



# Comhairle Cathrach Chorcaí Cork City Council

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

Stephen Lane  
18 Senandale  
Cloghroe  
Cork  
T23 W860

27<sup>th</sup> September 2021

**RE: R677/21– Section 5 Declaration**  
**Property: 18 Senandale, Cloghroe, Cork**

Dear Sir/Madam,

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

*The construction of a fence to the rear of the property*

**Is development and is exempted development.**

Yours faithfully,

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Kerry Bergin  
Assistant Staff Officer  
Community, Culture and Placemaking  
Cork City Council



**We are Cork.**

<b>PLANNER'S REPORT</b> <b>Ref. R677/21</b>		Cork City Council Development Management Strategic Planning and Economic Development
<b>Application type</b>	Section 5 Declaration	
<b>Description</b>	<i>Is the construction of a fence to the rear of a dwelling development and if so is it exempted development?</i>	
<b>Location</b>	18 Senandale, Cloghroe, Cork T12 W860	
<b>Applicant</b>	Stephen Lane	
<b>Date</b>	26/08/2021	
<b>Recommendation</b>	<i>Is development and is 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,

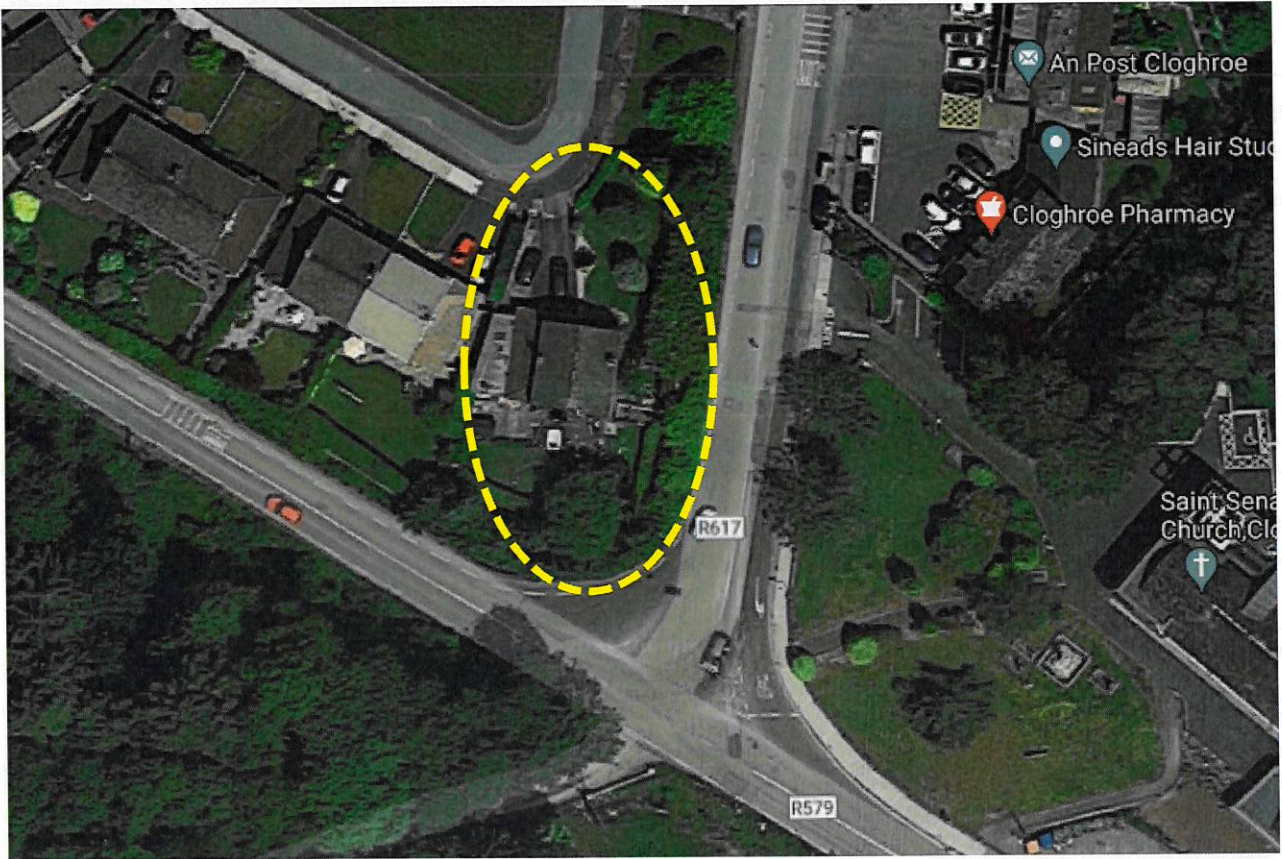
*5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and 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 response to Q2 on the application form the applicant frames the following question:

