Comhairle Contae Chorcaí Cork County Council

Denis Harrington, C/O Ian O'Flynn, Harrington O'Flynn Ltd, Consulting Engineers, 16 Roselane, Ballincurra, Midleton, Co. Cork Pleanáil agus Forbairt, Halla an Chontae, Bóthar Charraig Ruacháin, Corcaigh T12 R2NC. Fón: (021) 4276891

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



17th January, 2025

REF:

D/292/24

LOCATION:

Laharn, Carrignavar, Co. Cork

RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000 - 2010.

Dear Sir,

On the basis of the information submitted by you on 12th December, 2024 the Planning Authority, having considered whether the construction of a 40sq.m² extension to a dwelling house at **Laharan**, **Carrignavar**, **Co. Cork** is or is not development or 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

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended)
- Article 6 and 9 of the Planning and Development Regulations 2001-2024, (as amended)
- The plans and particulars received by the Planning Authority on 12th December, 2024
- Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

And Whereas the Planning Authority hereby decides that

Having regard to the condition of the structure on site, it is the Planning Authority's view that the structure is derelict and does not fall within the definition of a habitable house and as such the exemptions set out under Class 1, Part 1, Schedule 2 of the Planning and Development Act 2000 (as amended) do not apply in this instance.

NOW THEREFORE, Cork County Council, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the construction of a 40sq.m² extension to an existing derelict house at Laharan, Carrignavar, Co. cork 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,

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 https://www.corkcoco.ie/privacy-statement-cork-county-council

D/292/24 - Section 5 Declaration

1. Introduction

A Section 5 declaration is sought by Denis Harrington in respect of the construction of a 40 sq. m extension to a dwelling house at Laharan, Carrignavar, Co. Cork.

2. Site and Project Description

The subject site is located in the townland of Laharan c. 800m northwest of Carrignavar. It is set back c. 300m from the public road off a long private roadway which extends to serve a number of existing and recently constructed dwellings to the south. The site is situated within a larger field in agricultural use and comprises an existing derelict dwelling. The derelict dwelling is setback c.70m from the private roadway. An access from the private roadway to the dwelling has been cleared and laid with hardcore and heavy vegetation surrounding the dwelling has been cleared. It is apparent, having regard to the planning history associated with the site (23/5770), that previous additions to the north and south of the dwelling have been demolished. These works appear to have been undertaken relatively recently.

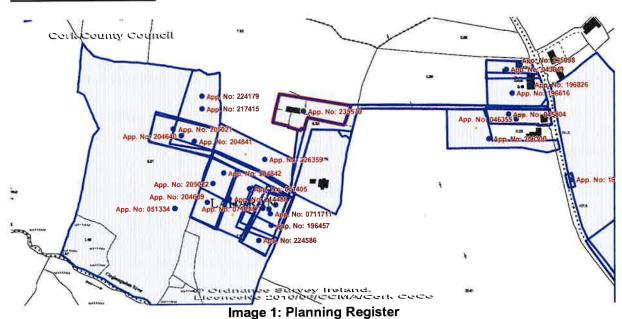
The extension subject of this Section 5 application will be sited to the north of the existing derelict dwelling. It will be flat roofed with an internal floor area of 40 sq. m. The extension will provide 3 no. bedrooms.

3. Question subject of the Section 5

On the basis of the information submitted and having visited the site I consider the question to be addressed under this request is as follows:

"Whether or not the construction of a 40 sq. m extension to an existing derelict house is or is not development and is or is not exempted development".

4. Planning History



The following recent planning history pertains to the site:

Planning Ref.	Development Description	Decision
23/5770	Permission for (1) Alterations and Renovations to his existing dwelling house. (2) Demolish existing derelict side extensions, (3) Construct a new single storey link and a storey and a half style rear extension to his existing dwelling. (4) Construct a new vehicular entrance. (5) Install a new wastewater treatment system and percolation area and all associated site works (Denis Harrington)	Withdrawn

5. Relevant Planning Legislation

Planning and Development Act 2000 (as amended)

Section 2 (1) of the Planning and Development Act 2000 (as amended) states:

In this Act, except where the context otherwise requires -

"habitable house" means a house which— (a) is used as a dwelling, (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or (c) was provided for use as a dwelling but has not been occupied;

"house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

"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) of the Planning and Development Act 2000 (as amended) states:

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 (4) of the Planning and Development Act 2000 (as amended) states:

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Planning and Development Regulations 2001 (as amended)

Article 6 (1) of the Planning and Development Regulations 2001 (as amended) states:

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) (a) of the Planning and Development Regulations 2001 (as amended) states:

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-

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Article 9 (1) (c) of the Planning and Development Regulations 2001 (as amended) states:

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) states the following is exempted development:

				- 4
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Exempted Development - General

Column 1 Description of Development

Column 2 Conditions and Limitations

Development within the curtilage of a house

CLASS 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

- (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
 - (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.
- 2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.
 - (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1

 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.
 - (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.
- Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

- 4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.
 - (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
 - (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.
- 5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.
- (a) Any window proposed at ground level in any such extension shall not be less than I metre from the boundary it faces.
 - (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
 - (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.
- 7. The roof of any extension shall not be used as a balcony or roof garden.

