

Draft Development Plan Submission

Dublin City

Development Plan 2022-2028

Draft Plan

on behalf of



Archdiocese of Dublin
Ard Deoise Átha Cliath

14 February 2022

Brock
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1 Introduction

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin are instructed by our client **Schools and Parishes of the Diocese of Dublin (20016166 RCN) Finance Secretariat, Archdiocese of Dublin, Holy Cross Diocesan Centre, Clonliffe Road, Dublin 3, D03 P2E7**, to make a submission to Dublin City Council in response to the Draft Dublin City Development Plan 2022-2028, which is currently on public display.

Our client's landholding, across the City administrative boundary, is extensive. This submission deals with a selection of sites which fall into two distinct categories:

- 1) Sites zoned Z15 in the current Dublin City Development Plan;
- 2) Selection of school sites with various zonings.

The main objective of this submission is to raise a very specific concern regarding the provisions of the Draft Z15 zoning as iterated in the Draft Dublin City Development Plan, and the implications for our client on their wider objectives and community involvement.

The overall submission is supported by an Opinion from **Mason Hayes Curran, which should be read in conjunction with this report.**

2 About the Dublin Diocese

The Archdiocese of Dublin (Parishes and Schools of) is composed of 197 parishes, communities of the Christian faithful established and entrusted to a pastor under the authority of the diocesan bishop.

The Archdiocese covers an area of some 100 km of the mid-eastern coast and extends inwards over 70km. The entire county of Dublin forms a substantial part of the diocese along with parts of counties Wicklow, Kildare, Carlow, Wexford and Laois. The Catholic population is approximately 1.1m. The Parishes and Schools of the Archdiocese of Dublin (entity) is governed by legal trust and registered with the Charities Regulatory Authority (20016166). There are at present 449 primary schools in the diocese under the patronage of the bishop.

Our client has specific ambitions and objectives to assist with the current housing crisis and, where possible, support Approved Housing Bodies in their delivery of social and affordable housing within existing communities, where needed.

A large number of their sites are capable of delivering on this objective and our client is already working with AHB's and local Councils in certain locations.

They have a stated ambition to continue to work with Local Authorities and to demonstrate and deliver on their objective to providing some solutions to addressing the housing crisis.

As will be iterated in this report, we have a concern surrounding the content of the Draft Development Plan and its ability to frustrate these objectives and projects.

3 Subject Sites

As stated above, the landholdings controlled by our client, across Dublin City, are extensive.

Appendix 1 detail the sites under consideration for the purpose of this submission and the review of the Dublin City Draft Development Plan.

Key attributes of these sites can be summarized as follows:

- **Generally Zoned z15 under the current Dublin City Development Plan;**
- **All are brownfield sites centrally located within existing communities;**
- **Many have attendant lands which may no longer be needed for the immediate workings of the Diocese in the medium to long term;**
- **All are strategically located in close proximity to high quality transport provision and local services;**
- **In relation to the school sites – their uses are generally catered for on site with no envisaged expansion plans or future requirements.**

4 Concern with the Provisions of the Z15 Designation

We wish to express our client’s significant concerns regarding the new provisions of the Z15 zoning as iterated in the Draft Plan. We would respectfully suggest that the Z15 zoning no longer reflects that of the current Development Plan, and in effect, a zoning change and significant impact on our clients landholding will take place.

There are key concerns of our client and the difficulty surrounding the narrative associated with this zoning is set out below.

The new Z15 Zoning places an increased emphasis on the on future proofing such lands for community and social infrastructure.

A blanket designation of this zoning, across all our clients lands, is a blunt development control instrument which doesn’t take account of site particulars or circumstances.

Residential use is no longer open for consideration under the Z15 zoning, and will only be considered in highly exceptional circumstances.

This considered to be an unnecessary intervention on our clients’ sites which are strategically located, and capable of delivering a level of appropriately designed and sited, residential development.

The Draft Development Plan notes, that in designating such sites with the Z15 zoning, it was done so in the acknowledgement that *‘such facilities are considered essential in order to provide adequate community and social infrastructure commensurate with the delivery of compact growth’*.

Again, this sweeping designation is not fit for purpose across our clients’ sites.

Limited residential development on Z15 lands will only be allowed in highly exceptional circumstances where it can be demonstrated by the institutional landowner that the proposed development is required in order to maintain or enhance the function / operational viability of the primary institution on the lands.

This limitation, imposed by the Z15 zoning, will impede our clients objectives regarding the delivery of social and affordable housing. Many of the subject sites are located in disadvantaged areas where the delivery of housing is taking priority over additional institutional land uses.

5 Rationale for Re-zoning Subject Lands

The Draft Dublin City Development Plan 2022-2028 proposes to retain the existing zoning for the vast majority of our client’s sites.

We have set out in Section 4 how redesignating the site as Z15 does not equate to a ‘retention’ of such zoning and represents a significant barrier to sustainable development.

5.1 Location Attributes of Subject Sites

All of our clients sites are well located, within existing residential communities, and close to local services.

Maintaining the Z15 zoning objective unnecessarily restricts our clients from considering any development potential on their lands.

This is contrary to all national policy wherein a supportive planning context should be provided across sites which can deliver residential development if a demand exists.

Development proposal for their sites could be brought forward to incorporate residential with ample public and communal open space to create an integrated neighbourhood in line with “15-minute City” Objectives whilst also protecting the community or institutional uses that may exist.

The Draft Z15 zoning does not provide for this.

Given that the adjoining educational uses are fully catered for, it is more appropriate to support the subject site’s integration into the adjoining residential developments in the vicinity.

5.2 Public Transport

All the subject sites are located in close proximity to key public transport routes

The subject sites and any development potential of same, would be in alignment with the Metropolitan Area Strategic Plan (MASP), to promote compact growth and sustainable densities through the consolidation and intensification of infill and brownfield lands in the city. As specified in the Draft City Development Plan in terms of quality housing and sustainable neighbourhoods, national and regional policy reinforces the need for ‘healthy placemaking’ and the delivery of well-designed, affordable, adaptable, infill and brownfield development close to existing services and facilities.

All of these elements can be accommodated at the subject sites, if the Development Plan allowed for a supportive context within which some residential could be considered, if it was found that the lands were considered surplus to the requirements of the Diocese. The Z15 zoning objective is considered too blunt an instrument to be imposed across their landholding and is does not reflect the changing requirements for some of these sites.

5.3 Site Characteristics – Untypical of Institutionally zoned sites

Most of the subject sites, under consideration by way of this submission, could not be described as being traditional ‘Institutional’ sites. They are generally not located on large sites, they typically do not contain protected structures, and they typically don’t have mature trees and distinct landscape characteristics.

The Z15 Zoning, as currently drafted, is not considered appropriate given the largely neutral, infill characteristics of most of our clients sites. It unfairly inhibits any development options our clients wish to pursue, should the timing be right to rationalise some of the uses at certain locations.



5.4 Future Uses

Without furnishing Dublin City Council with a full audit of all their facilities, it is difficult to provide details on short, medium, and long term intentions of the Dublin Diocese with respect to their sites.

However, it is clear that certain uses will, in the short and medium term, be no longer required, and certain buildings will no longer be fit for purpose. When this is juxtaposed against an express objective and desire by the Dublin Diocese to assist in the provision of social and affordable housing across the City, a barrier to achieving this is potentially formulated in the context of the City Development Plan.

Again we would state that the Z15 Zoning, as currently drafted, is not considered appropriate given the largely neutral, infill characteristics of most of our clients sites. It unfairly inhibits any development options our clients wish to pursue, should the timing be right to rationalise some of the uses at certain locations.

5.5 Zoning Provisions

An examination of the current Plan and Draft Plan shows some of our client’s sites zoned for residential development. There are many examples of these – the ones outlined is a representative selection:



Figure 1 - Blessed Margaret Ball – Oak Park, Santry

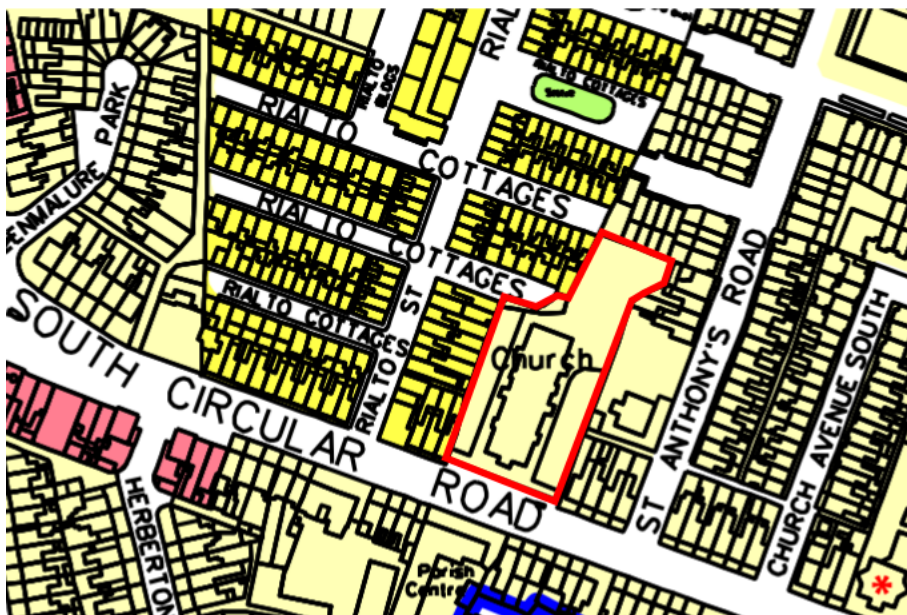


Figure 2 - Our Lady of the Holy Rosary of Fatima, South Circular Road



Fig. 3 St Brigid's Howth Road, Killester

There is no clear rationale as to why this has happened and we have no idea why Dublin City Council would choose to differentiate between these and other sites within our clients control.

What is clear is that the designation of zonings which support residential development does not mean that these sites are immediately made available for redevelopment. The Dublin Diocese has a clear vision for their landholding and only when sites are no longer needed, or viable, or where the use is no longer tenable to they look to examine their options in respect of same.

We would urge Dublin City Council to exhibit confidence in the Diocese as regards their particular sites and requirements and, through the designation of an appropriate zoning, allow some flexibility in the statutory context to support their rational decision making process in the short and medium term. We would respectfully suggest that to impose a Z15 restrictive zoning on their landholdings is short-sighted and lacks ambition.

5.6 Hindering the Delivery of Social and Affordable Housing

There is much reference in this report to the impact of a Z15 zoning on our clients intended contribution towards the delivery of much needed social and affordable housing.

We wish to provide Dublin City Council with working examples of this fact, and highlight that a Z15 zoning on such sites will place serious constraints on the Dioceses ability to work with Approved Housing Bodies in the manner that they are used to.

Example: Church of the Annunciation, Cappagh Road and Cardiffsbridge Road, Finglas West, Dublin 11

The Church on this site was considered, by the Diocese, to be no longer fit for purpose due to due to falling attendances and structural problems with the building. A planning application was lodged which provided for a new pastoral centre and identified, by means of a Masterplan, a future development zone wherein social and affordable housing could be provided.



Figure 4: Masterplan Vision – Finglas

Example: Cabra West Parish – Most Precious Blood

The Dublin Diocese facilitated the construction of social housing across a significant portion of their site here.

To be clear, under the terms of the current Z15 zoning, the achievement of this ambition and redevelopment proposals would be clearly difficult.

There are tangible working examples of the issues now presented to our client with a Z15 designation across their sites. We would ask Dublin City Council to provide more flexibility in this regard and consider a more suitable zoning for their general landholding.

6 Existing Schools Facilities

We refer Dublin City Council to the list of school sites contained within the Appendices.

These sites don't have any long term capacity issues, and don't envisage a need for expansion of same in the long term. They are also not on any Department of Education Schools programme lists.

The commentary referred to throughout this report is applicable to these also, and we would ask the Council to consider an alternative zoning across these sites.

7 Legal Considerations

We refer Dublin City Council to the legal opinion prepared by Mason Hayes Curran in respect of the more restrictive provisions of the Draft Z15 zoning as iterated in the Draft Development Plan.

We have expressed our concern with this throughout this submission, and are supported by Mason Hayes Curran, who have flagged significant concerns with the legality of this position.

8 Proposed Rezoning

As stated clearly throughout this submission, the current land use zoning of Z15 is inappropriate and inconsistent with the long-term future vision for comprehensive regeneration and redevelopment of Dublin City and will represent an under-utilisation of our clients sites in the short, long and medium term.

We therefore invite the Planning Authority to amend the zonings, as they relate to our client landholdings from Z15 to Z12.

Objective Z12: To ensure existing environmental amenities are protected in the predominantly residential future use of these lands.

Reason: *In the interests of the proper planning and sustainable development of the area and the provision of residential accommodation on appropriately located sites.*

Our client is confident that a Z12 zoning, as set out in the Draft Plan, will allow them to protect their current pastoral, community, educational, and religious requirements and obligations, whilst, in some instances, allow them to achieve their objective regarding the delivery of social and affordable housing.

They are aware of the requirements of the Z12 zoning, and can meet and address the particular nuances and objectives of same:

Z12 Narrative	Applicable to Subject Sites and Endorsed by Dublin Diocese
These are lands, the majority of which are or which have been institutional use, which may be developed for other uses in the future	✓
Minimum of 25% of the site, will be required to be retained as accessible public open space to safeguard the essential open character and landscape features of the site.	✓
Where such lands are redeveloped, the predominant land-use will be residential	✓
Dublin City Council will require the preparation and submission of a masterplan setting out a clear vision for the future for the development of the entire land holding.	✓
Where there is an existing sports pitch or sports facility on the Z12 lands subject to redevelopment, commensurate recreational/ social infrastructure will be required to be provided and retained for community use where appropriate as part of any new development	✓

In addition they welcome the use classes associated with this zoning, which allow more flexibility than the current Draft Z15 zonings across their sites.



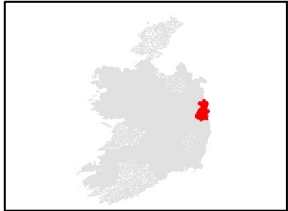
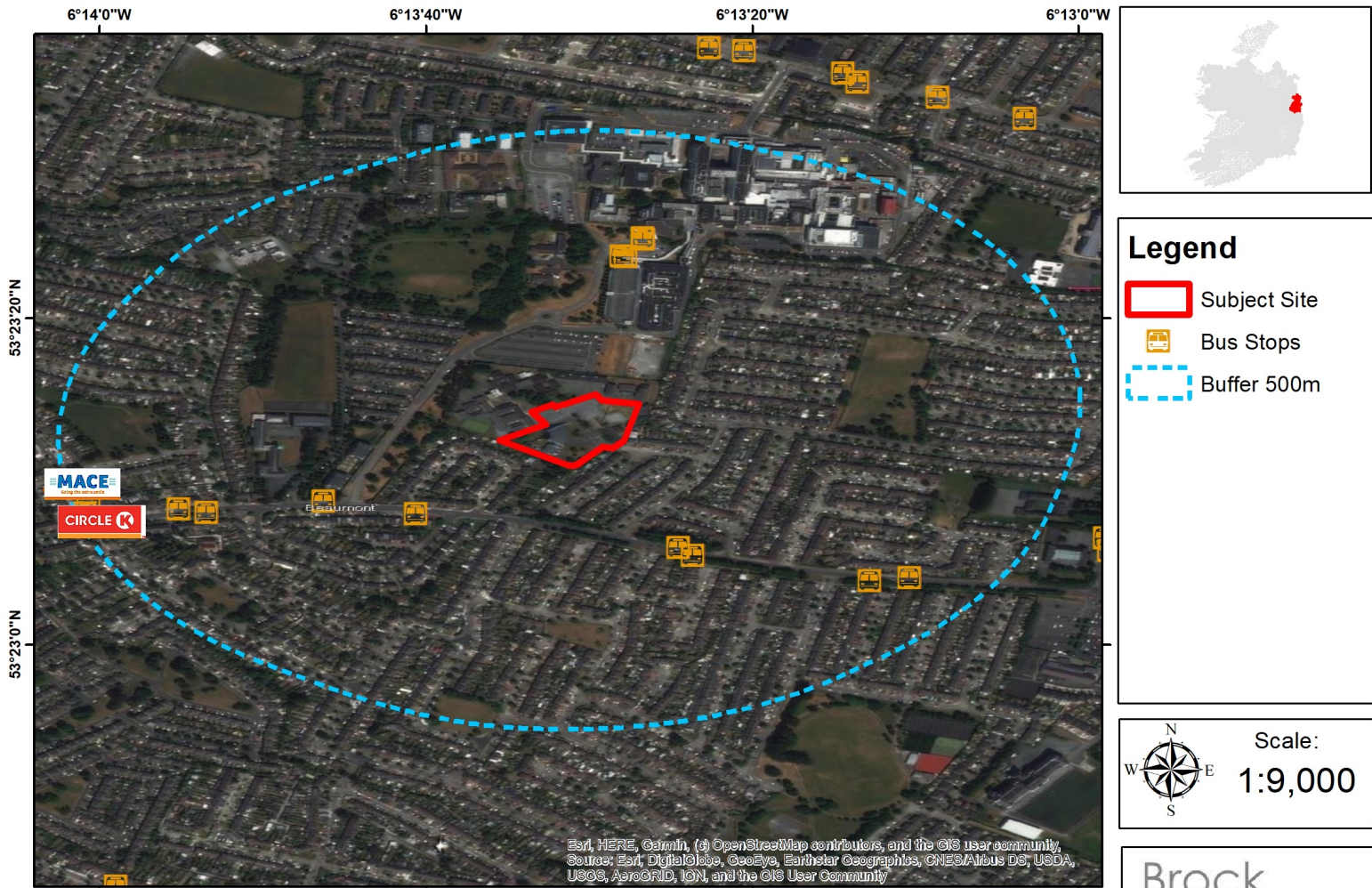
9 Conclusion

We trust the foregoing sets out a reasonable rationale for the rezoning of the identified sites, and adequate justification is provided to allow these sites to be brought forward for development in a sustainable manner to promote the provision of housing in a manner that aligns with the objectives of Dublin City Council and the ambitions of our client to assist in the delivery of social and affo

Appendix I(a) - List of sites to which this submission relates.