*Is the construction of a fence to the rear of a property development and if so is it exempted development?*



### 3. Site Description

The property subject of this declaration comprises a corner site within the established residential estate at Senandale, Cloghroe. The subject site contains a two storey detached dwelling with front and side gardens and a large rear garden which is bounded by the R617 to the east and the R579 to the south. Access to the site is provided via the internal roads in the Senandale estate, no access is provided via the public roads to the east or south of the site.

Viewed from the public road the site boundary along the east and south consists of a low block wall and a mixture of trees and shrubbery behind this. It is noted that the existing block wall was erected by the Council and marks the legal boundary of the property at no. 18 Senandale.

#### 4. Planning History

There are no recent planning applications associated with the site. Permission was granted by Cork County Council under 96/2214, without conditions, for the retention of the garage conversion and extension to the dwelling and permissions for the Senandale Estate was granted under 91/3156 without conditions.

#### 5. Legislative Provisions

##### 5.1 Planning and Development Act, 2000 as amended

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, as amended.*

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 Planning and Development Regulations, 2001 as amended

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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, Part 1 – Exempted Development*

General Classes 1 –8 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

*Schedule 2, Part 1 – Exempted Development - General*

Column 1 Description of Development	Column 2 Conditions and Limitations
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<p><i>Development within the curtilage of a house</i></p> <p><b>CLASS 5</b></p> <p><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>1. 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>2. 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>3. No such structure shall be a metal palisade or other security fence.</p>
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**Article 9(1)**

Development to which article 6 relates shall not be exempted development for the purposes of the Act – sets out a number of restrictions. Relevant to this question are the following:

- 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.*
    - (iii) *endanger public safety by reason of traffic hazard or obstruction of road users.*
    - (xi) *obstruct any public right of way.*

**6. Assessment**

**6.1 Development**

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’.

‘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.’

As noted above Section 3(1) of the Planning and Development Act states that: ‘development’ means, *except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*

I consider that the erection of a fence to the rear of this property constitutes the carrying out of works and as such it constitutes development.

**6.2 Exempted Development**

The next issue for consideration is whether or not the proposal is exempted development.

The erection of a fence may be exempt if it accords with the exemption set out in Class 5 in Schedule 2 of the *Planning and Development Regulations 2001* (as amended). The following is a review of the proposal against the conditions / limitations set out in Class 5.

<p>1. 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>1. Proposed fence will have a total height of 2m above ground, (noting the information provided states ‘7 feet’ which is equal to 2metres approx.)</p> <p>2. N/A</p>
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<p>2. 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>3. No such structure shall be a metal palisade or other security fence.</p>	<p>3. N/A</p>
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The proposed erection of a concrete post and timber fence to the rear of the subject property therefore does comply with the conditions / limitations set out under Class 5 of Schedule 2 of the Act.

The details provided by the applicant note the proposed total height of the fence will be '7 feet over ground', the conversion of said measurement to metres would result in a total fence height of 2 metres approx. Therefore, the proposed fence is consistent with the conditions/ limitations under Class 5 (1) restricting the height of boundary fence to 2 metres.

With regard to Article 9(1) I consider that the proposed fence is not subject to any restriction subject to its grant of permission. The proposed fence is set back from the existing road junction by 13ft at its nearest part and 21ft and its furthest part, as such will not cause any obstructions, cause traffic hazard or obstruct public right of way at this location.