6. Relevant Precedents

ABP-304752-19

Relates to refusal of permission for a replacement house in Co. Waterford. On the basis of the information submitted with the application and appeal relating to the structure on site, the Board noted the overall disused condition of the structure which was without windows and doors and considered that there was insufficient evidence that the structure constitutes a habitable dwelling.

7. Internal Consultees

Area Engineer – No comments.

8. Assessment

Is the proposal development?

The construction of an extension comes within the meaning of 'works' and 'development' in accordance with Sections 2 and 3 of the Planning and Development Act 2000 (as amended) respectively. The question at issue, therefore, is whether the development is or is not exempted development.

Is the proposal exempted development?

A 40 sq. m single storey flat roofed extension is proposed to the north of the existing house on site which is in a derelict condition.

Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) allows for the construction of an extension to the rear a house provided the floor area of any such extension does not exceed 40 sq. m where the house has not been extended previously. As such a 40 sq. m extension to a house constitutes exempted development.

However, it is important to note in this instance the house that is being extended appears to have been unoccupied for a considerable period of time and is considered to be in a derelict condition.

Section 2 of the Planning and Development Act 2000 defines a 'habitable house' as a house which –

(a) is used as a dwelling,

- (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
- (c) was provided for use as a dwelling but has not been occupied;

Significant site clearance works and removal of vegetation surrounding the house has been undertaken recently, as evidenced by the site photographs attached to the Case Planners report associated with 23/5770 which were taken in August 2023. These photographs are included at Appendix 1 below.

Site photographs taken on 15th January 2025 showing the current condition of the structure are included at Appendix 2. There are some roof tiles and ridge tiles missing and the chimneys need repair. There are no gutters or downpipes on the house and the eaves are exposed to the front and the rear. There is vegetation

growing on the house in several places. Crucially, there are no windows and doors in place, and some opes have been blocked up with concrete blocks. The applicant has not submitted any evidence that this structure constitutes a habitable house.

It is noted that in relation to an application for planning permission for a replacement house An Bord Pleanála considered what constitutes a 'habitable house' and found that a structure in a disused condition which was without windows and doors did not constitute a habitable house.

Having regard to the condition of the structure on site I am of the view that the structure is derelict and does not fall within the definition of a habitable house and as such the exemptions set out under Class 1, Part 1, Schedule 2 of the Planning and Development Act 2000 (as amended) do not apply in this instance.

9. Recommendation

A question has arisen as to whether the construction of a 40 sq. m extension to an existing derelict house at Laharan, Carrignavar, Co. Cork is or is not development and is or is not exempted development.

The Planning Authority, in considering this Section 5, had regard to:

- a) The plans and particulars received by the Planning Authority on 12th December 2024;
- b) Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- c) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- d) Class 1 of the Planning and Development Regulations 2001 (as amended)

The Planning Authority has concluded that the construction of a 40 sq. m extension to an existing derelict house is development and is not exempt development.

Marie Down
Executive Planner

16/01/2025

Noel Sheridan

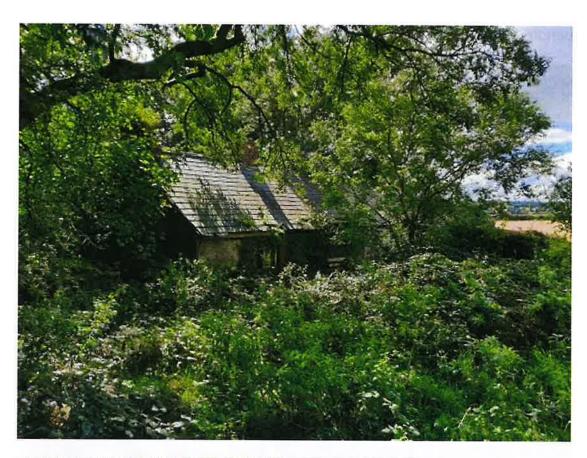
Senior Executive Planner

XX/01/2025

Appendix 1: Site Photographs taken August 2023 in association with 23/5570









Appendix 2: Site Photographs taken 15th January 2025









CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

4 No. Copies of Application Form:

1 No. Copy of Contact Details:

4 No. Copies 6" O.S. Maps:

4 No. Copies 25" O.S. Maps:

4 No. Copies of Site Layout Plan:

4 No. Copies Scaled Drawings of Development:

€80 Application Fee:

(Please tick $\sqrt{}$)



FOR OFFICE USE ONLY

Receipt No.	P(200)2453
Cash/Cheque/ Credit Card	CHEONE
Date	12/2/24
Declaration Ref. No.	1/292/24

DATE STAMP HERE

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 3^{rd} parties to view.