NAME	ADDRESS	ZONING (DCC DRAFT PLAN 2022-28)	PROPOSED ZONING
St. John Vianney	Ardlea Road, Dublin 5	Z12 & Z15	Z12
Our Lady of Mercy	Brookwood Grove, Artane	Z12 & Z15	Z12
Church of St. Paul	Ayrfield, D.13	Z15	Z12
Church of the Virgin Mary	Shangan Road, Ballymun, D.9	Z15	Z12
Our Lady of Victories	Ballymun Road, D.9	Z12 & Z15	Z12
The Church of the Nativity of Our Lord	Montrose Park, Beaumont, D.5	Z15	Z12
St. Joseph the Artisan	Greencastle Road, D.17	Z15	Z12
Christ the King	Cabra, D.7	Z15	Z12
St. Bernadette's	Clogher Road, D.12	Z15	Z12
Our Lady of Consolation	Donnycarney, D.5	Z12 & Z15	Z12
St. Teresa of the Child Jesus	Donore Ave, D.8	Z15	Z12
Corpus Christi	Home Farm Road	Z15	Z12
St. Monica's	Edenmore Crescent, D.5	Z15	Z12
Church of the Annunciation	Finglas West, D.11	Z15	Z12
St. Benedict	Grange Park View, D.5	Z15	Z12
St. Vincent de Paul	Griffith Ave, D.9	Z15	Z12
Our Lady of Good Counsel	Mourne Road, Drimnagh, D.12	Z15	Z12
Our Lady Help of Christians	Navan Road, D.7	Z15	Z12
St. Francis of Assisi	Priorswood, D.17	Z15	Z12
Our Lady Mother of Divine Grace	Howth Road, Raheny, D.5	Z4 & Z15	Z12
St. Finian's Oratory	Glenties Park	Z15	Z12
Holy Spirit	Silloge Road	Z15	Z12
Assumption of the Blessed Virgin Mary	Walkinstown	Z15	Z12
Immaculate Heart of Mary	City Quay, D.2	Z11	Z12
St. Canice	Main Street, Finglas Village, D.11	Z15	Z12
St. Agatha's	North William Street, D.1	Z15	Z12
St. Joseph's	Terenure, D.6	Z15	Z12
St. Kevin's	Harrington Street, D. 8	Z15	Z12
St. Michan's	Halston Street, D.7	Z11	Z12
Capuchin Friary	Church Street	Z11	Z12
St. Paul's	Arran Quay	Z11	Z12
St. James'	James' Street, D.8	Z15	Z12
Most Precious Blood	Cabra West, D.7	Z15	Z12


Appendix I (b) - Locational Attributes



Legend

- Subject Site
- Bus Stops
- Buffer 500m

Scale: 1:9,000




The Church of the Nativity of Our Lord, MontrosePark, Beaumont, D5

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

6°17'20"W

6°17'0"W

6°16'40"W

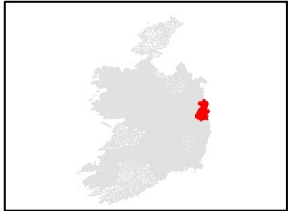
53°20'20"N

53°20'0"N





53°19'40"N




Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community,
 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA,
 USGS, AeroGRID, IGN, and the GIS User Community



Legend

-  Subject Site
-  Buffer 500m
-  Luas
-  Bus Stops

Scale: 1:9,000



St. Teresa of the Child Jesus, Donore Ave, D8



6°14'20"W

6°14'0"W

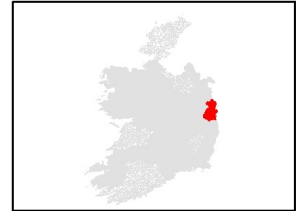
6°13'40"W

53°22'20"N

53°22'0"N




Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community,
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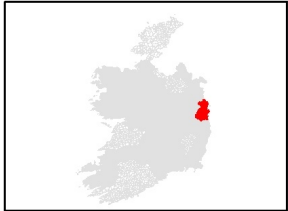
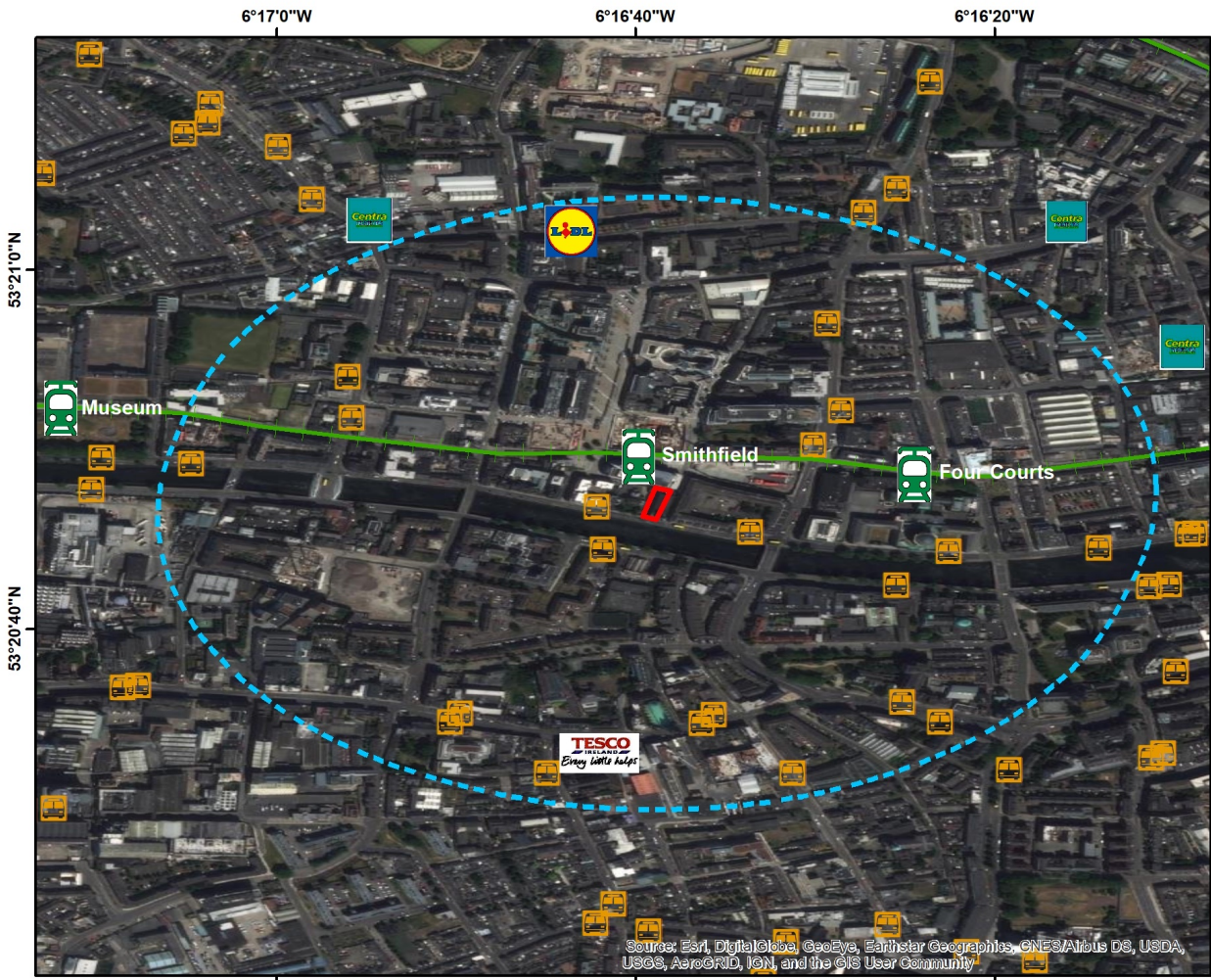
-  Subject Site
-  Buffer 500m
-  Bus Stops
-  Irish Rail Station

Scale: 1:9,000







St. Vincent de Paul, Griffith Avenue, D9






Legend

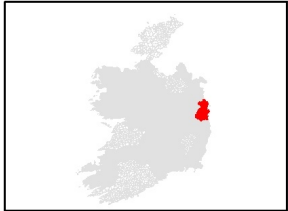
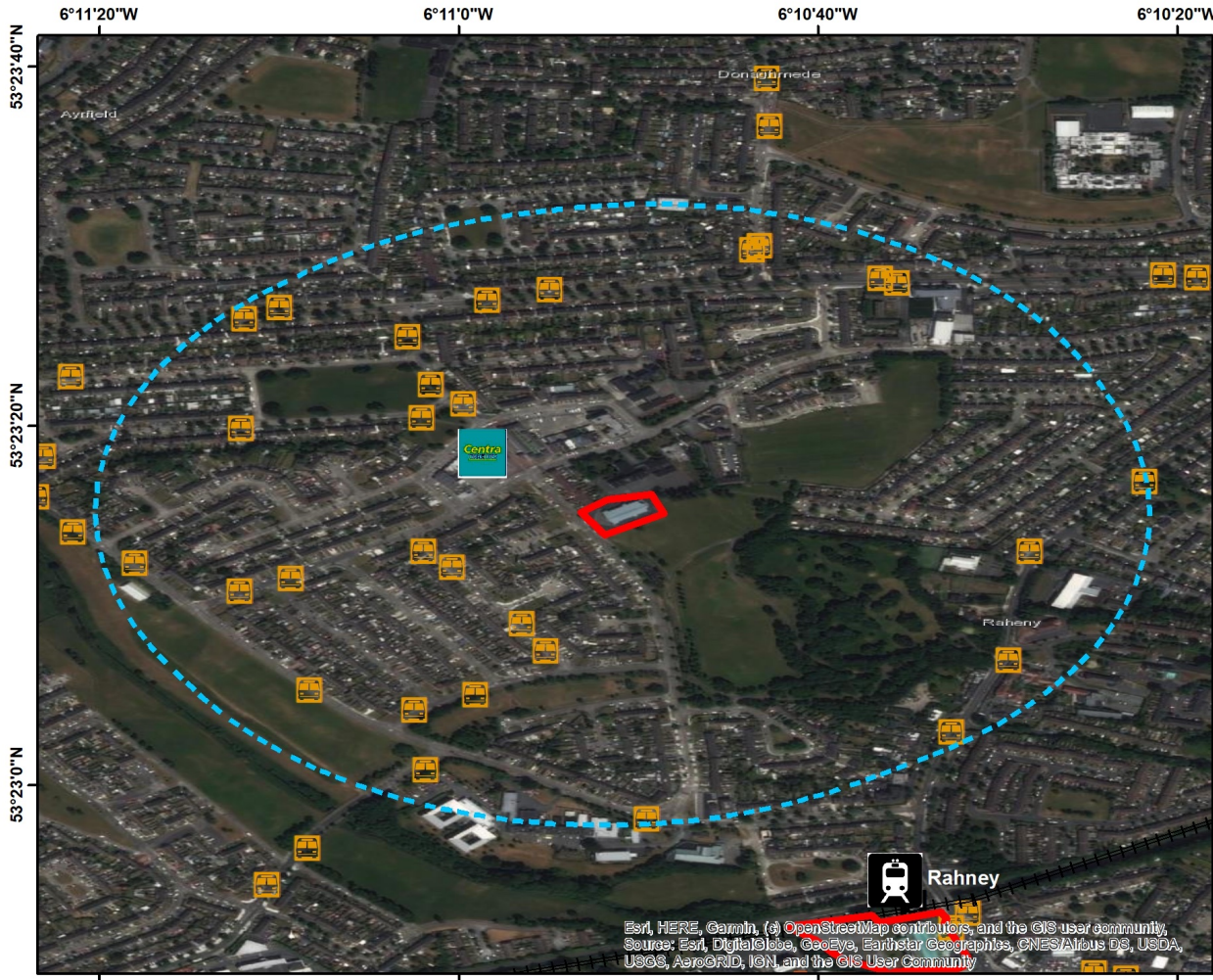
-  Subject Site
-  Buffer 500m
-  Luas
-  Bus Stops

Scale: 1:9,000







St. Pauls, Arran Quay






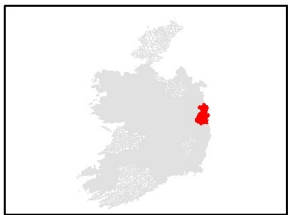
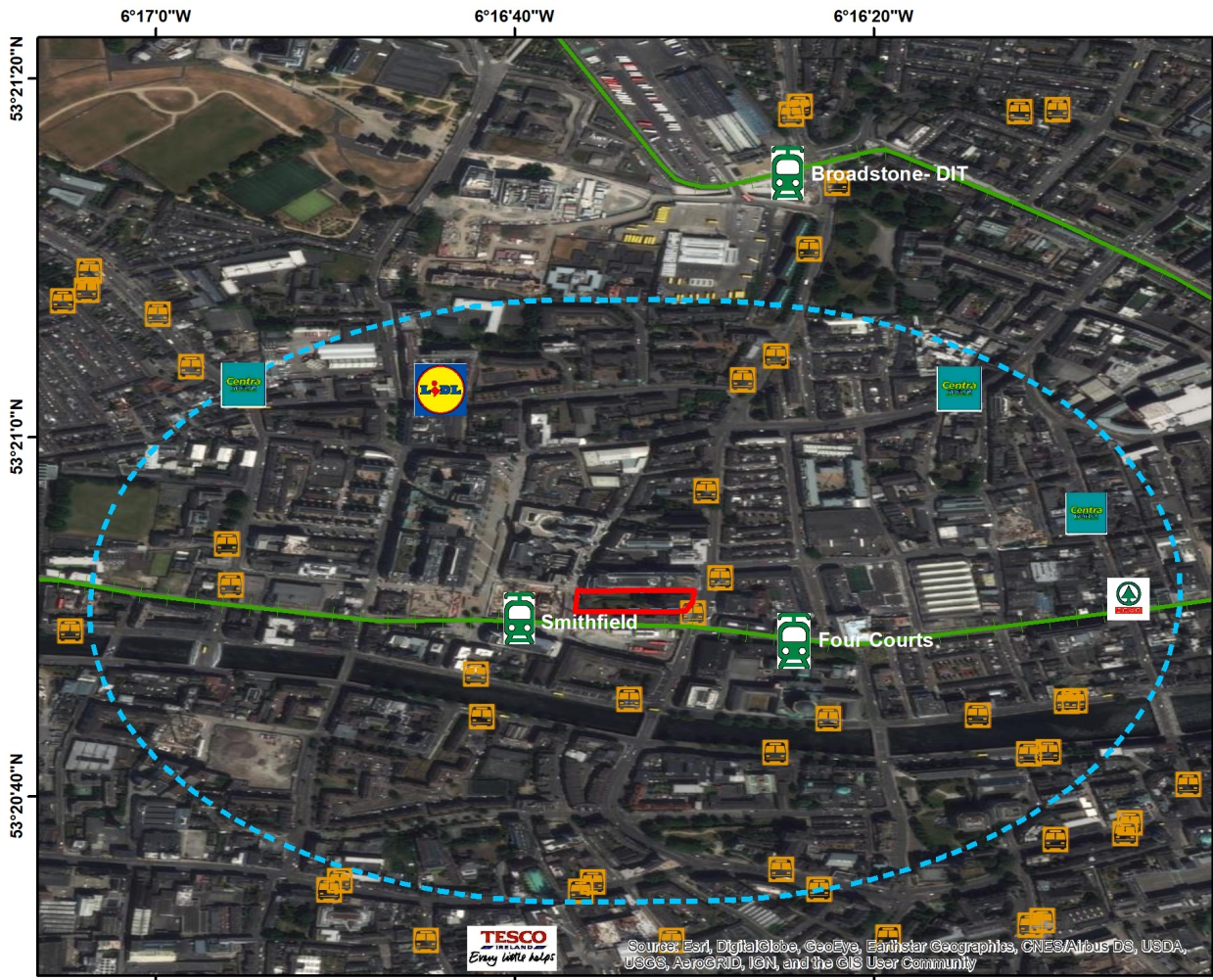
Legend

-  Subject Site
-  Buffer 500m
-  Irish Rail Station
-  Bus Stops





Scale: 1:9,000





St. Monica's, Edenmore Crescent, D5



Legend

-  Subject Site
-  Buffer 500m
-  Luas
-  Bus Stops

Scale: 1:9,000




St. Michan's, Halston Street, D7

6°16'20"W

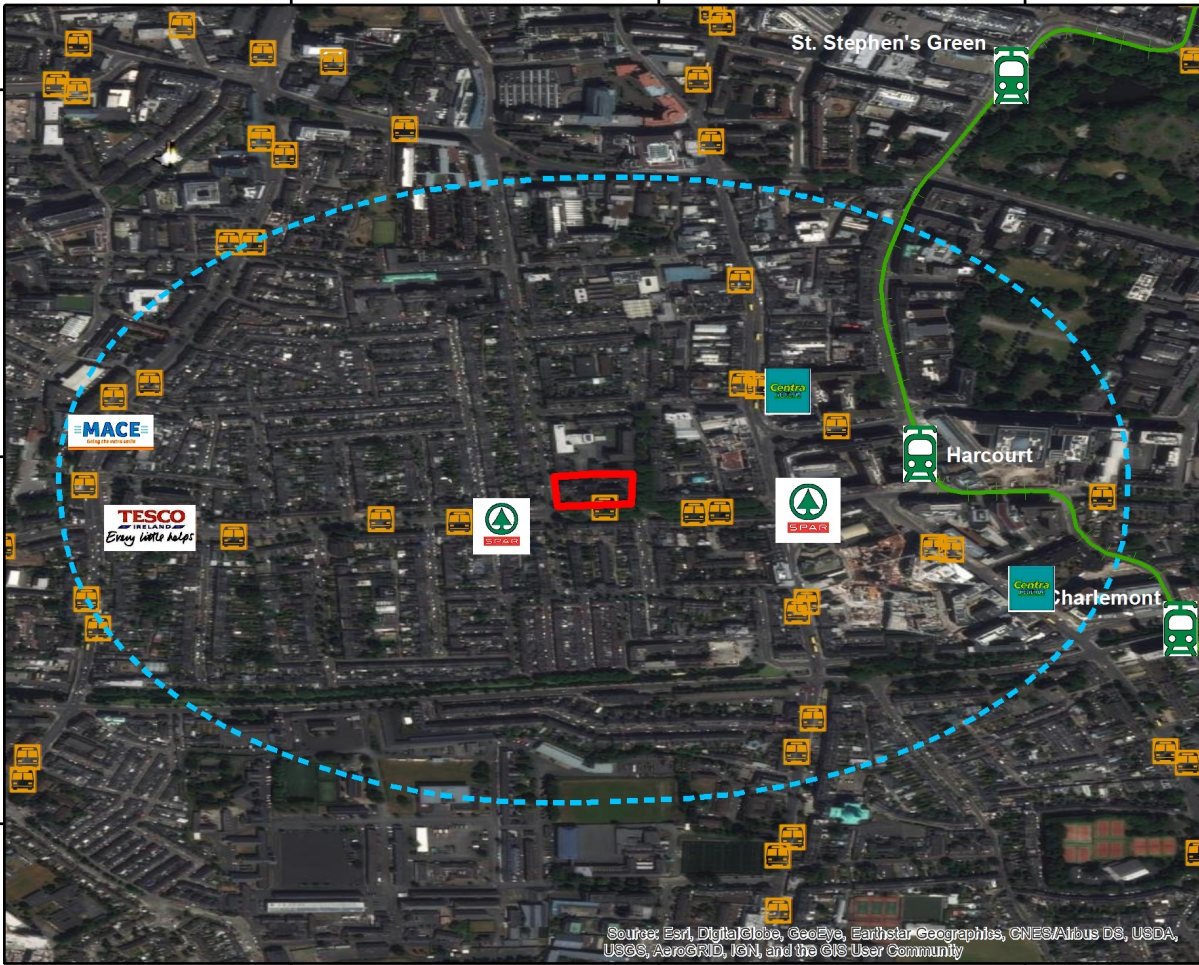
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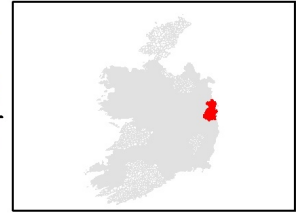
53°20'20"N

53°20'0"N





53°19'40"N




Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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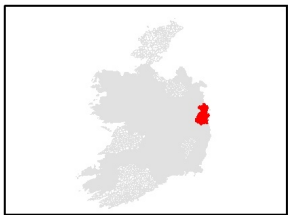
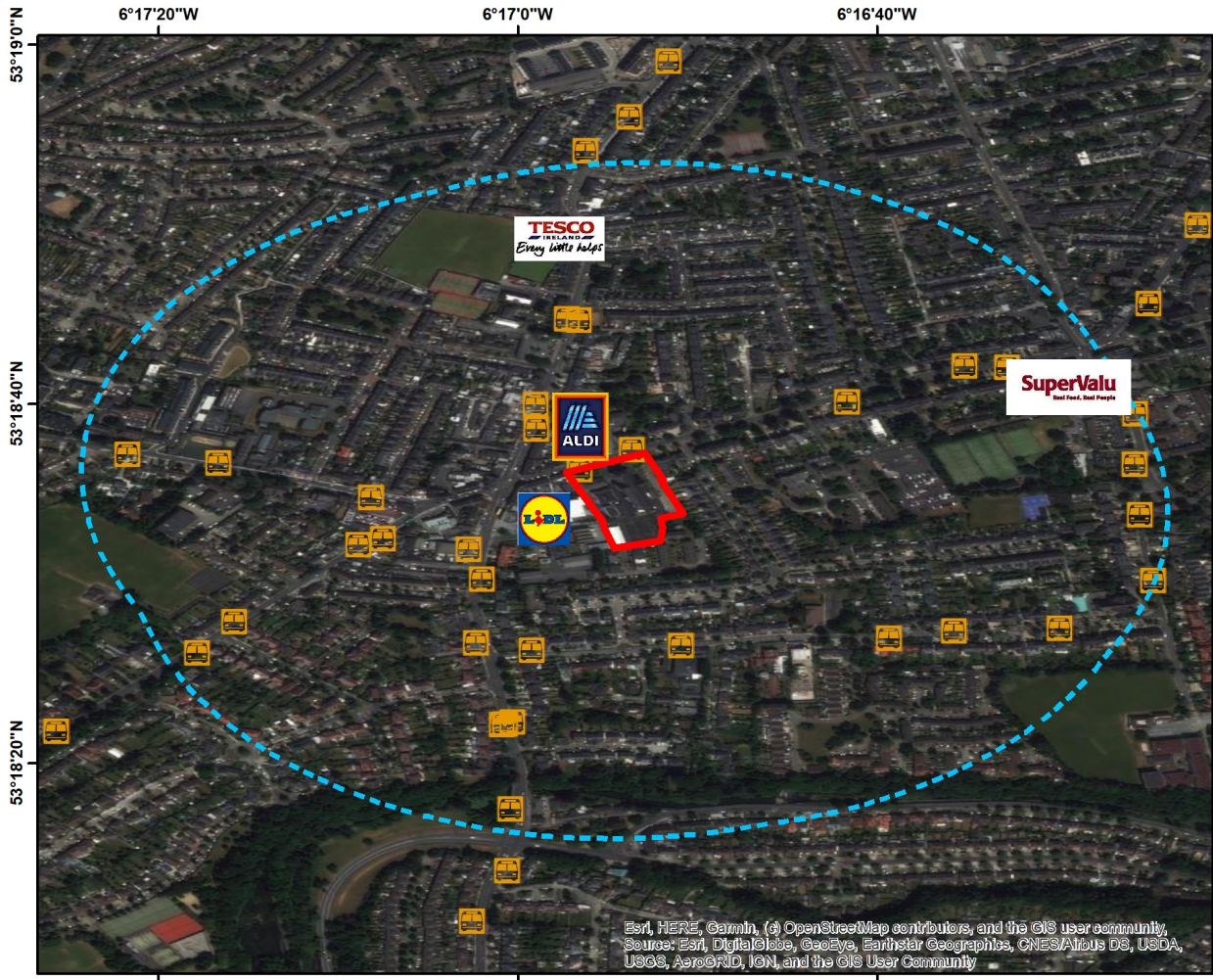
-  Subject Site
-  Buffer 500m
-  Luas
-  Bus Stops