## 7. Environmental Assessment & Restrictions on Exemption

### 7.1 Screening for Environmental Impact Assessment

A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.

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.

#### 7.1 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 development site relative to these European sites and related watercourses and to the nature and scale of the 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 —

*The construction of a fence to the rear of the property*

**Is development and is exempted development.**

26-07-2021

COMHAIRLE CATHRACH CHORCAÍ  
CORK CITY COUNCIL

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

Strategic Planning & Economic  
Development Directorate

R-Post/E-Mail [planning@corkcity.ie](mailto:planning@corkcity.ie)

Fón/Tel: 021-4924762

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**

18 SENANDALE, CLOGHROE, CORK  
T23, W860

**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 construction of a fence to the rear of my property exempt?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

- The fence (is) 24 metres in length.
  - 7 ft over ground.
  - concrete posts + wooden panels
  - No dwelling is behind the property
  - The 25779 runs behind the fence it intersects the 2617 at a T junction
- Please see enclosed maps.

The fence will be 11 feet from the road. It will not affect sightlines from the T junction but please come and examine if you need to.

11 ft is the nearest point.

21 ft is the furthest.

The rear boundary to our house was drawn by council Planners, November 2020

→ this is marked in following pictures. - pic 4

see pic 9

2579  
pic 3

pic 4



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?

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?

If so please supply details:

NO

**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	<u>NA</u>
(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 type="checkbox"/> If yes, please provide floor areas. (sq m) <u>NA</u>
(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)
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-----	<u>NA</u>

**8. 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		

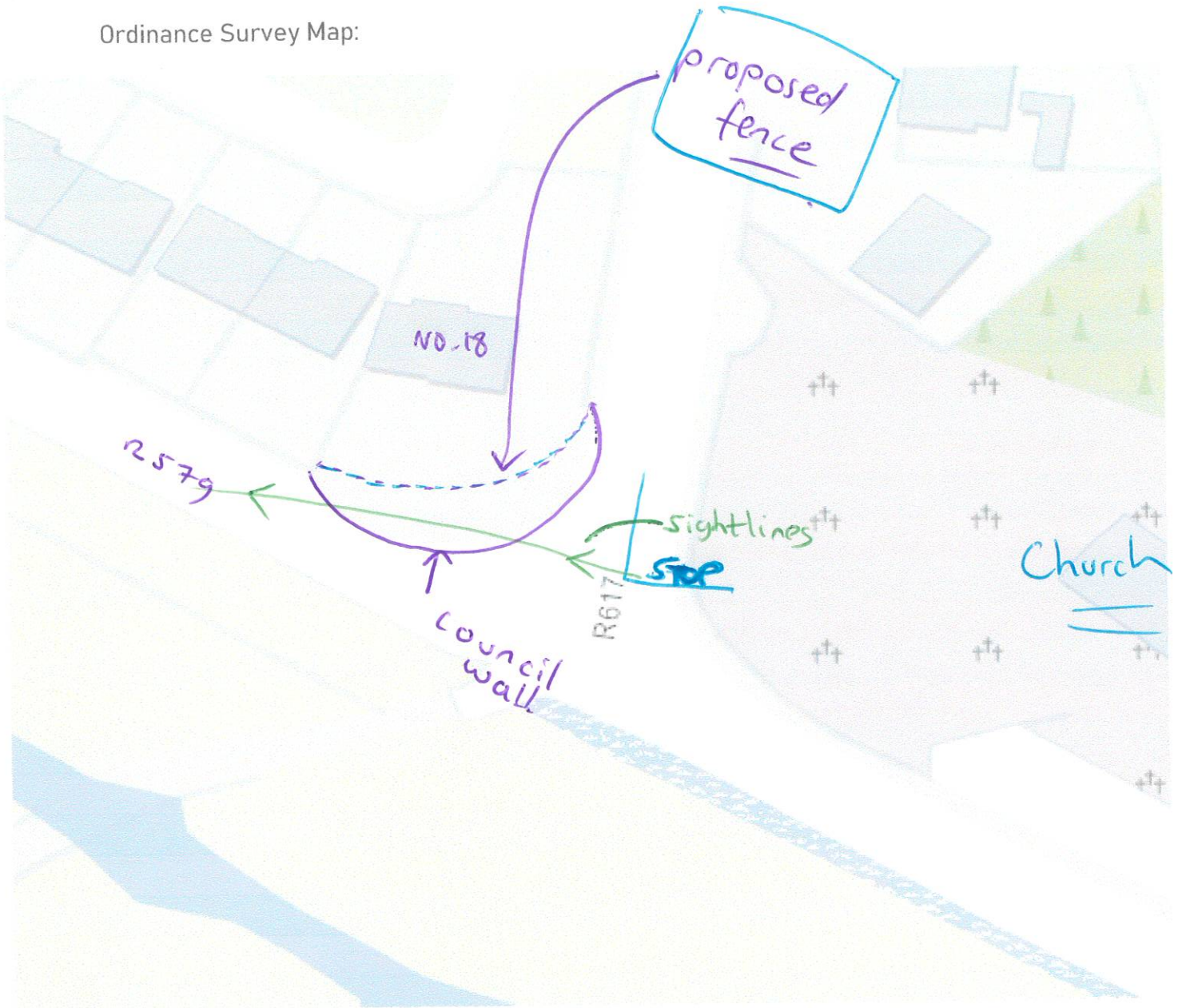
9. I / We confirm that the information contained in the application is true and accurate:

