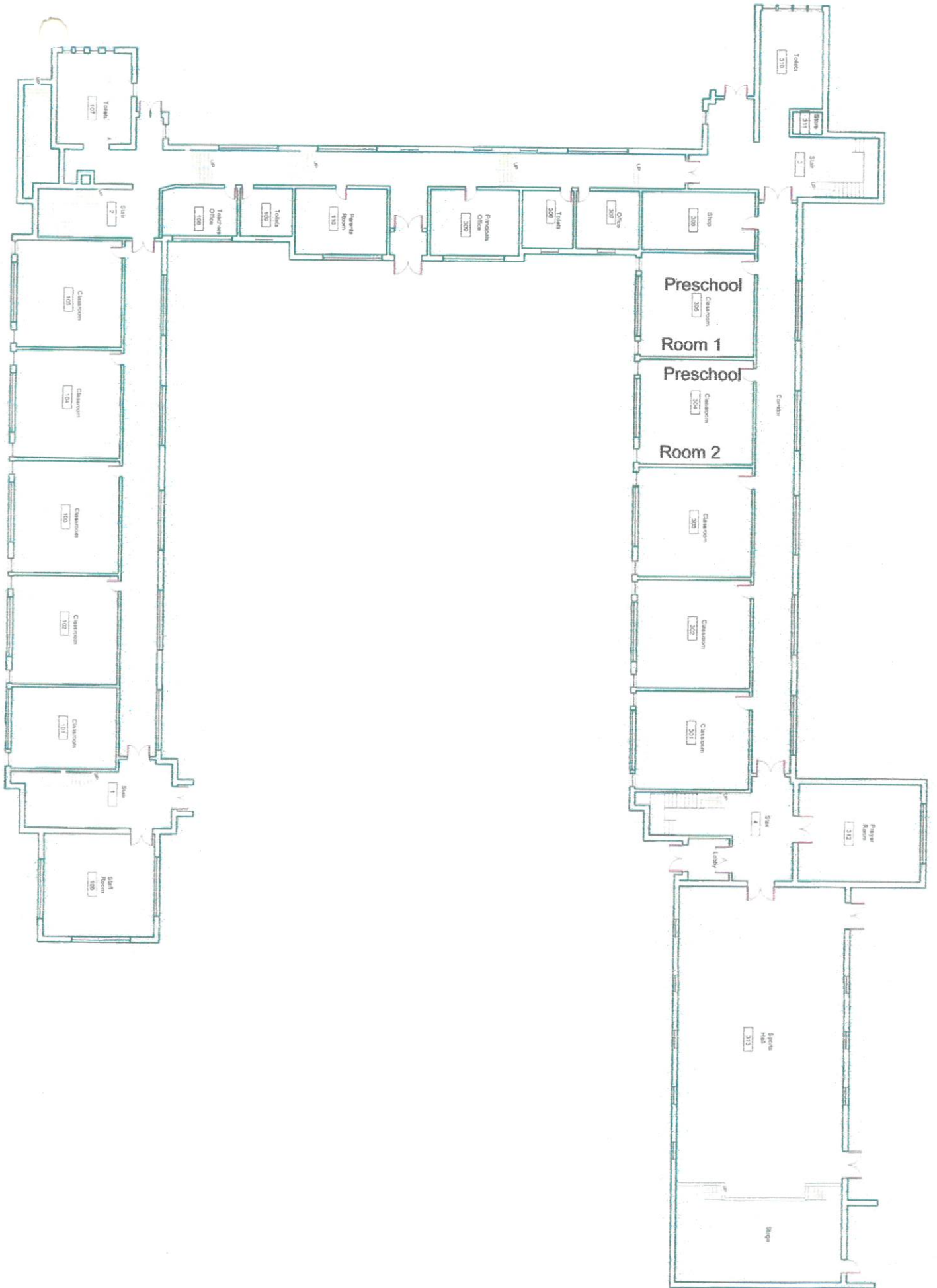
Date: 02/09/21



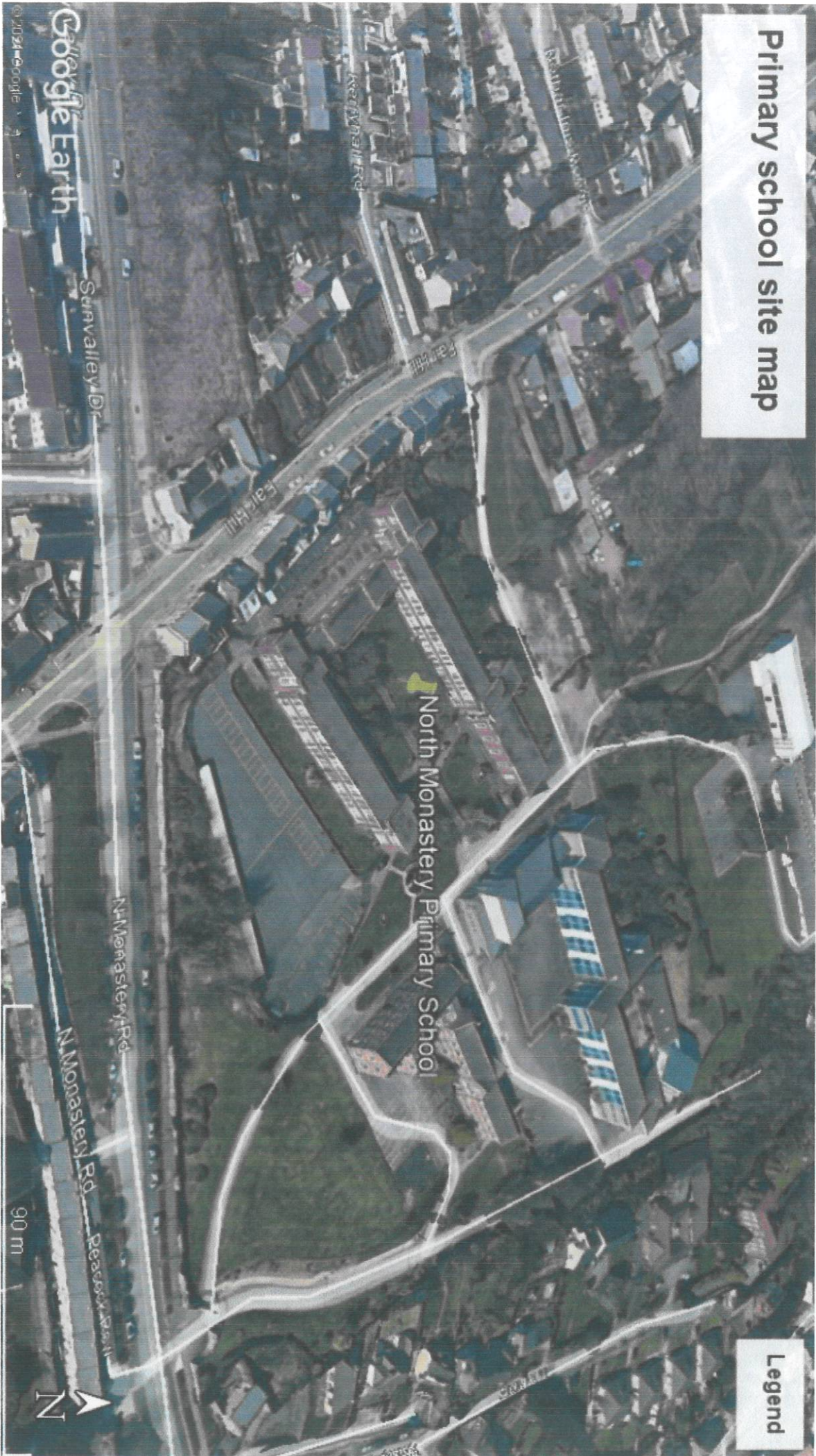
- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any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



# Primary school site map



Legend

© 2024 Google  
Google Earth

90 m