Scale: 1:9,000



St. Kevin's, Harrington Street, D8





Legend

- Subject Site
- Buffer 500m
- Bus Stops

Scale: 1:9,000

St. Joseph's, Terenure, D6



6°12'40"W

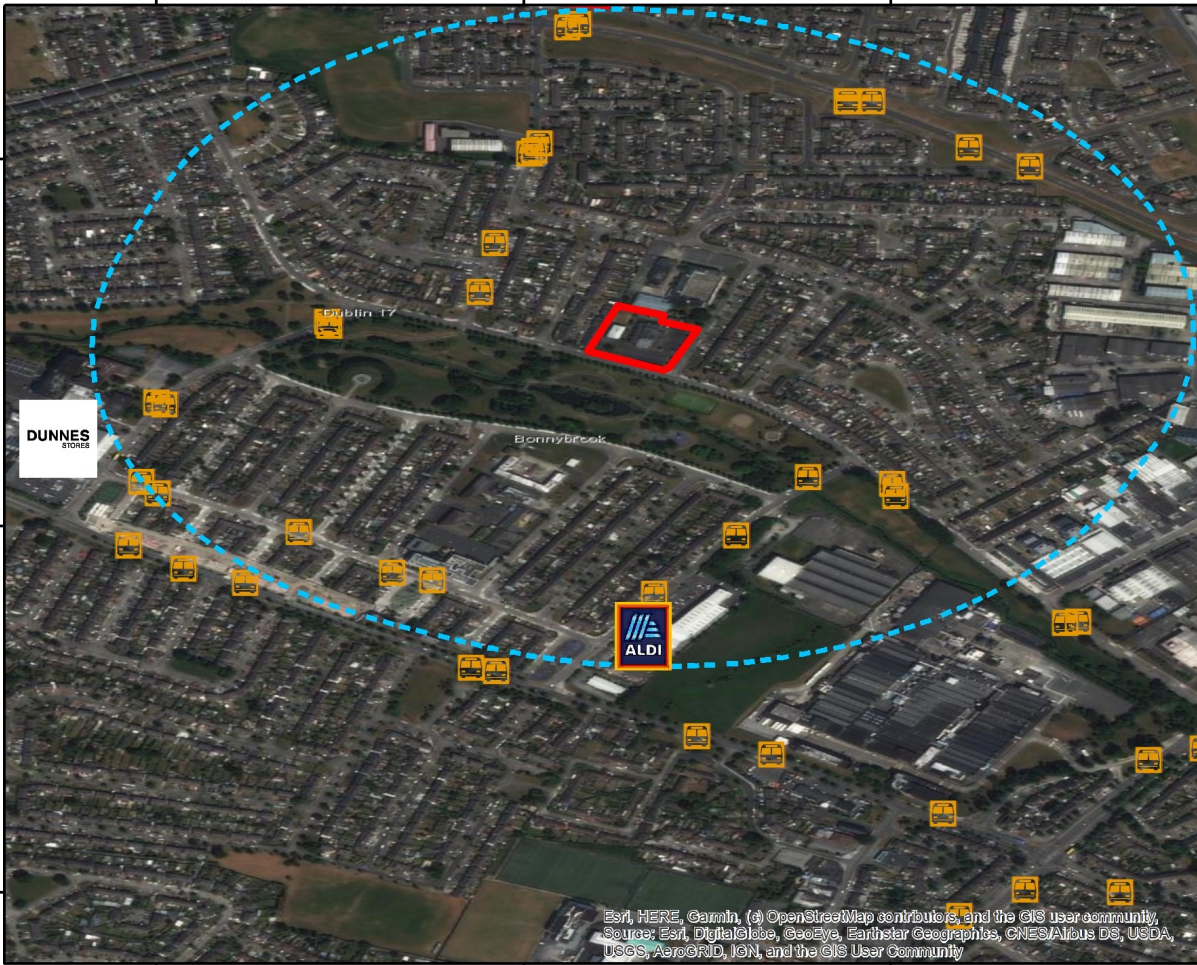
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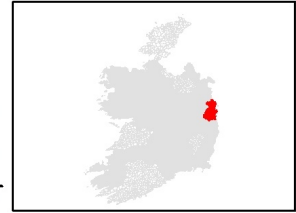
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53°23'40"N

53°23'20"N




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 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA,
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Legend

-  Subject Site
-  Buffer 500m
-  Bus Stops

Scale: 1:9,000



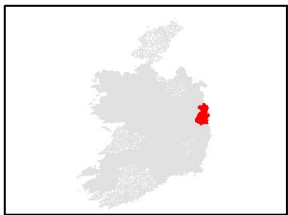
St. Joseph the Artisan, Greencastle Road, D17



6°13'0"W 6°12'40"W 6°12'20"W

53°23'20"N

53°23'0"N



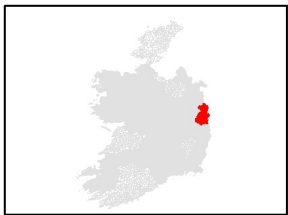
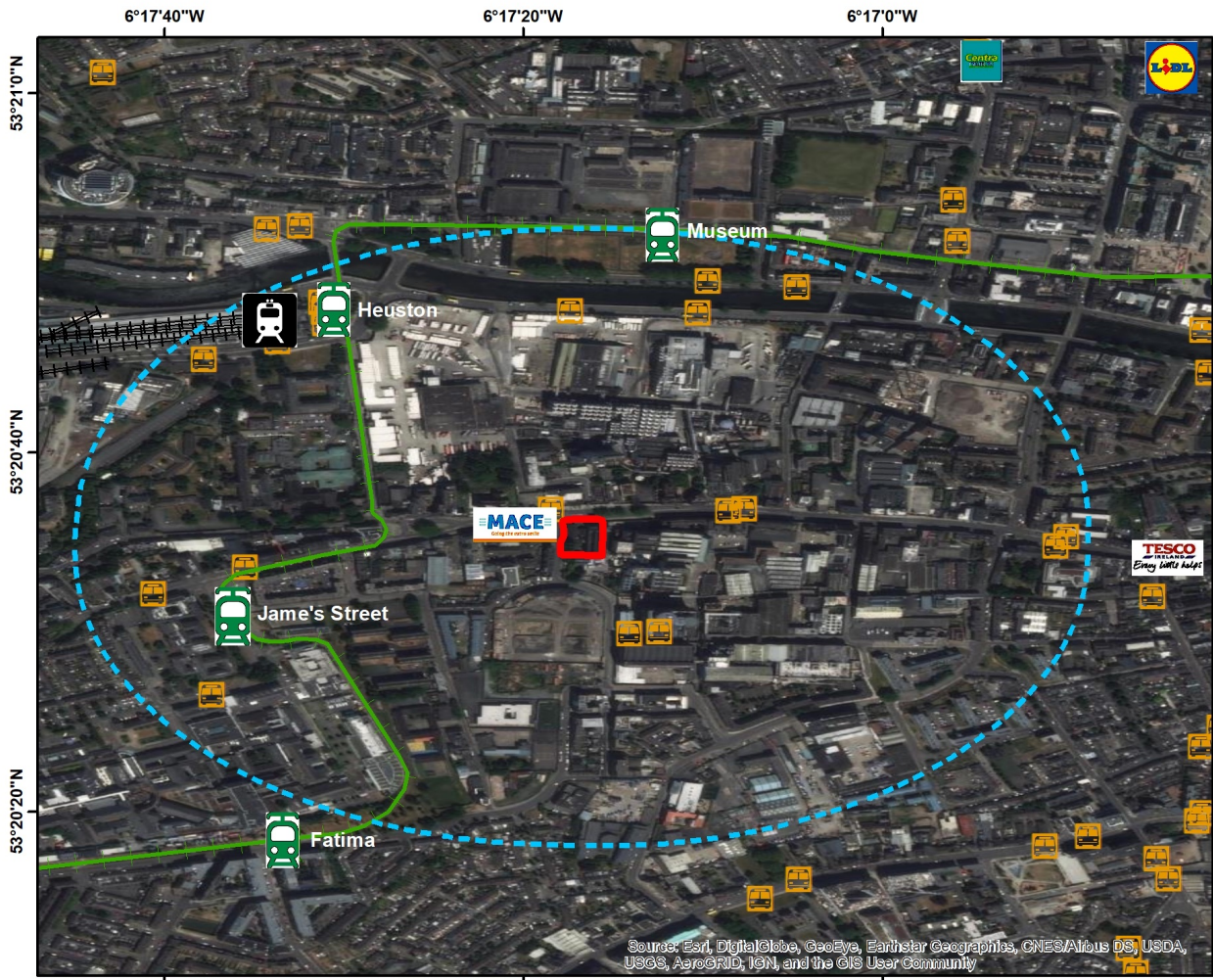
Legend

- Subject Site
- Buffer 500m
- Bus Stops






Scale: 1:9,000

St. John Vianney, Ardlea Road, Dublin 5






Legend

-  Subject Site
-  Buffer 500m
-  Luas
-  Irish Rail Station
-  Bus Stops

Scale: 1:9,000




St. James, James Street, D8

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

6°12'40"W

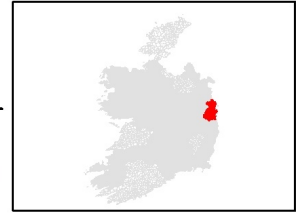
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53°24'40"N

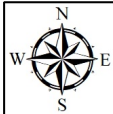
53°24'20"N

53°24'0"N



Legend

-  Subject Site
-  Bus Stops
-  Buffer 500m



Scale:
1:9,000

St. Francis of Assisi, Priorswood, D17



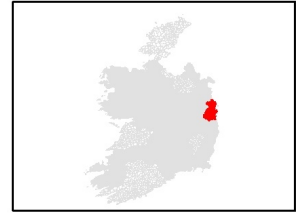
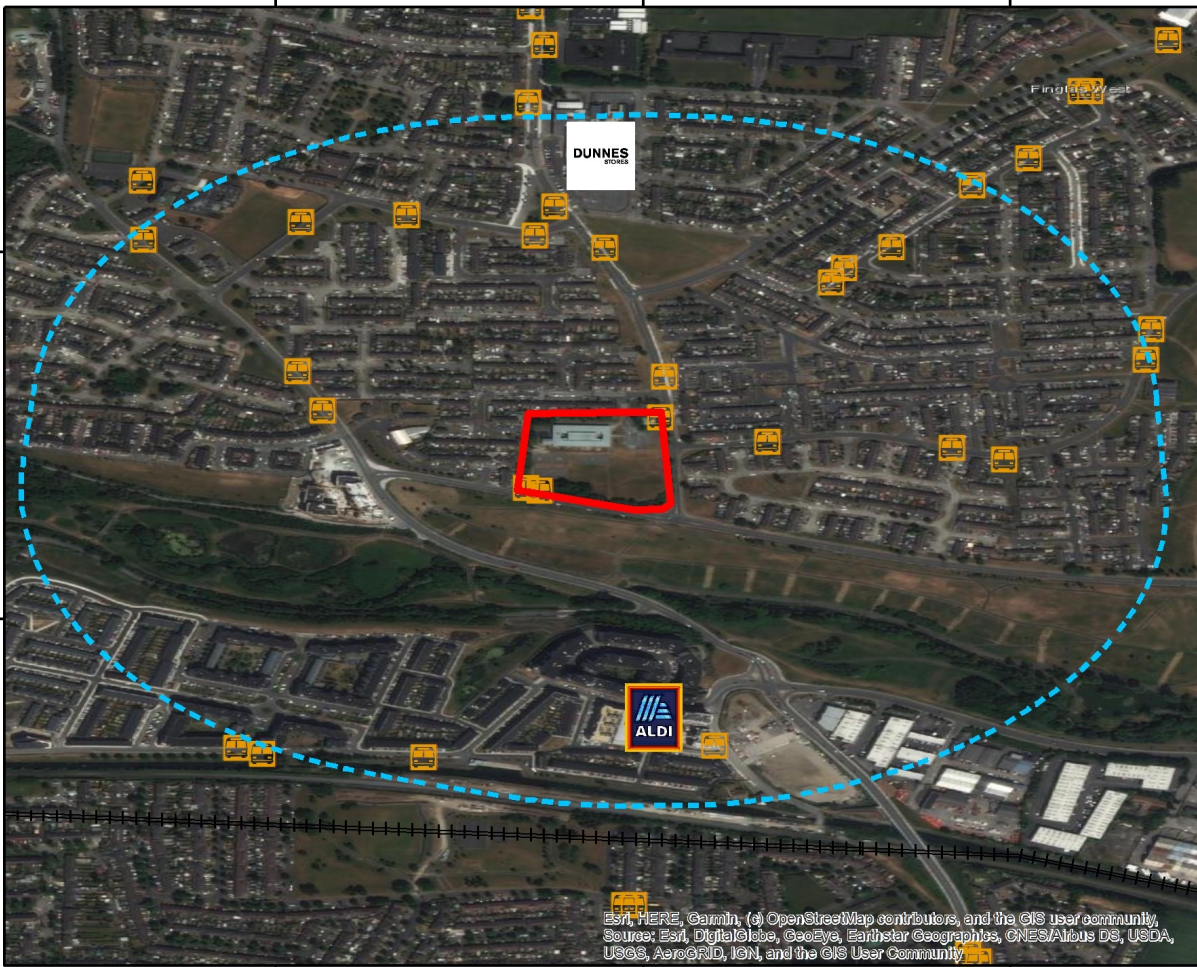
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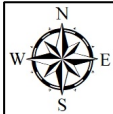
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53°22'40"N



Legend

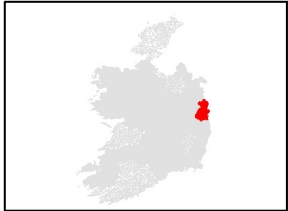
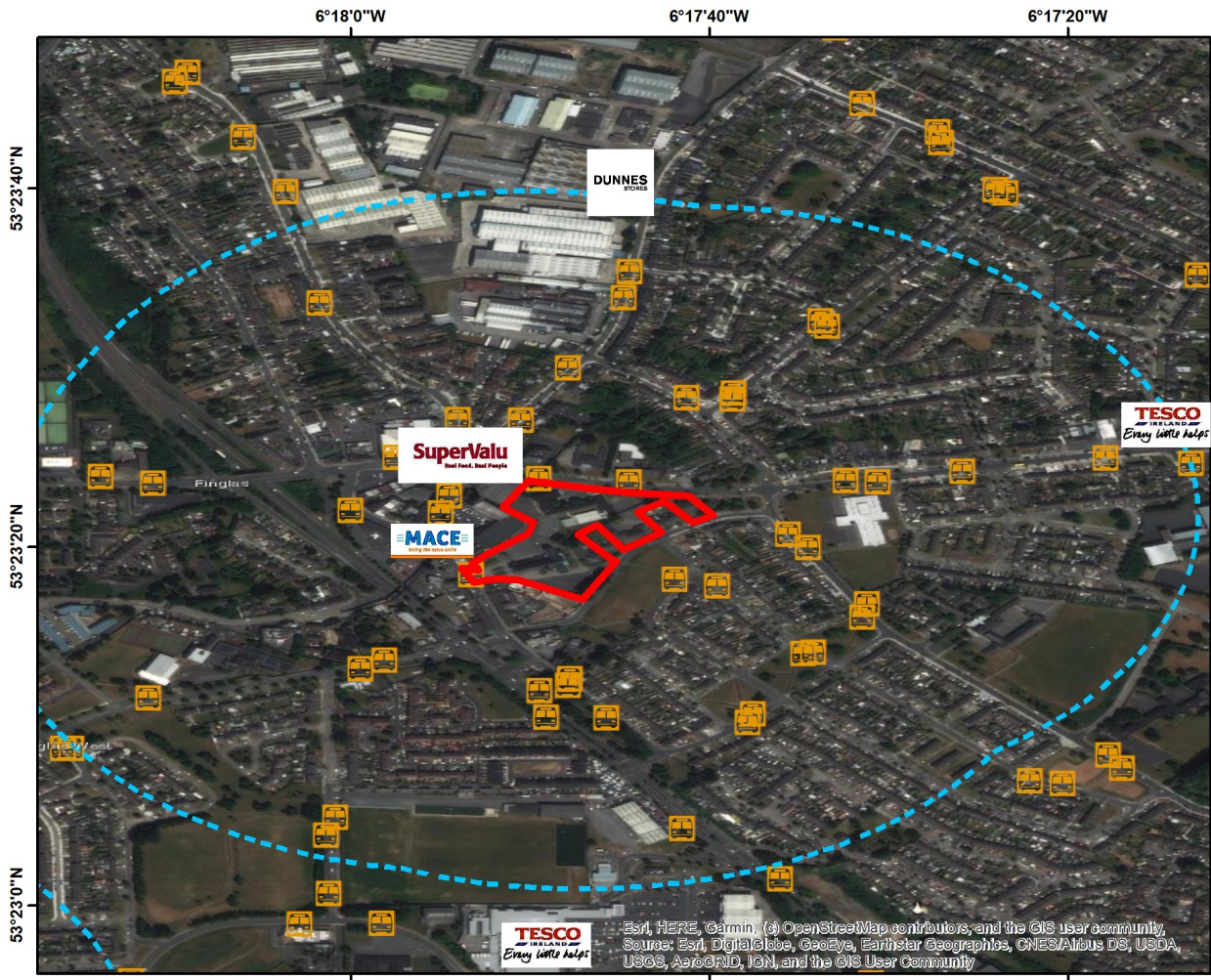
- Subject Site
- Bus Stops
- Buffer 500m



Scale:
1:9,000

St. Finian's Oratory, Glenties Park






Legend

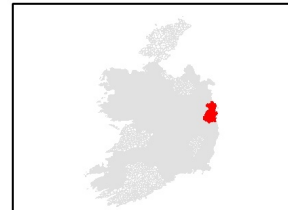
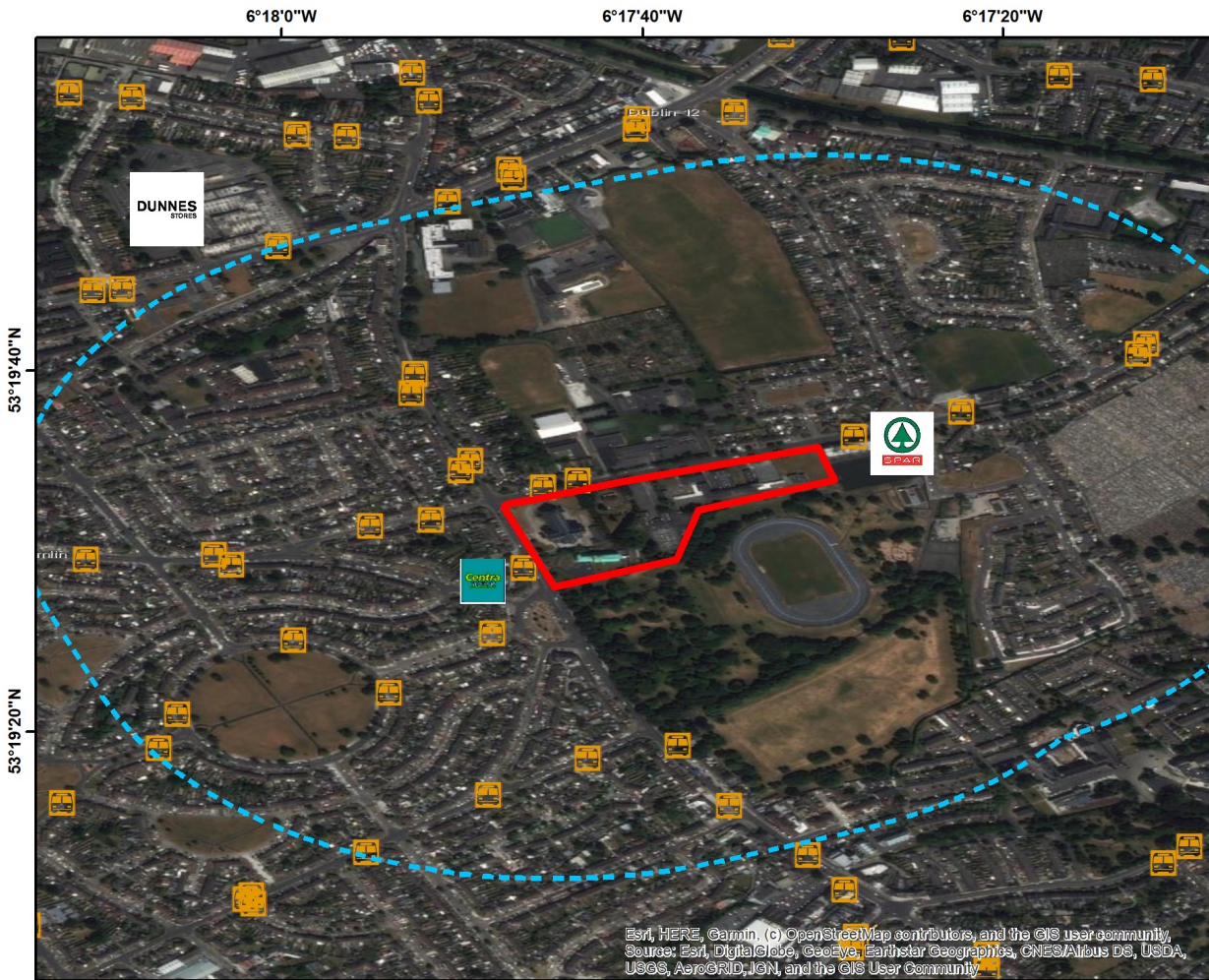
- Subject Site
- Bus Stops
- Buffer 500m