Signature: Stephen Lane

Date: 23.7.21



Ordinance Survey Map:



T23 W860  
= eircode

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①



②



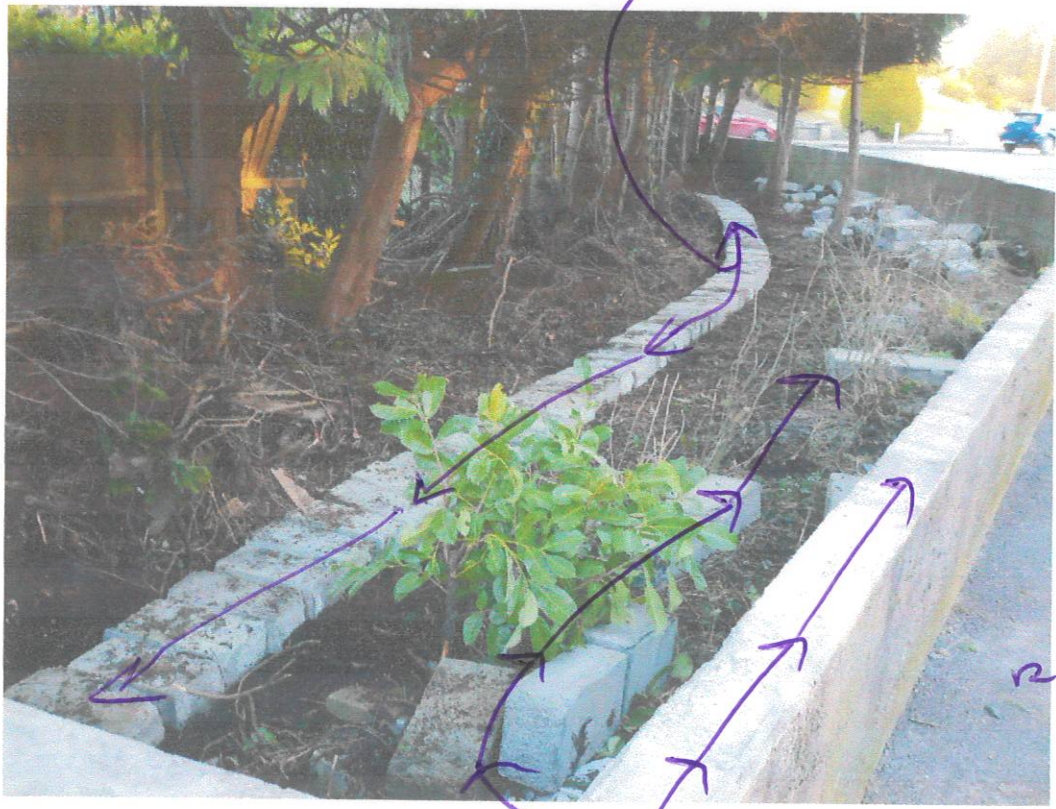