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 purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

Planning Department

112 DEC 2024

DATA PROTECTION

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

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.

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

DENIS HARRINGTON

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

LAHARAN, CARRIGNAVAR, CO. CORX

3. QUESTION/DECLARATION DETAILS:

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

140m2 REAR EX EXISTING DW	
AT LAHARAN, C	PARITHUAVAR, CO. CORK
(40m² ExEMPT FROM REAL EXTER	m Planning
REAR EXTER	vsion -
	2 - nortment
	Planning Department
	12 DEC 2024
	Cork County Courier
	Cork.

(a) Floor area of existing/proposed structure(s):	68 m 2 MAIN 40 m REAR EXTENTION
(b) If a domestic extension is proposed, have	Yes No No
any previous extensions/structures been	2 1
erected at this location after 1st October,	If yes, please provide floor areas (m ²) and
1964 (including those for which planning	previous planning reference(s) where applicable
permission has been obtained):	
(c) If a change of use of land and/or building(s)	
is proposed, please state the following:	
Existing/previous use	Proposed use
$\propto //A$	N/A.
7	
(d) Are you aware of any enforcement	Yes No No
(d) Are you aware of any enforcement proceedings connected to this site?	Tes No V
/	If yes, please state relevant reference number(s):
11/1	
N/λ .	
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	N/A
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	41/2
Question C in Contact Details):	N/A.
	ARCHITECTURAL CONSERVATION AREA
Is this a Protected Structure/Proposed Protected Structure: Yes No	ructure or within the curtilage of a Protected
YC 1 D 1 d'annual or Continue 57 of the Di	oming & Davidonment Act 2000 hear requested
If yes, has a Declaration under Section 57 of the Pl	y: Yes No No
or issued for the property by the Planning Authorit	y. 165
If yes, please state relevant reference No.	4
Is this site located within an Architectural Conserv	ation Area (ACA), as designated in the County
Development Plan? Yes	No L
Development I am.	lanning Department
APPROPRIATE AGGREGATION	
APPROPRIATE ASSESSMENT:	4.2 DEC 2024
auld the prepared development require or hope	anriate/assessment necalise(if wallin ne likelv ii
ould the proposed development require an appr ve a significant effect on the integrity of a Europ	pean site (SAC, SPA ato)? Yes No

4.

APPLICATION DETAILS:

8. DATA PROTECTION DECLARATION:

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 Planning Authority

I give permission for my personal information to be processed for the purpose stated above

Signed
(By Applicant Only)

Date

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

7	11	•	
I give permi	ssion for my sensitive personal data submitted t	to the Planning Authority to	be processed
for the purpose s	tated above.		
Signed	Da Shot		
Date	9 000		

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 view at the Planning Authority offices.

ADVISORY NOTES:

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 Road, Skibbereen, Co. Cork, P81 AT28.

- 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
 decision.
- 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.

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

Signed (Applicant or Agent as appropriate)	The file
Date	6-12-24

Planning Department

12 DEC 2024

Conk County Counted

County Hall

Cork.

Site Location Map SITE LOCATION 583497 **National Mapping Agency** CENTRE **COORDINATES:** 566732.582589 Rises PUBLISHED: **ORDER NO.:** 30/11/2021 50236743 1 Cross Konda (479 MAP SERIES: **MAP SHEETS:** 6 Inch Raster CK052 No of fence COMPILED AND PUBLISHED BY: Ordnance Survey Ireland, Phoenix Park. Dublin 8, Ireland. Bleak House Unauthorised reproduction infringes Ordnance Survey Ireland and Government of Ireland Planning Department copyright. All rights reserved. No part of this publication may be copied, reproduced or transmitted in any form 18 DEC 2024 or by any means without the prior written permission of the copyright owners. The representation on this map of a road, track or footpath is not evidence of the existence of a right of way. Garla Siathchrua Sin. Cot Office
Catholic Church San 350 Ordnance Survey maps never show legal property M Including 9 Carrignavar boundaries, nor do they show ownership of Church physical features. © Suirbhéireacht Ordanáis Éireann, Larignavar linera © Ordnance Survey Ireland, 2021 www.osi ie/copyright Ordnance Survey Ireland CAPTURE RESOLUTION: Ν 440 metres 220 The map objects are only accurate to the resolution at which they were captured LEGEND: **OUTPUT SCALE: 1:10,560** Output scale is not indicative of data capture scale http://www.osi.ie Further information is available at: 0 200 400 600 800 1,000 Feet search 'Large Scale Legend http://www.osi.ie; search 'Capture Resolution'