Scale: 1:9,000




St. Canice, Main Street, Finglas Village, D11

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Legend

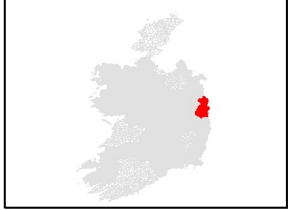
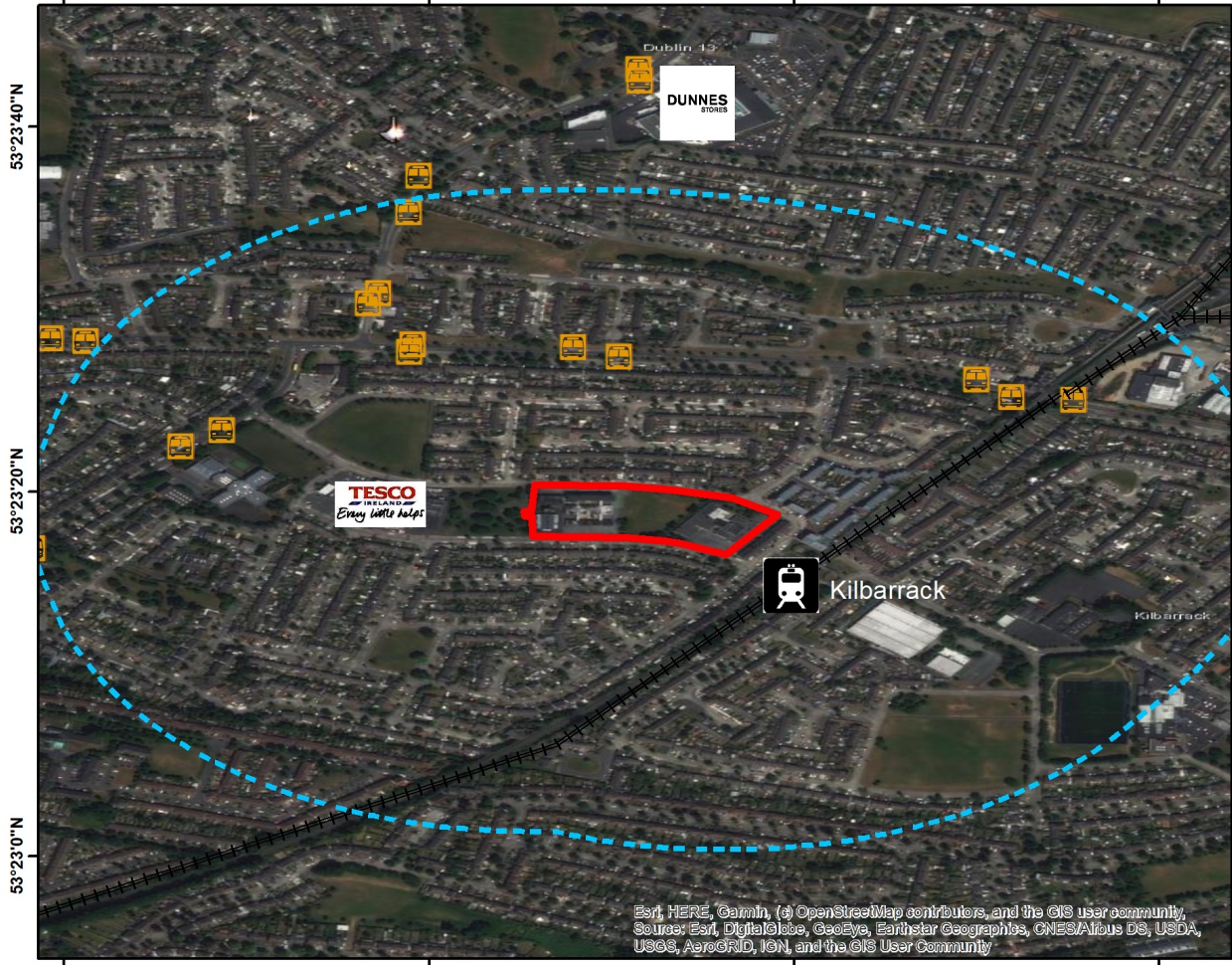
- Subject Site
- Buffer 500m
- Bus Stops

Scale: 1:9,000

St. Bernadette's, ClogersRoad, D12



6°10'20"W 6°10'0"W 6°9'40"W 6°9'20"W



Legend

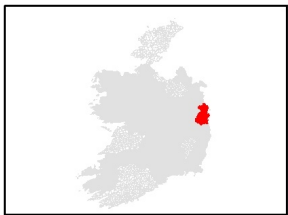
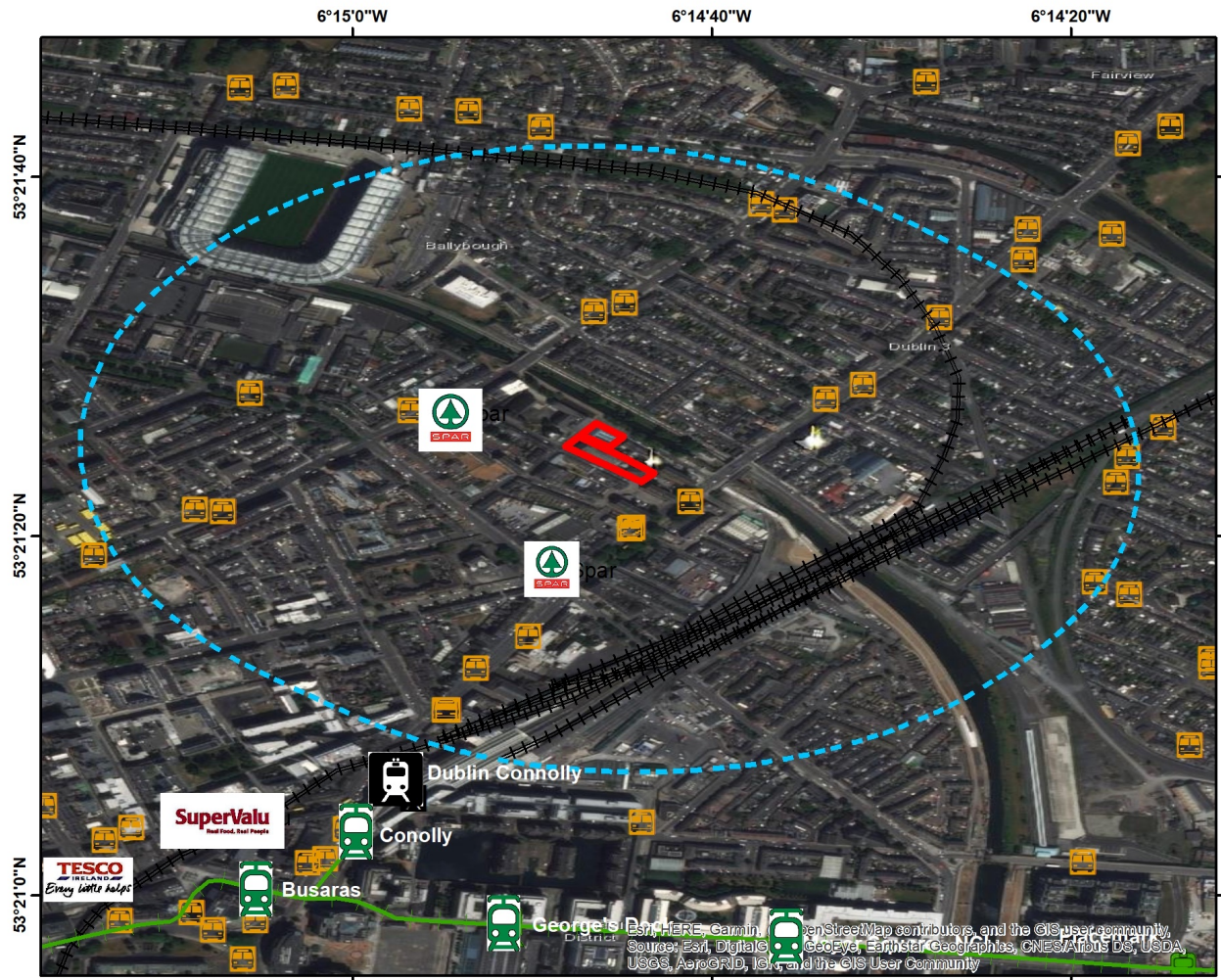
-  Subject Site
-  Buffer 500m
-  Irish Rail Station
-  Bus Stops

Scale: 1:9,000






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St. Benedit, Grange Park View, D5






Legend

-  Subject Site
-  Buffer 500m
-  Luas
-  Irish Rail Station
-  Bus Stops

Scale: 1:9,000




6°16'20"W

6°16'0"W

6°15'40"W

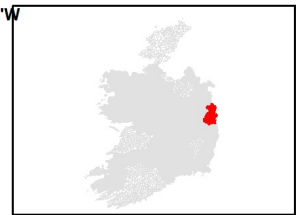
6°15'20"W

53°23'20"N




53°23'0"N




Esri, HERE, Garmin, StreetMap contributors, and the GIS user community,
 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA,
 USGS, AeroGRID, IGN, and the GIS User Community



Legend

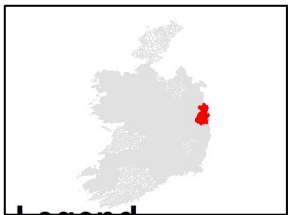
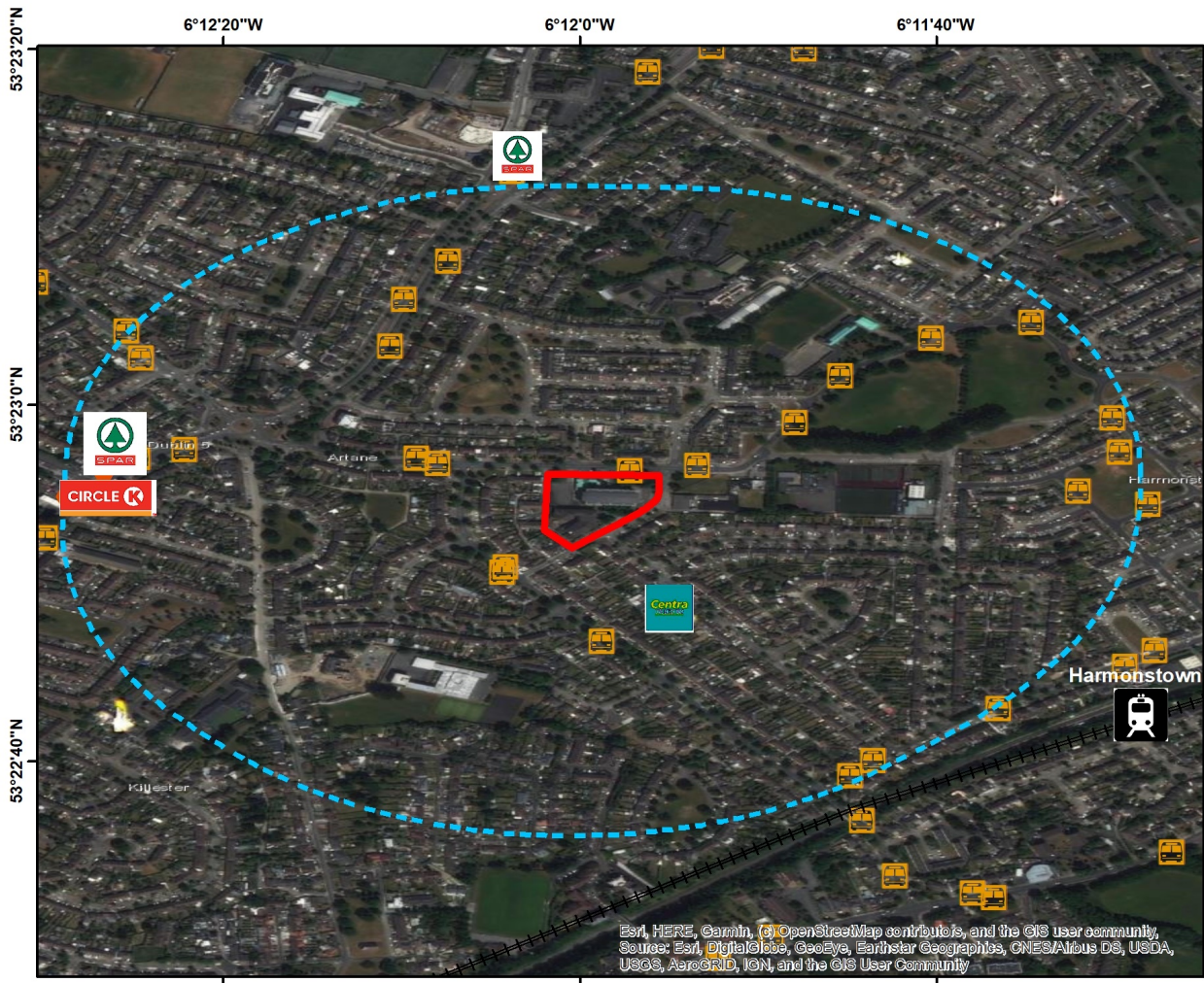
-  Subject Site
-  Buffer 500m
-  Bus Stops

Scale: 1:9,000



Our Lady of Victories, Ballymun Road D9




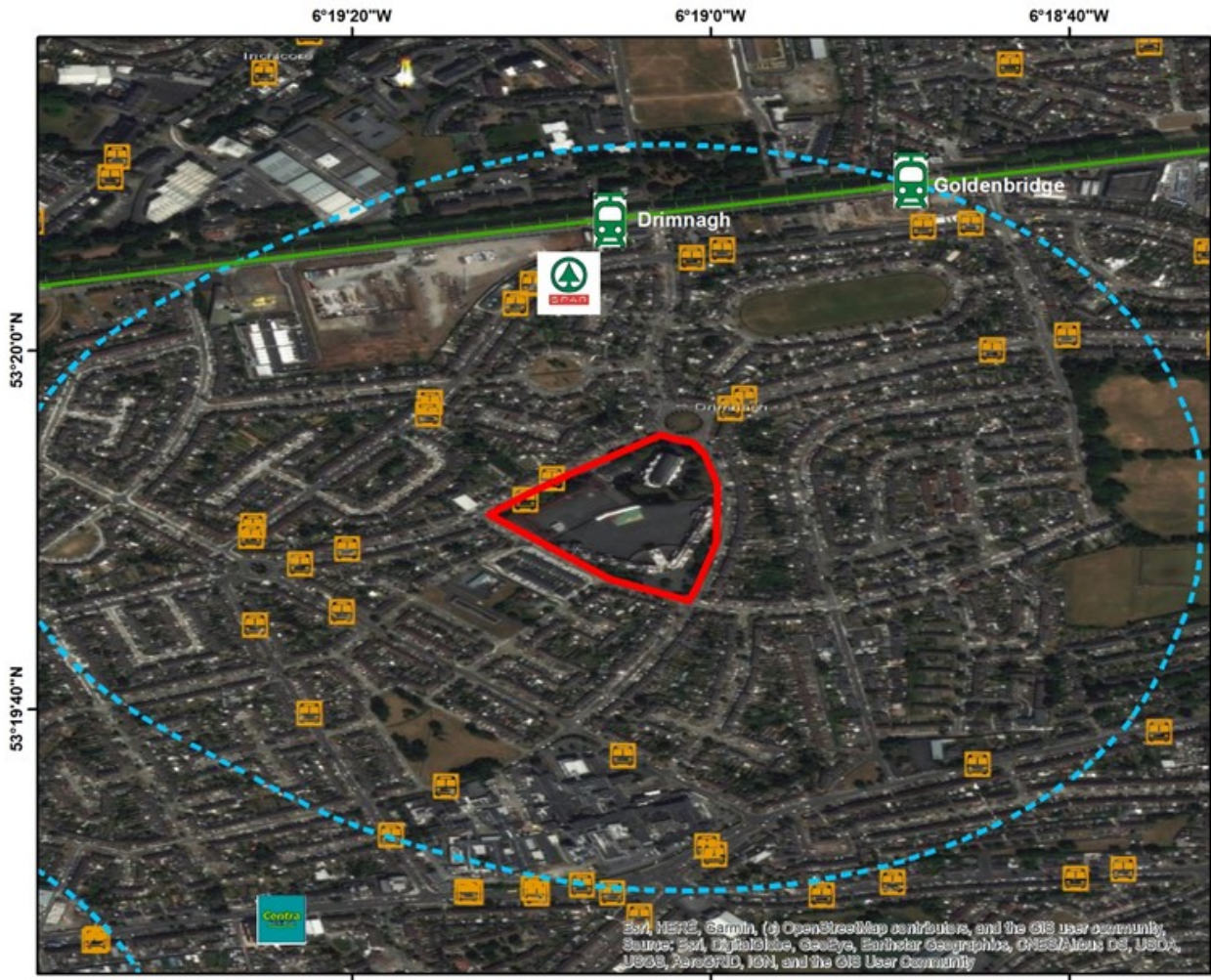


Legend

-  Subject Site
-  Buffer 500m
-  Irish Rail Station
-  Bus Stops

Scale: 1:9,000



Legend

-  Subject Site
-  Buffer 500m
-  Bus Stops
-  Luas

Scale: 1:9,000



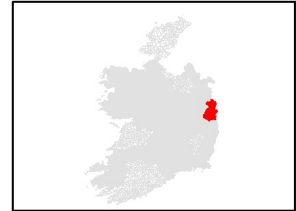

6°13'20"W

6°13'0"W



6°12'40"W


53°22'40"N

53°22'20"N



Legend

-  Subject Site
-  Buffer 500m
-  Bus Stops


 Scale: 1:9,000

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Our Lady of Consolation, Donnycomey, D5



6°11'0"W

6°10'40"W

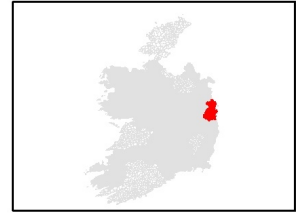
6°10'20"W

53°23'0"N





53°22'40"N




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 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA,
 USGS, AeroGRID, IGN, and the GIS User Community



Legend

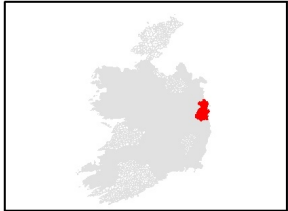
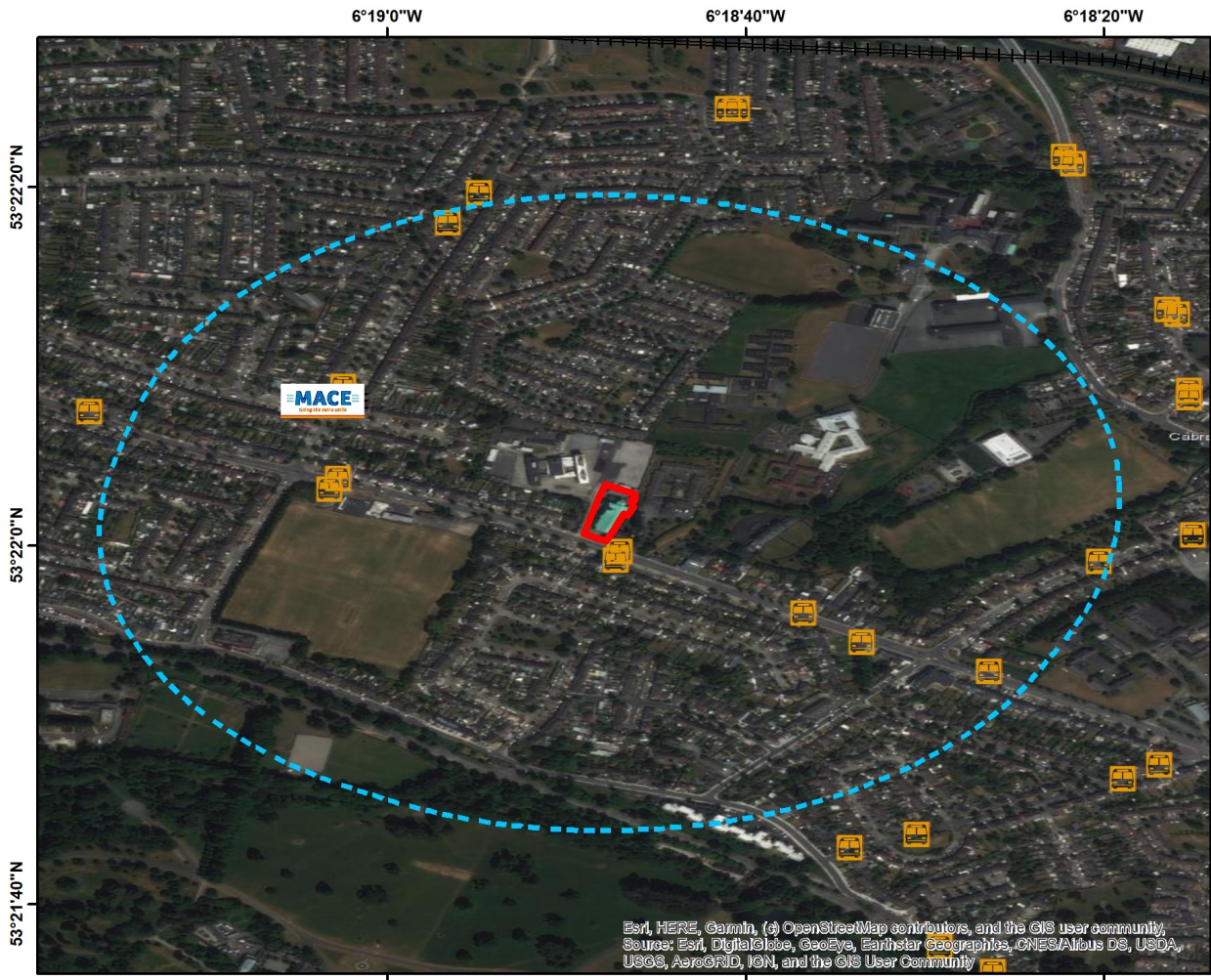
-  Subject Site
-  Buffer 500m
-  Irish Rail Station
-  Bus Stops