→ council wall



3



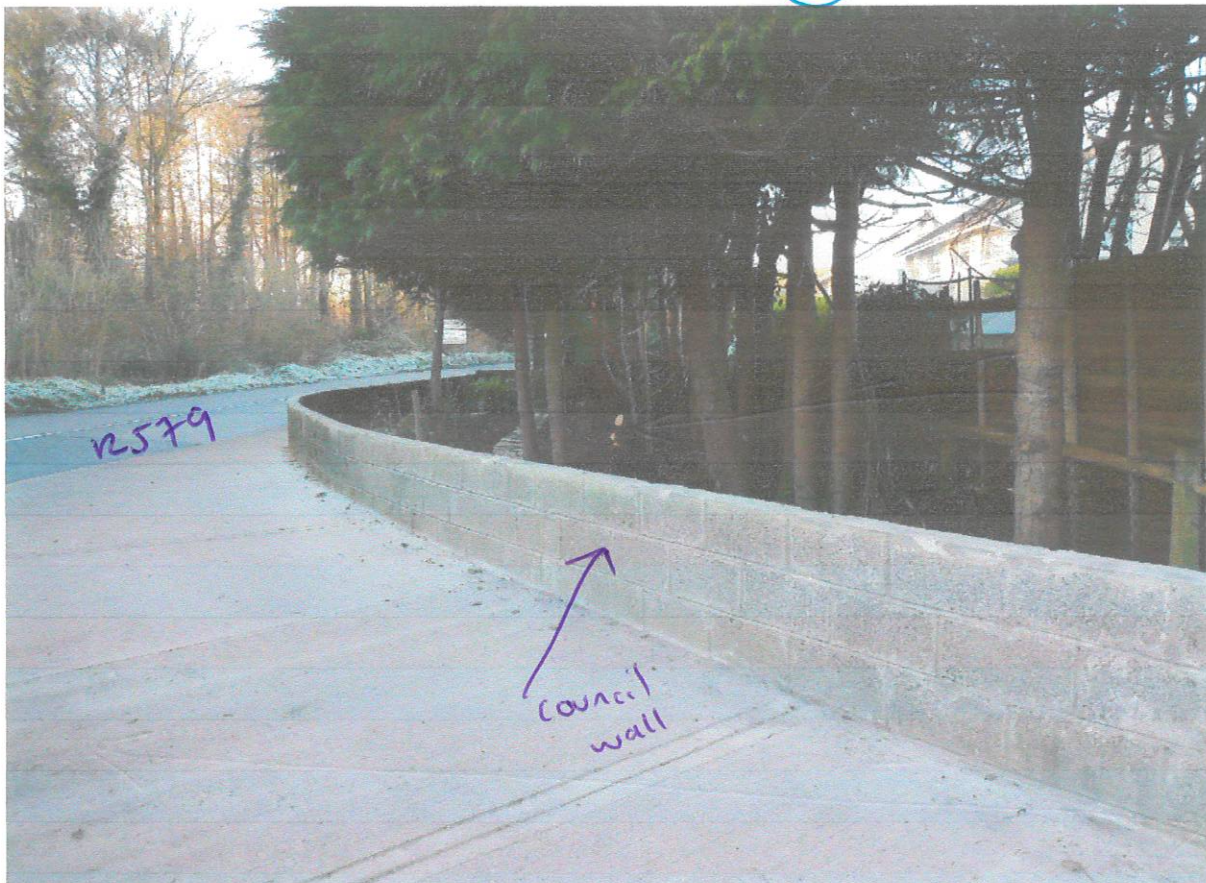
4  
proposed fence site =  
(Boundary of Land for WO-18)



Council land + wall



5



6





7



R2617

R2579

8



No. 18

Fence Type:

9