Scale:
1:9,000

Our Lady Mother of Divine Grace, Howth Road, Raheny






Legend

- Subject Site
- Buffer 500m
- Bus Stops

Scale: 1:9,000




Our Lady Help of Christians, Navan Road D7

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6°18'0"W

6°17'40"W

6°17'20"W

53°22'20"N

53°22'0"N



Map: HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, AeroGRID, IGN, and the GIS User Community



Legend

-  Subject Site
-  Luas
-  Bus Stops
-  Irish Rail Station
-  Buffer 500m

Scale: 1:9,000

Most Precious Blood, Cabra West D7



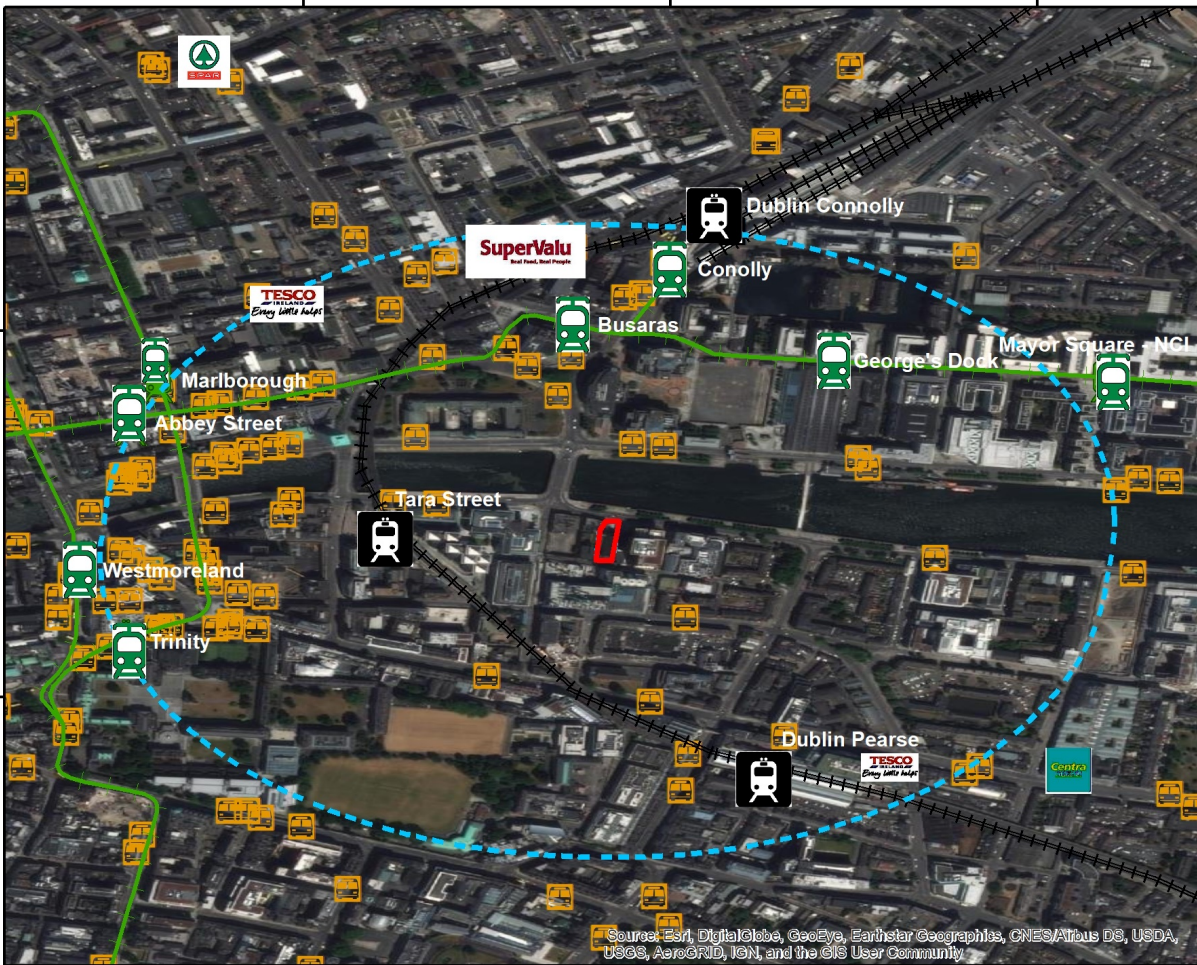
6°15'20"W

6°15'0"W

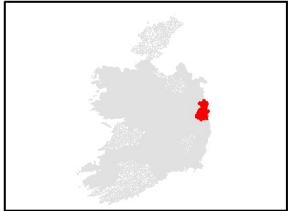
6°14'40"W

53°21'0"N






53°20'40"N




Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Legend

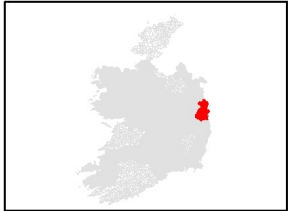
-  Subject Site
-  Buffer 500m
-  Luas
-  Irish Rail Station
-  Bus Stops

Scale: 1:9,000



Immaculate Heart of Mary, City Quay D2





- Legend**
- Subject Site
 - Buffer 500m
 - Bus Stops

Scale: 1:9,000

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Holy Spirit, Silloge Road



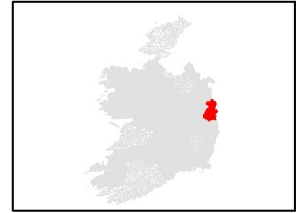
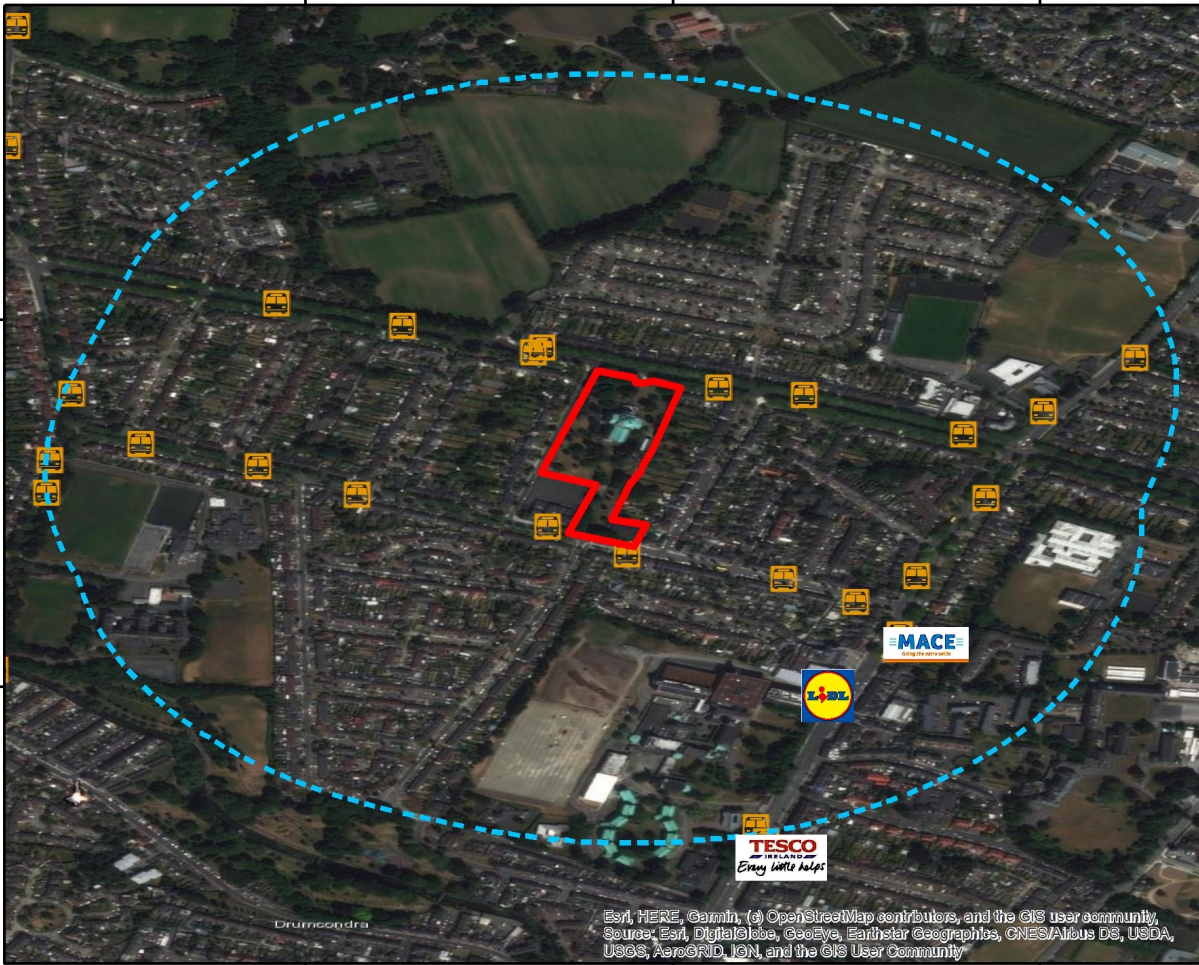
6°15'40"W

6°15'20"W




6°15'0"W

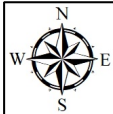
53°22'40"N

53°22'20"N



Legend

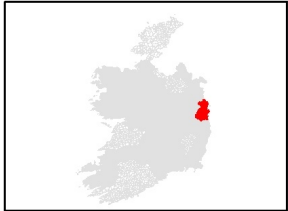
-  Subject Site
-  Bus Stops
-  Buffer 500m



Scale:
1:9,000

Corpus Christi, Home Farm Road






Legend

- Subject Site
- Buffer 500m
- Bus Stops

Scale: 1:9,000




Church of the Virgin Mary, Shangan Road, Ballymun, D9

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6°11'20"W

6°11'0"W

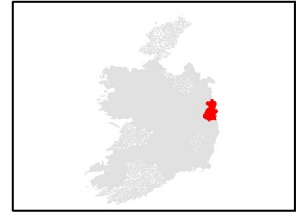
6°10'40"W

53°24'0"N

53°23'40"N

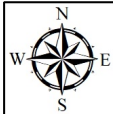


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community,
 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA,
 USGS, AeroGRID, IGN, and the GIS User Community



Legend

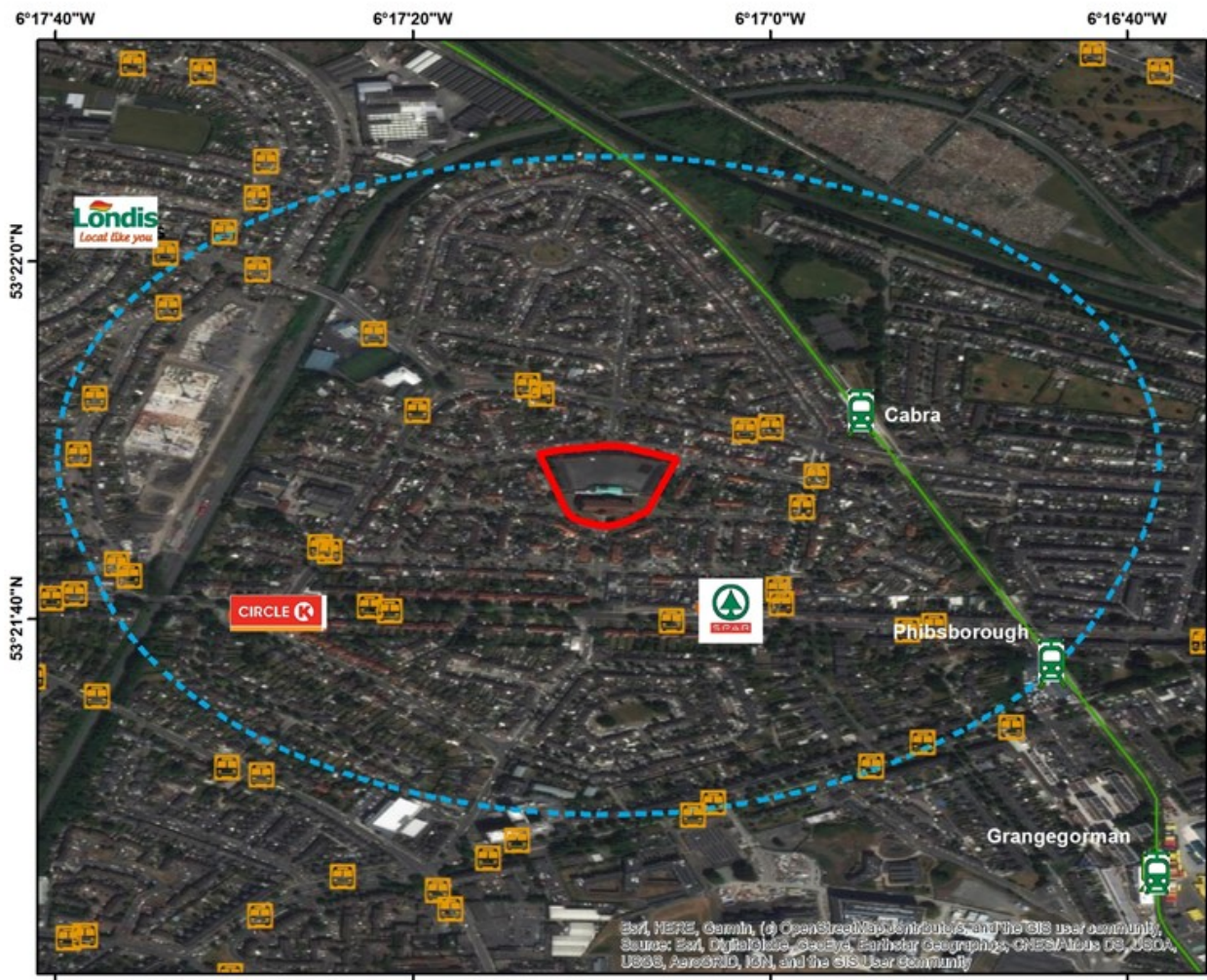
-  Subject Site
-  Bus Stops
-  Buffer 500m



Scale:
1:9,000

Church of St. Paul, Ayrfield D13





Legend

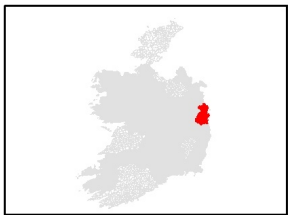
- Subject Site
- Luas
- Bus Stops
- Buffer 500m

Scale: 1:9,000







Christ the King, Cabra D7


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Legend

-  Subject Site
-  Buffer 500m
-  Luas
-  Bus Stops

Scale: 1:9,000




Capuchin Friary, Church Street

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

6°20'20"W

6°20'0"W

6°19'40"W

53°19'40"N

53°19'20"N

53°19'0"N



Legend

-  Subject Site
-  Buffer 500m
-  Bus Stops
-  Luas

Scale: 1:9,000

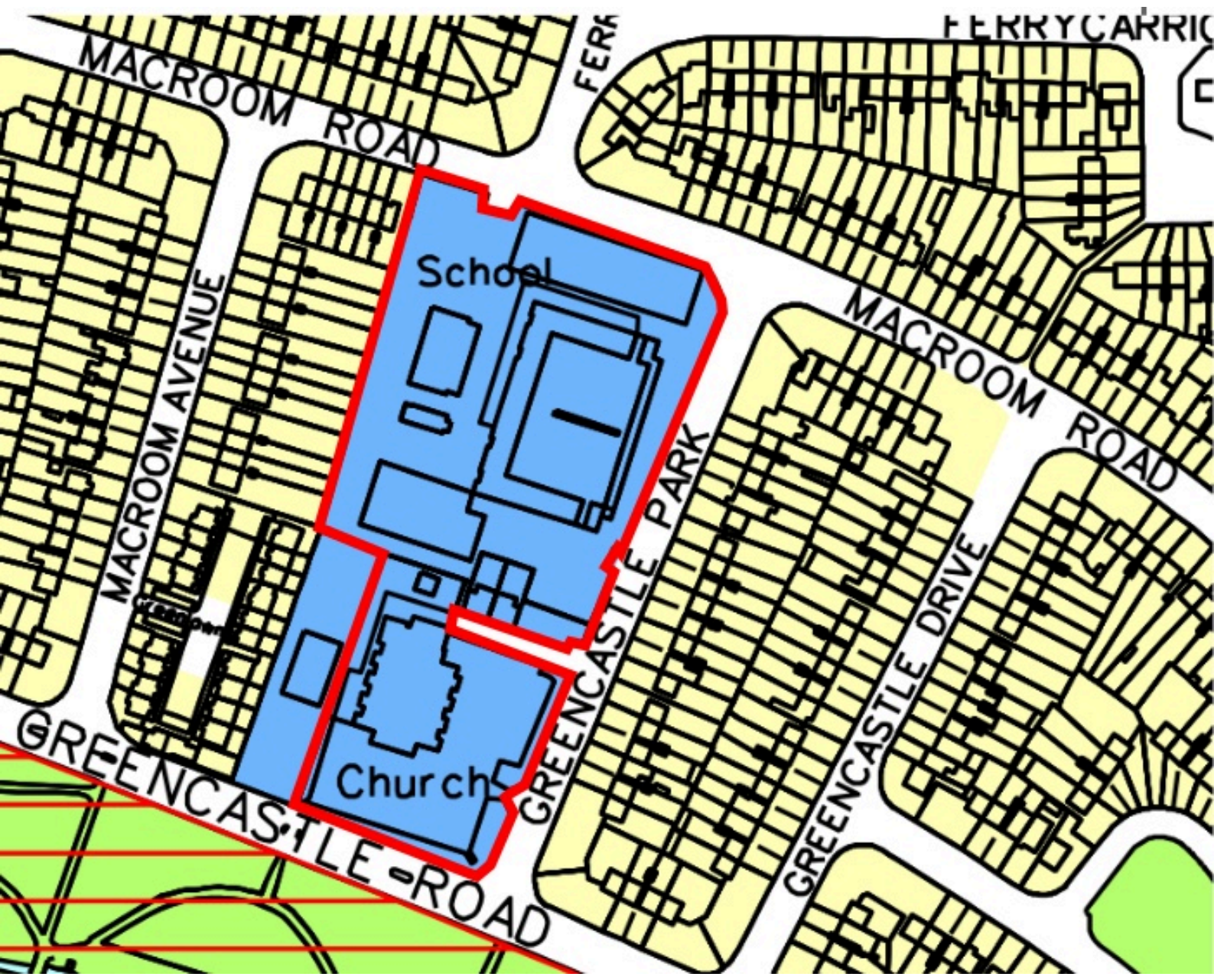



Assumption of the Blessed Virgin Mary, Walkinstown

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Appendix I(c)- Current Zonings





MACROOM ROAD

FERRY CARRIG

FERRA

School

MACROOM ROAD

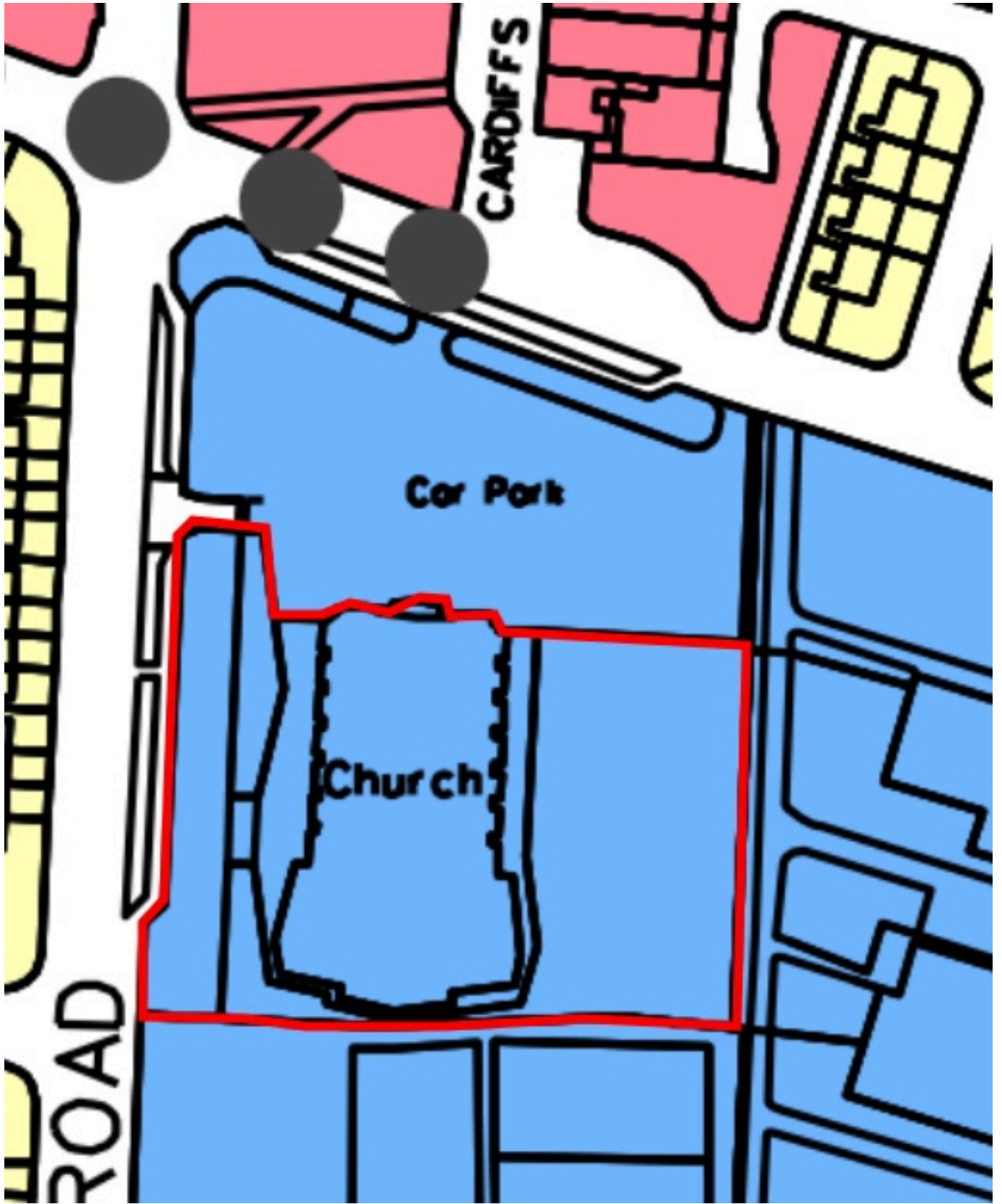
MACROOM AVENUE

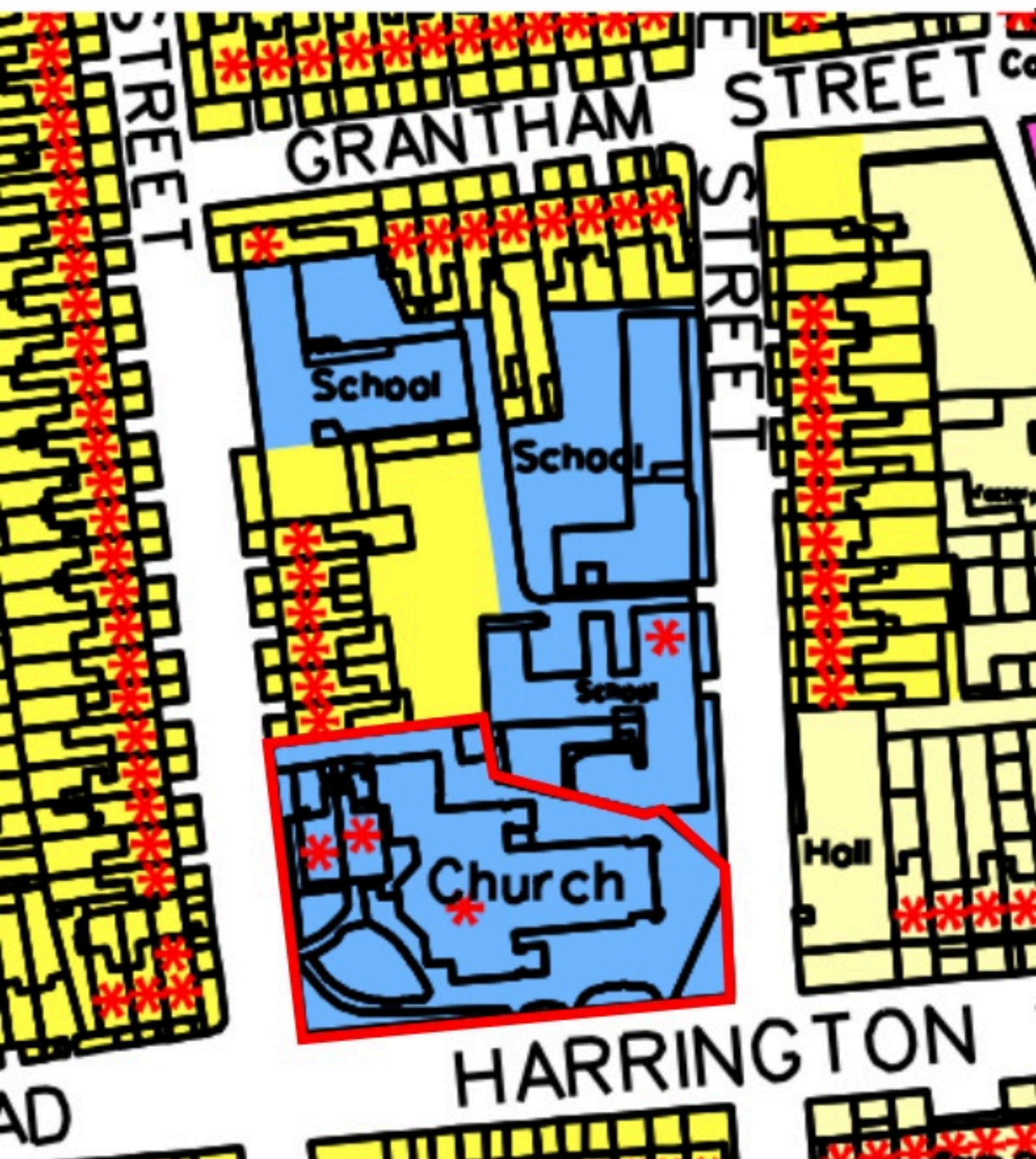
GREENCASILE PARK

Church

GREENCASILE DRIVE

GREENCASILE ROAD





GRANTHAM

STREET

STREET

STREET

School

School

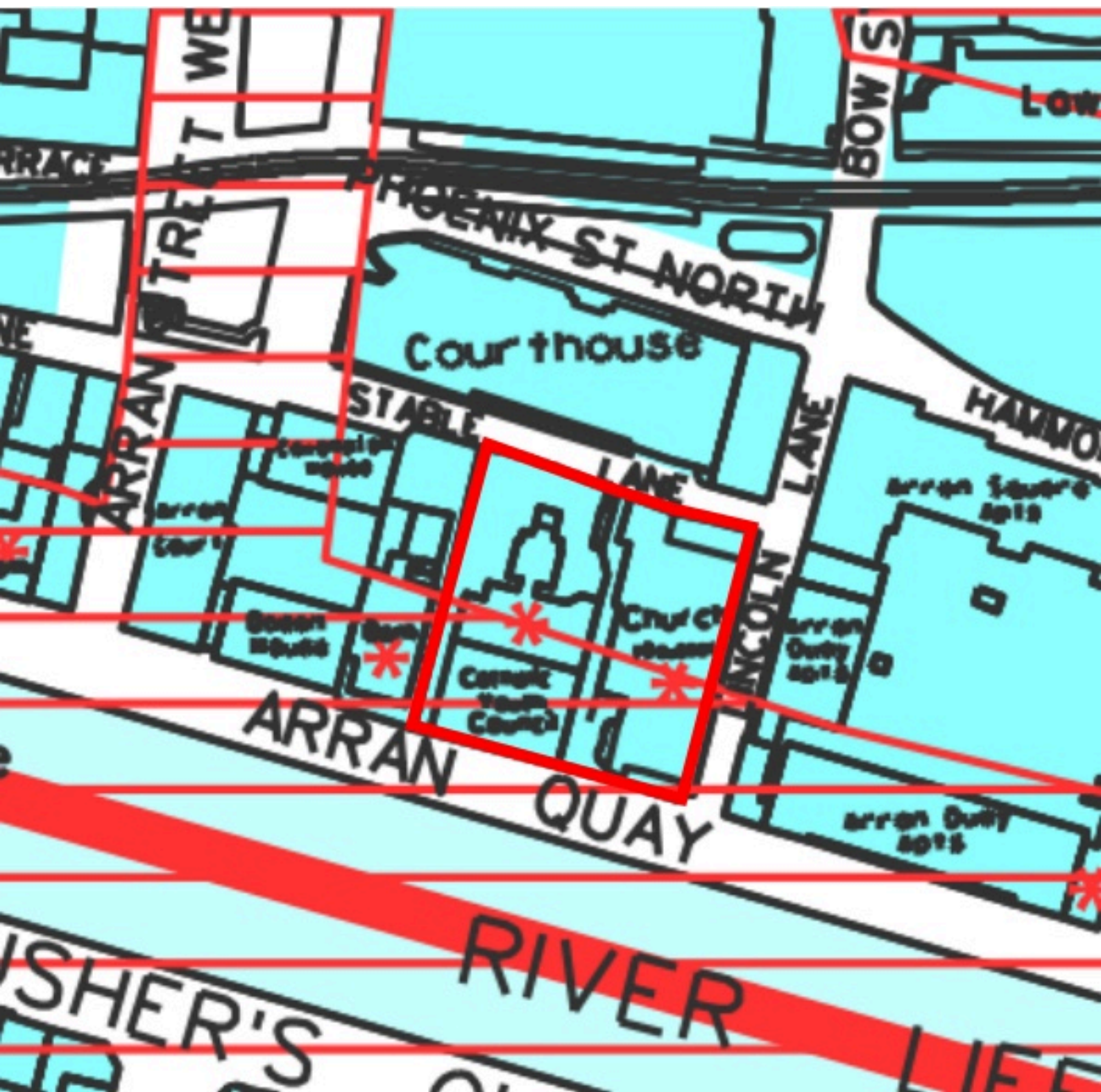
School

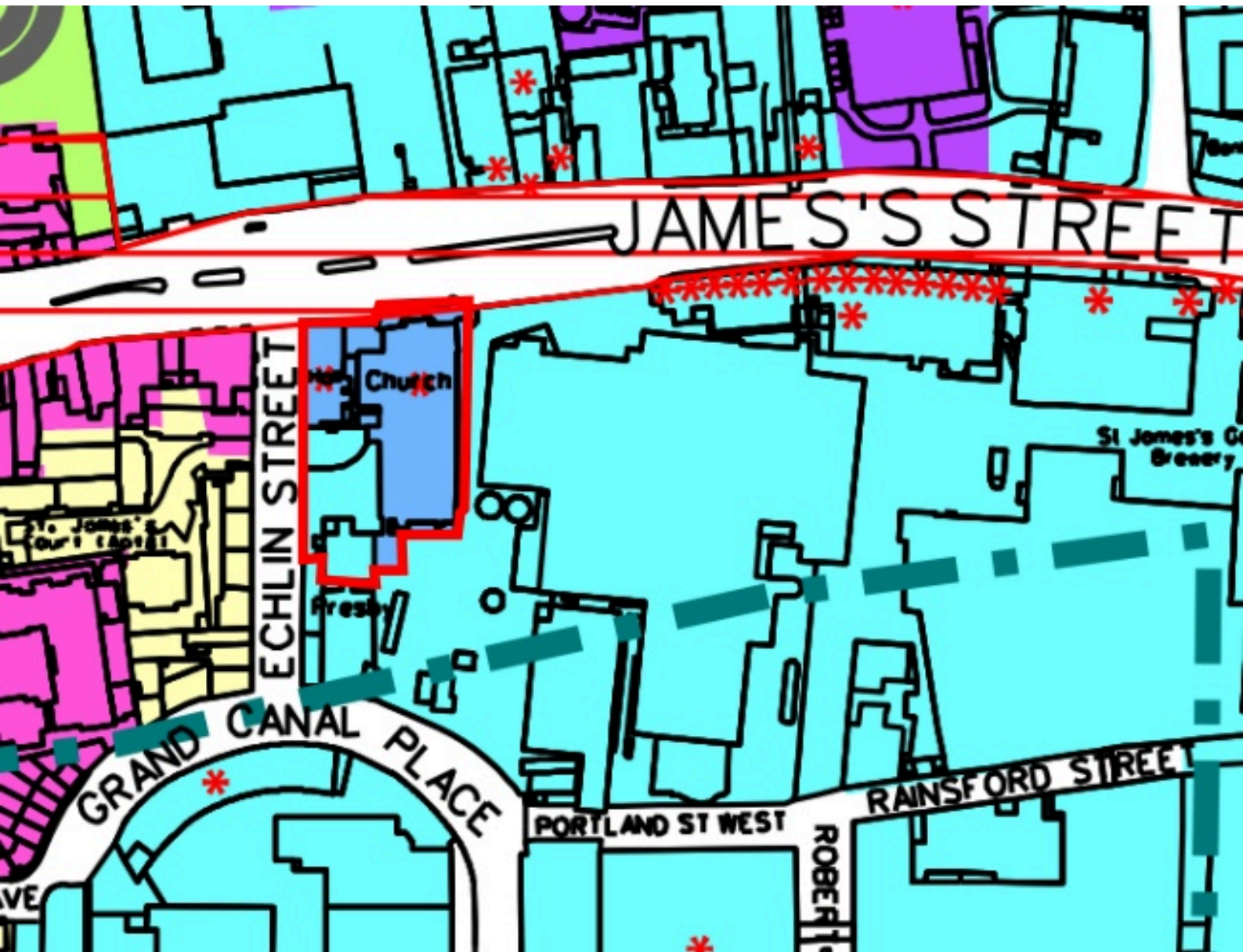
Church

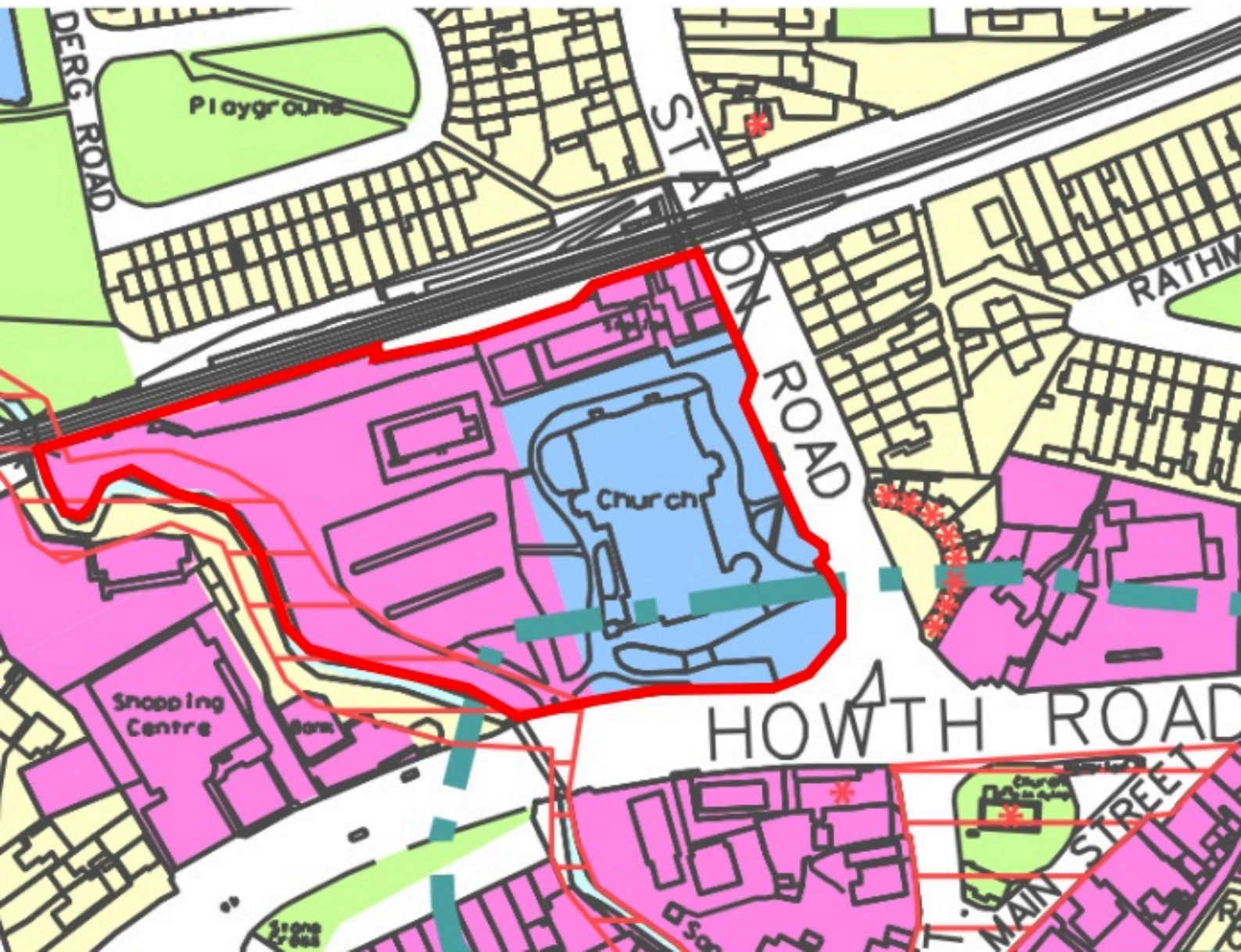
Hall

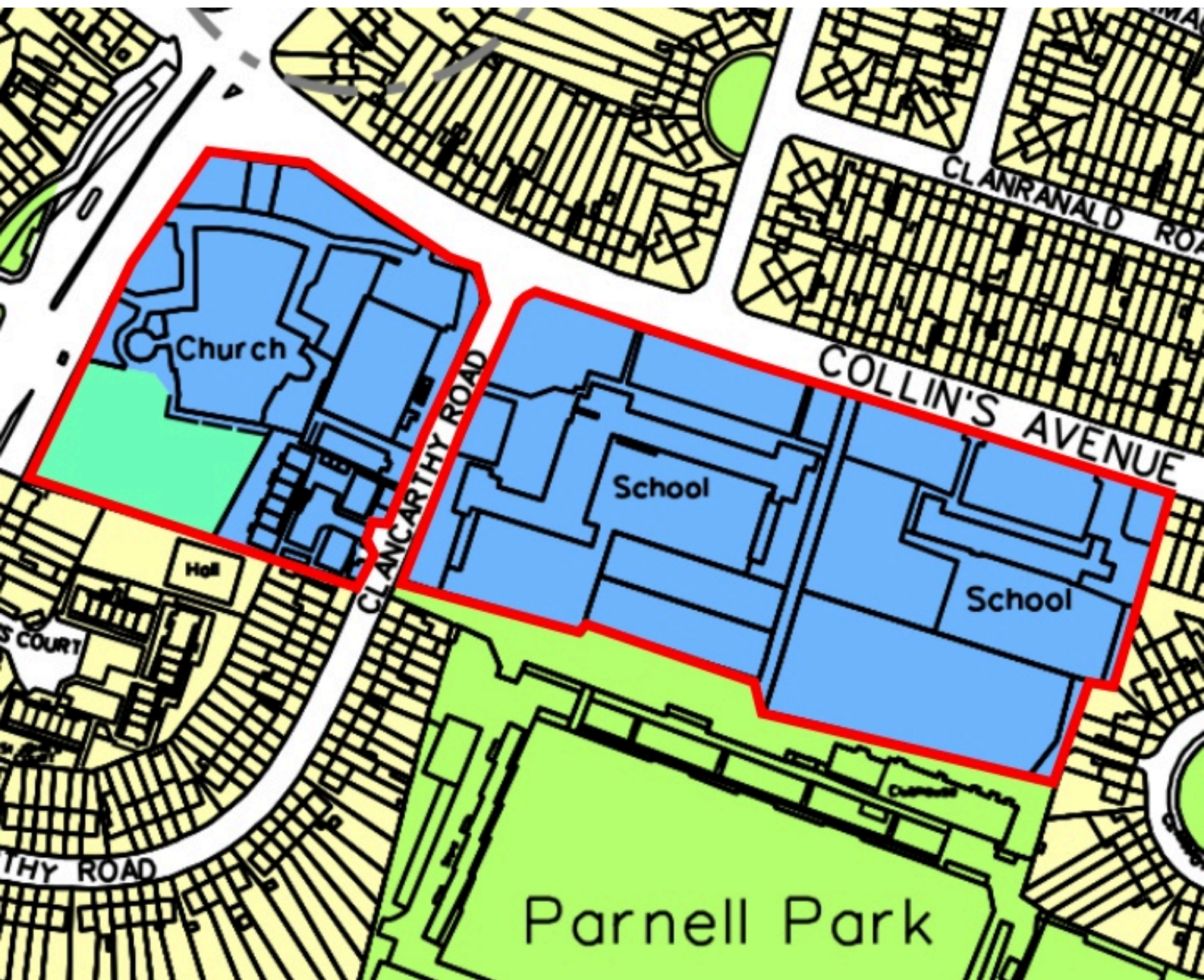
HARRINGTON

AD









Church

School

School

Parnell Park

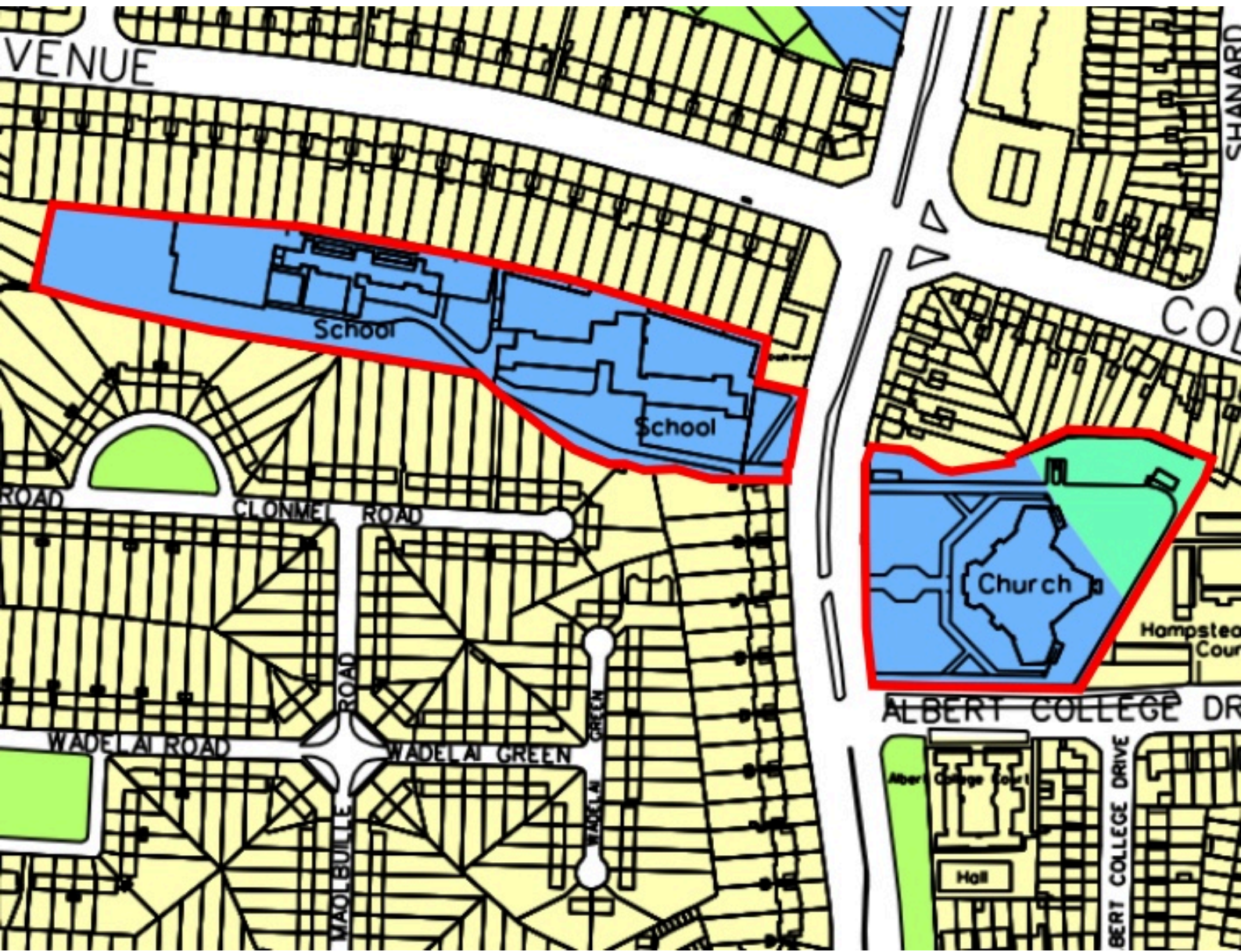
CLANCARTHY ROAD

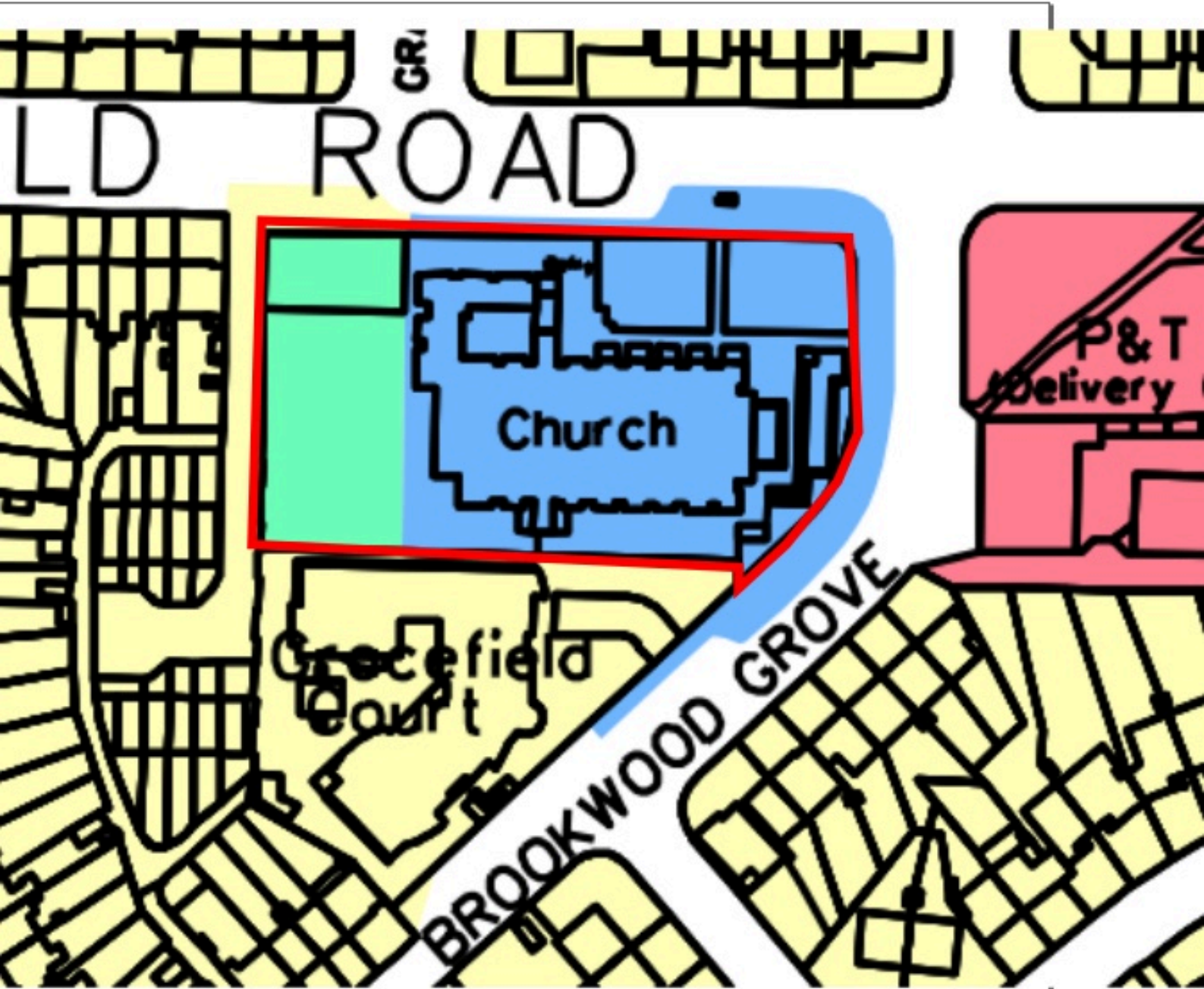
COLLIN'S AVENUE

CLANRANALD ROAD

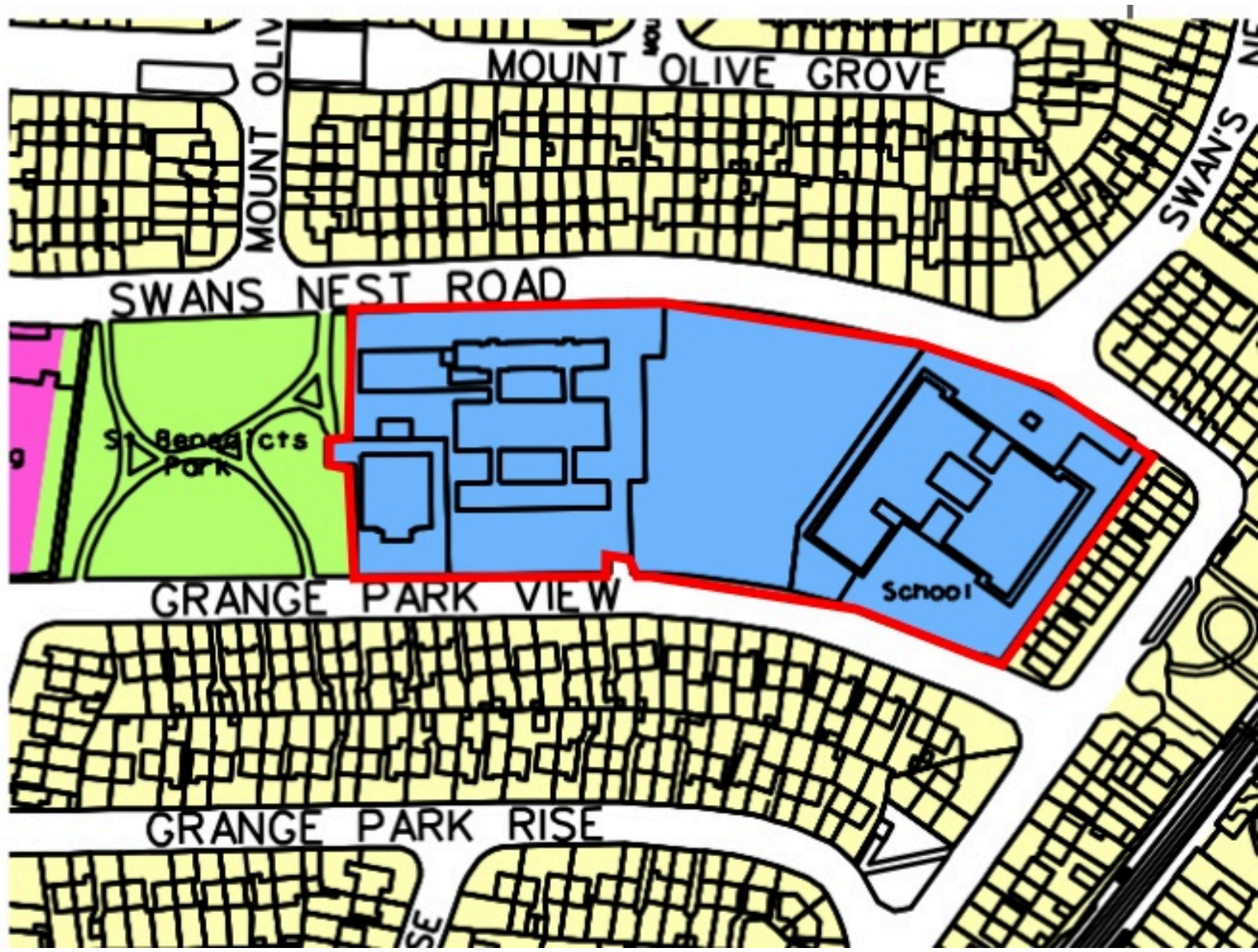
S COURT

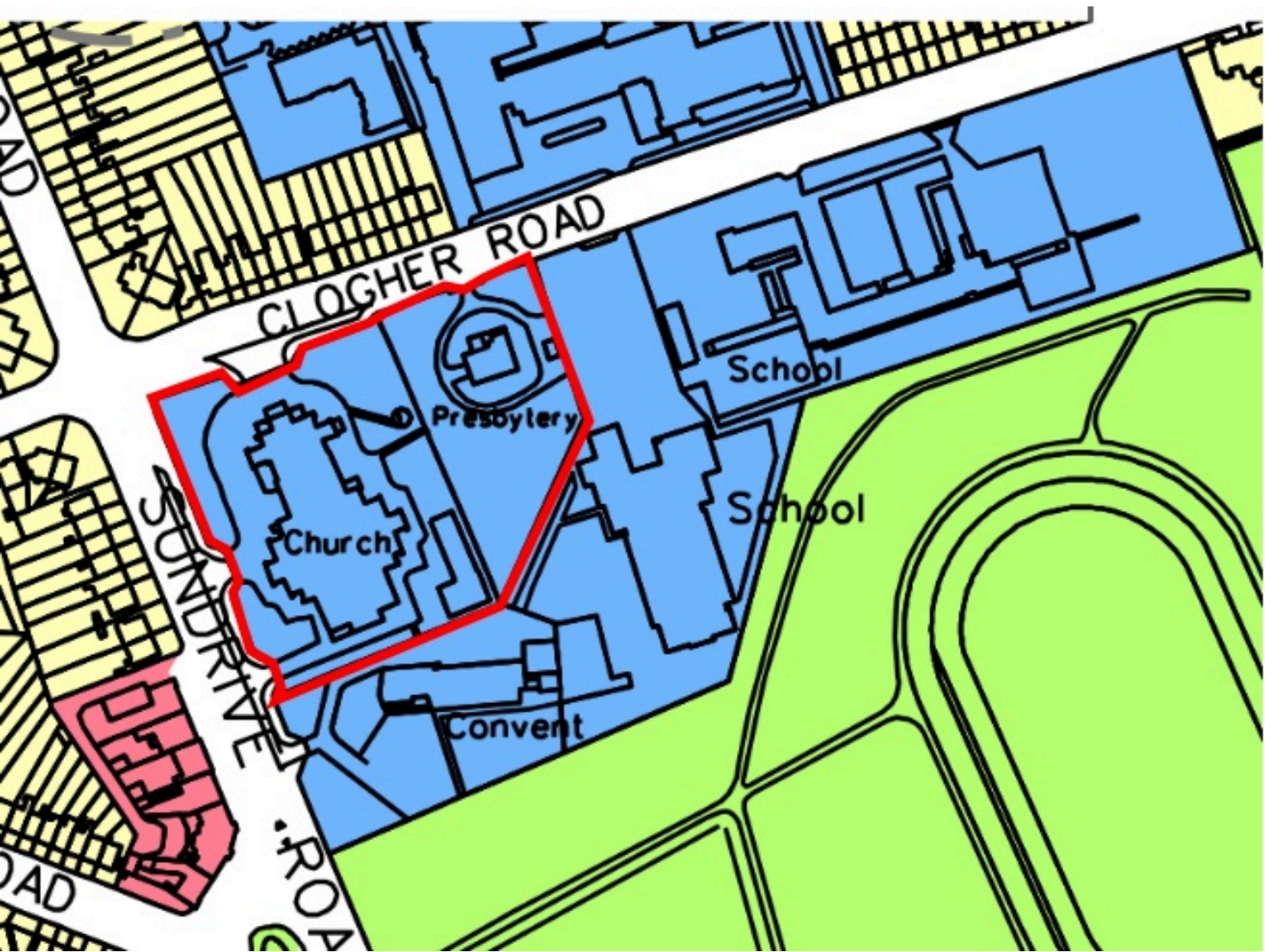
THY ROAD

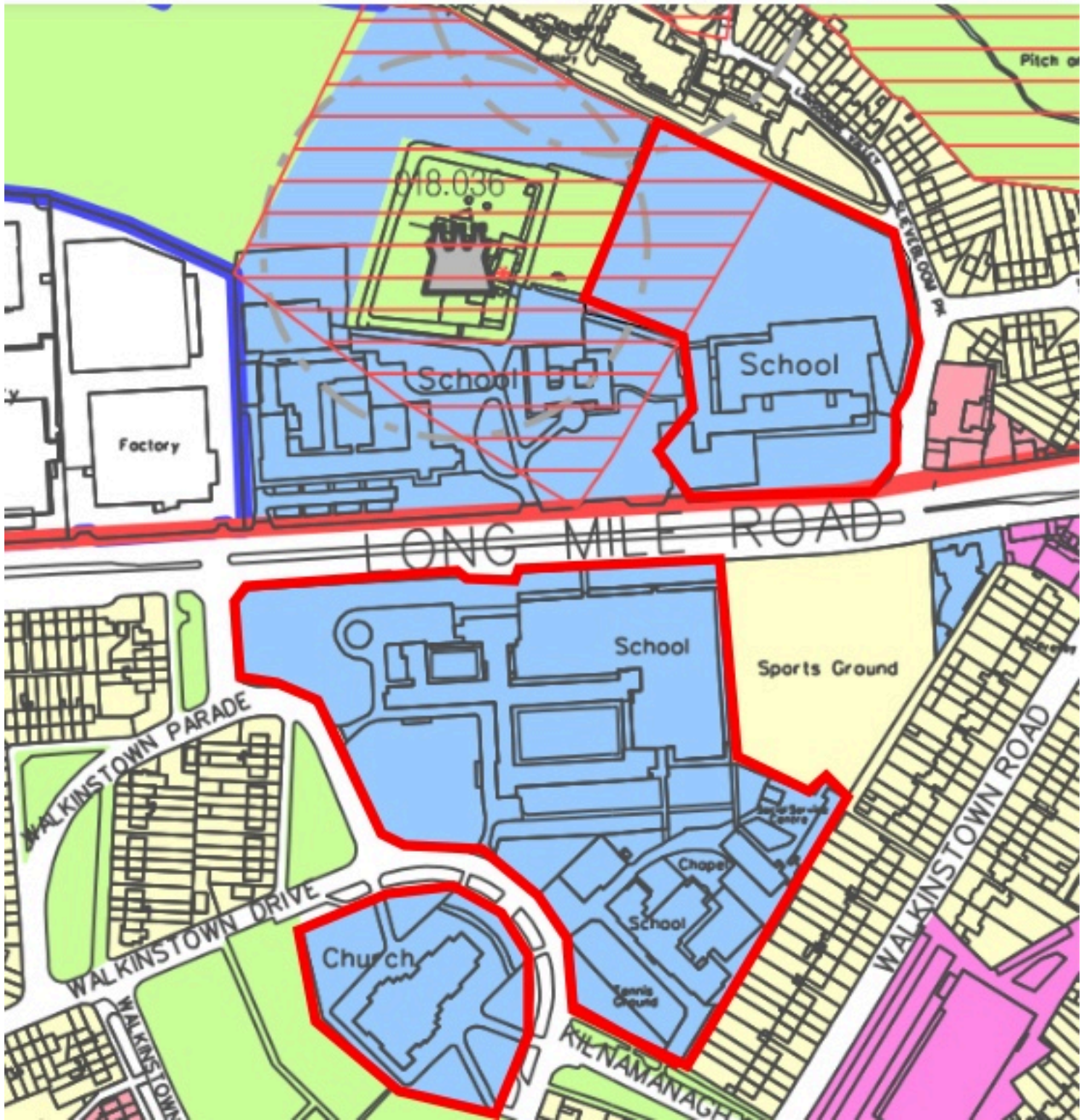












018.036

Factory

School

School

LONG MILE ROAD

School

Sports Ground

WALKINSTOWN PARADE

WALKINSTOWN DRIVE

Church

Chapel

School

Tennis Ground

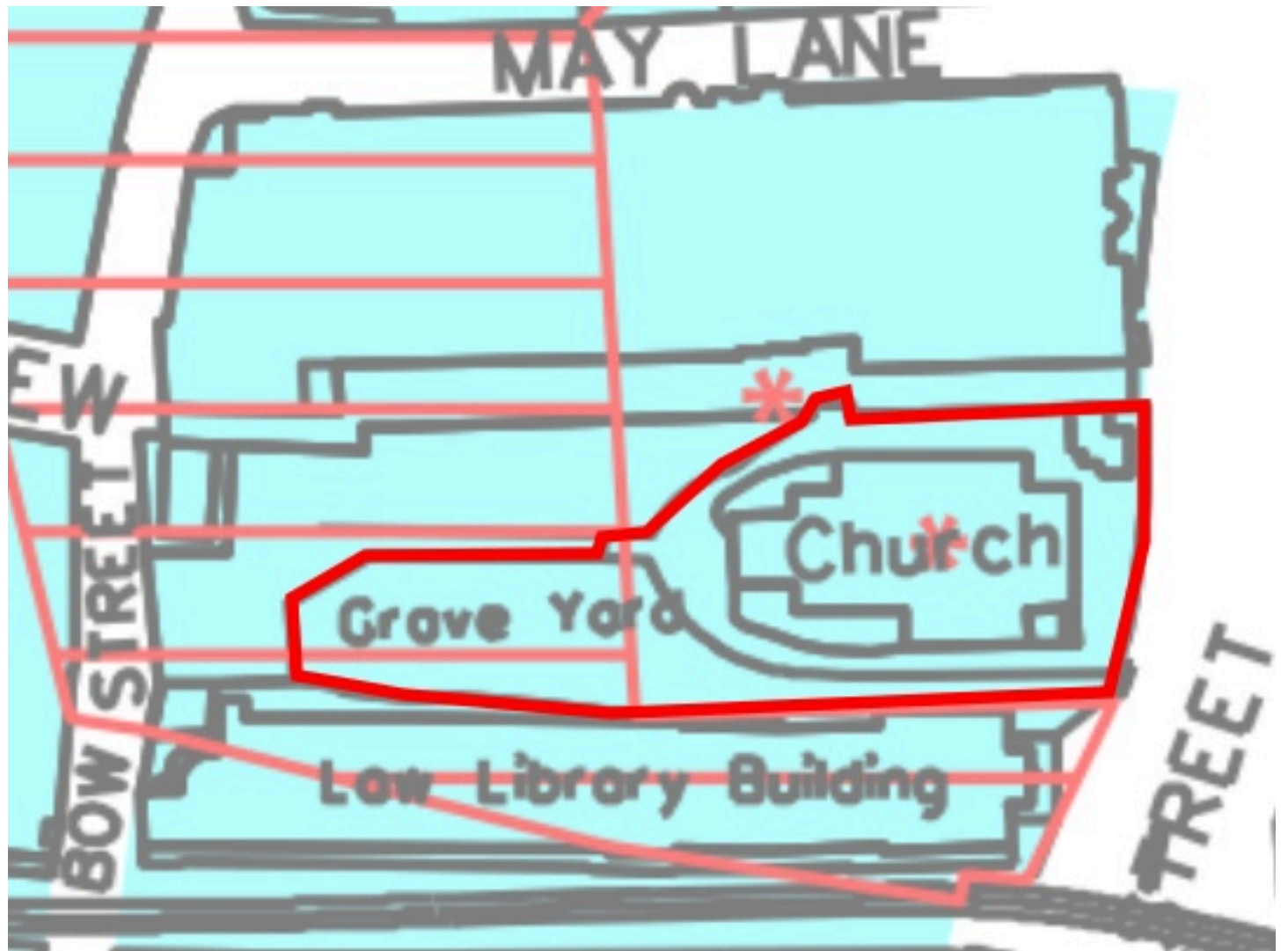
RYLNAMANAGH

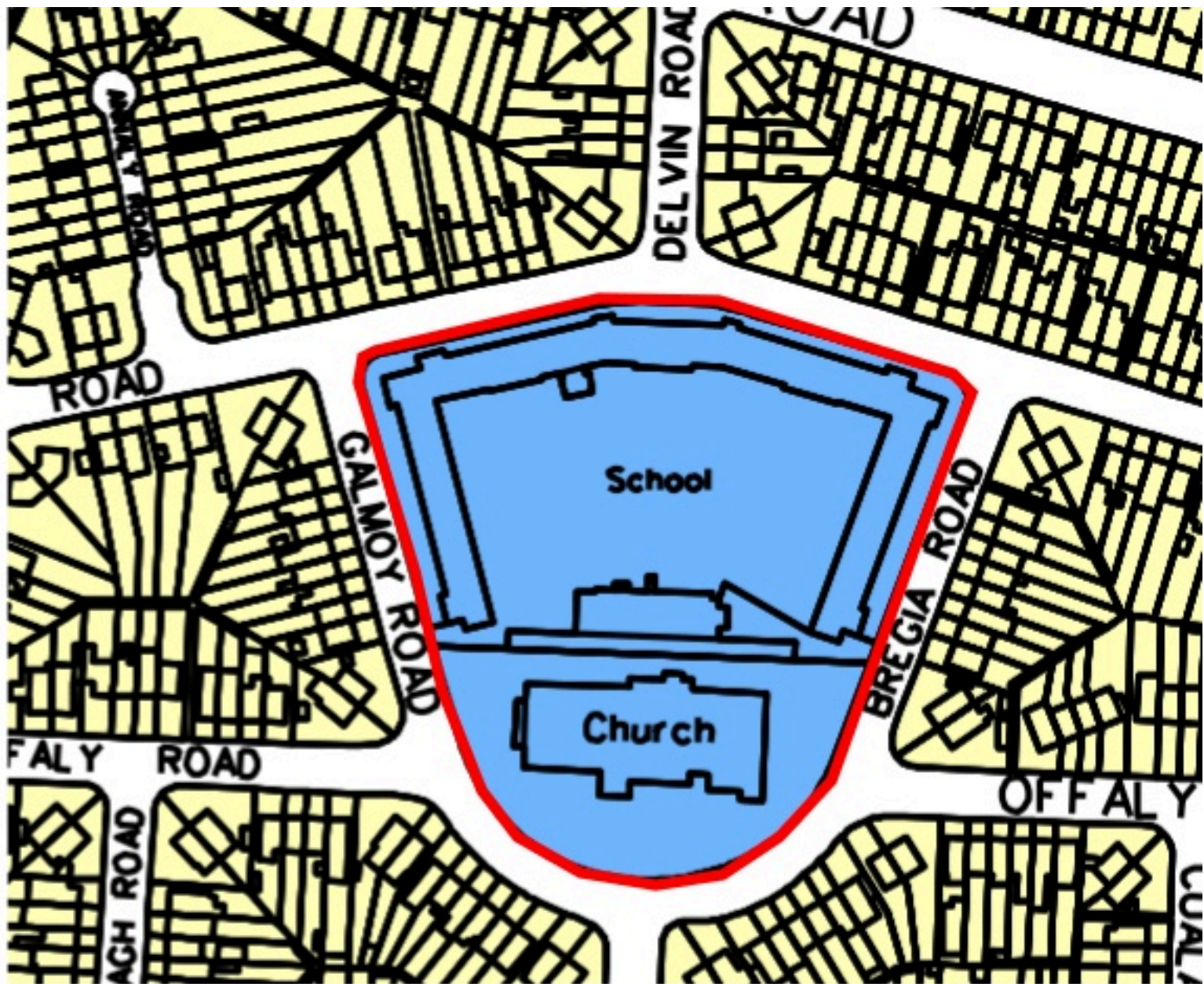
WALKINSTOWN ROAD

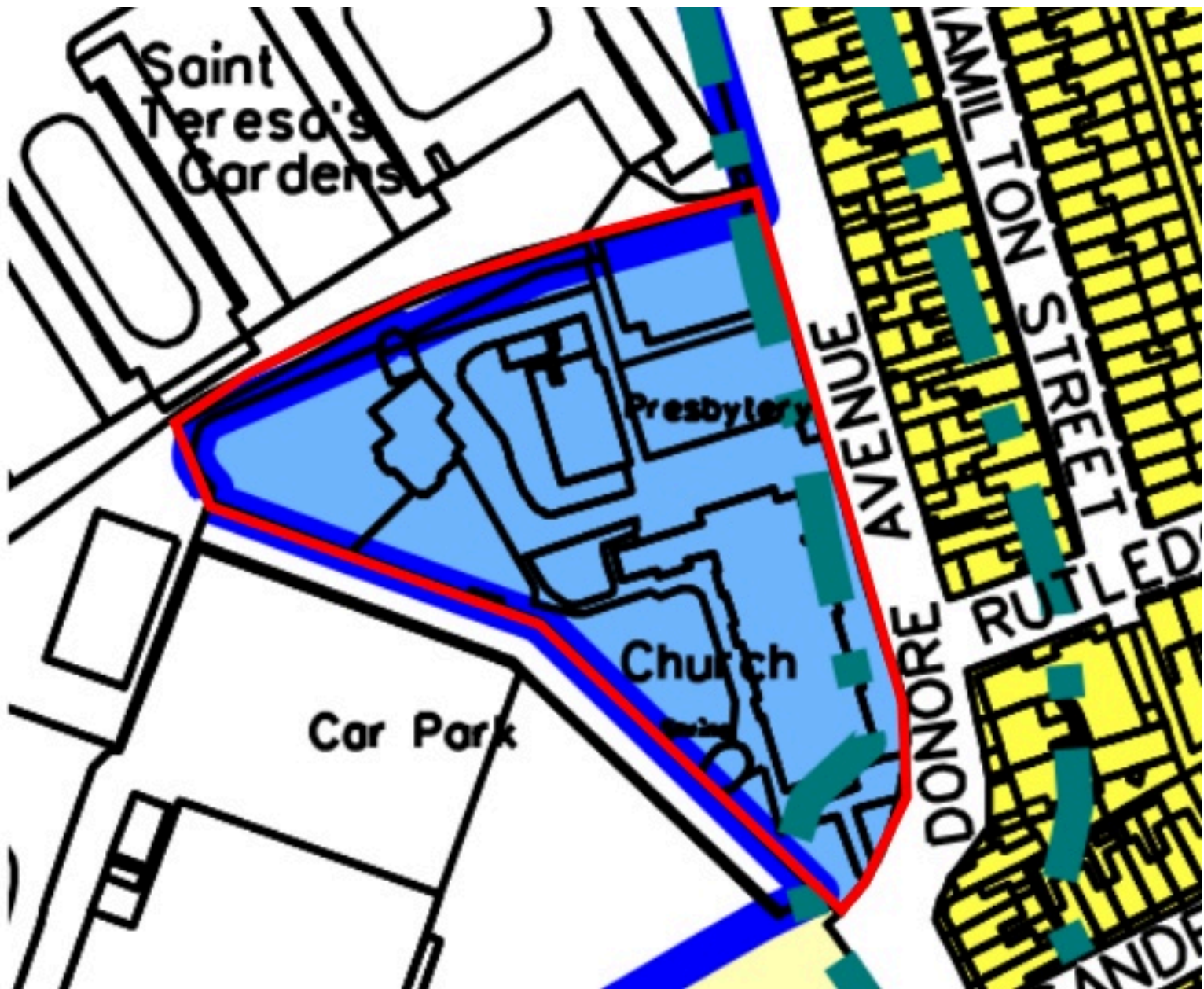
Pitch

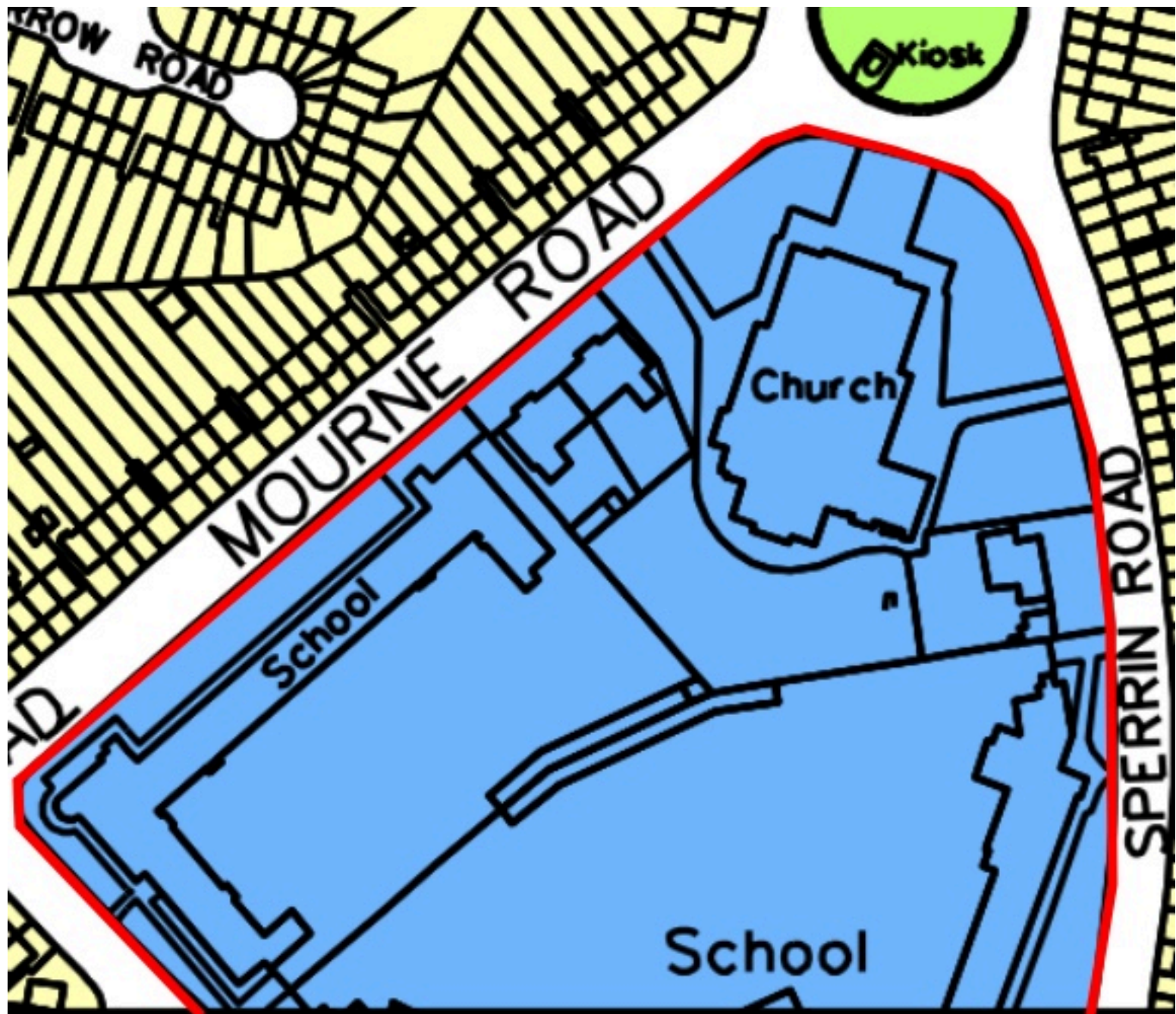


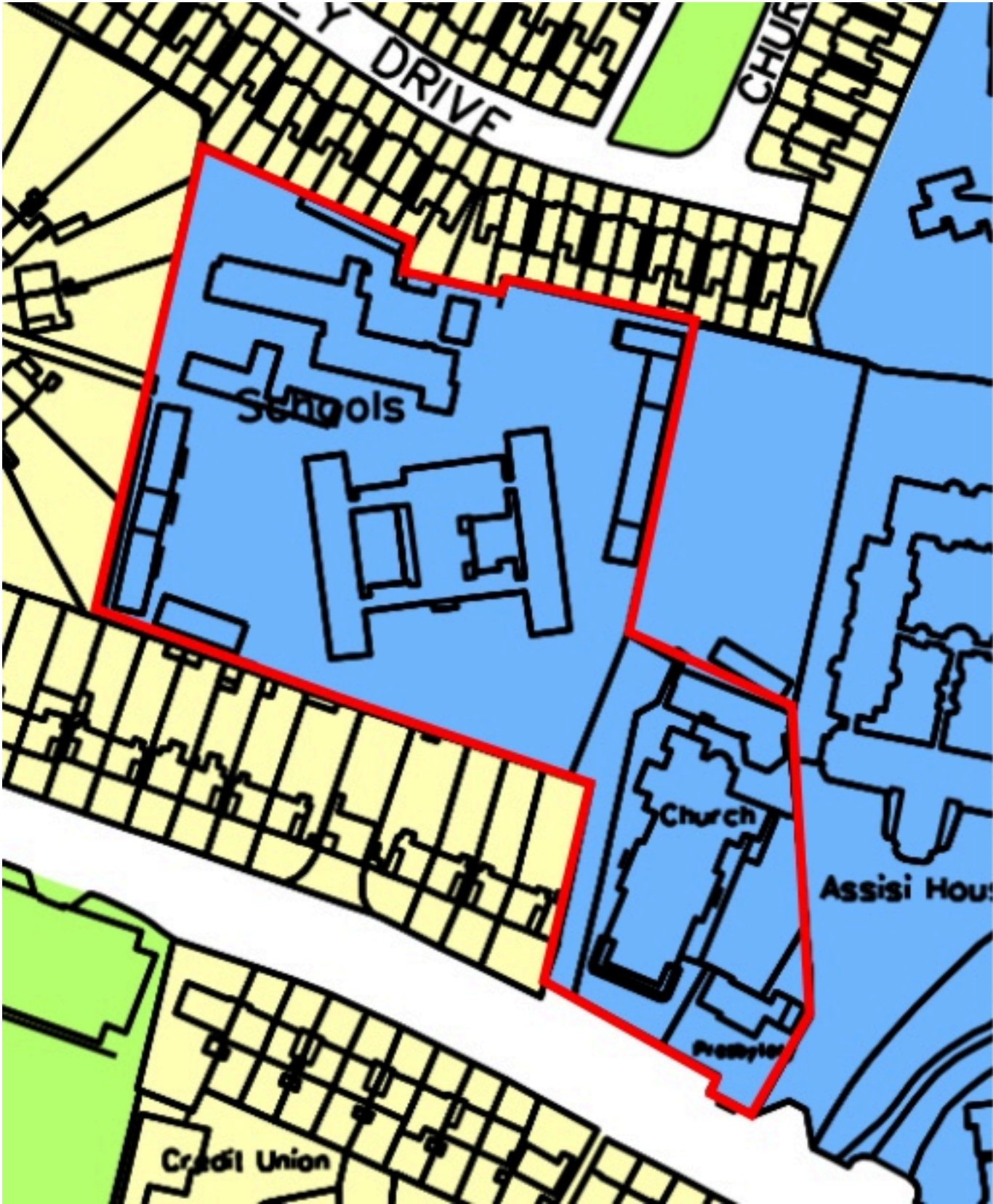


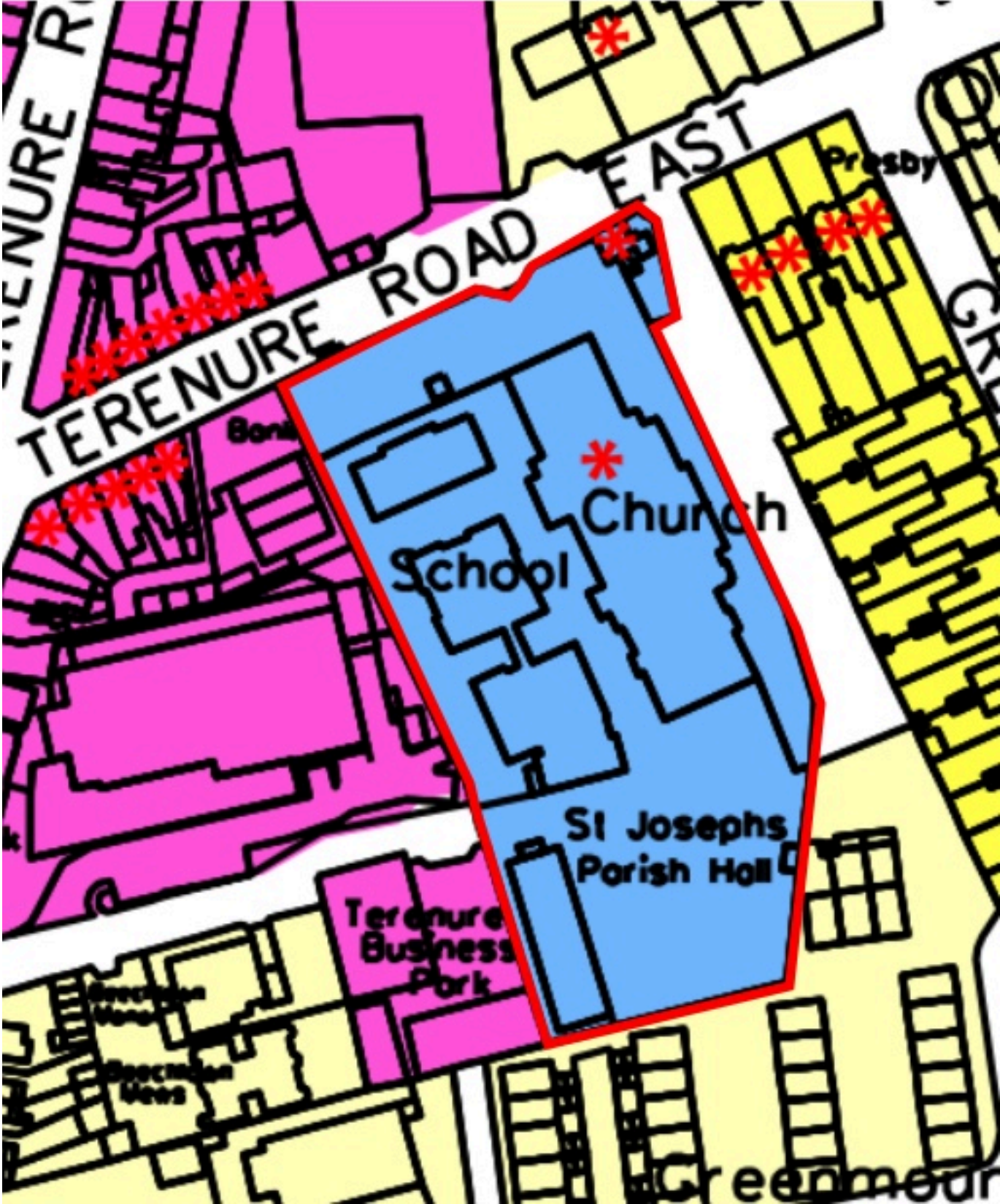


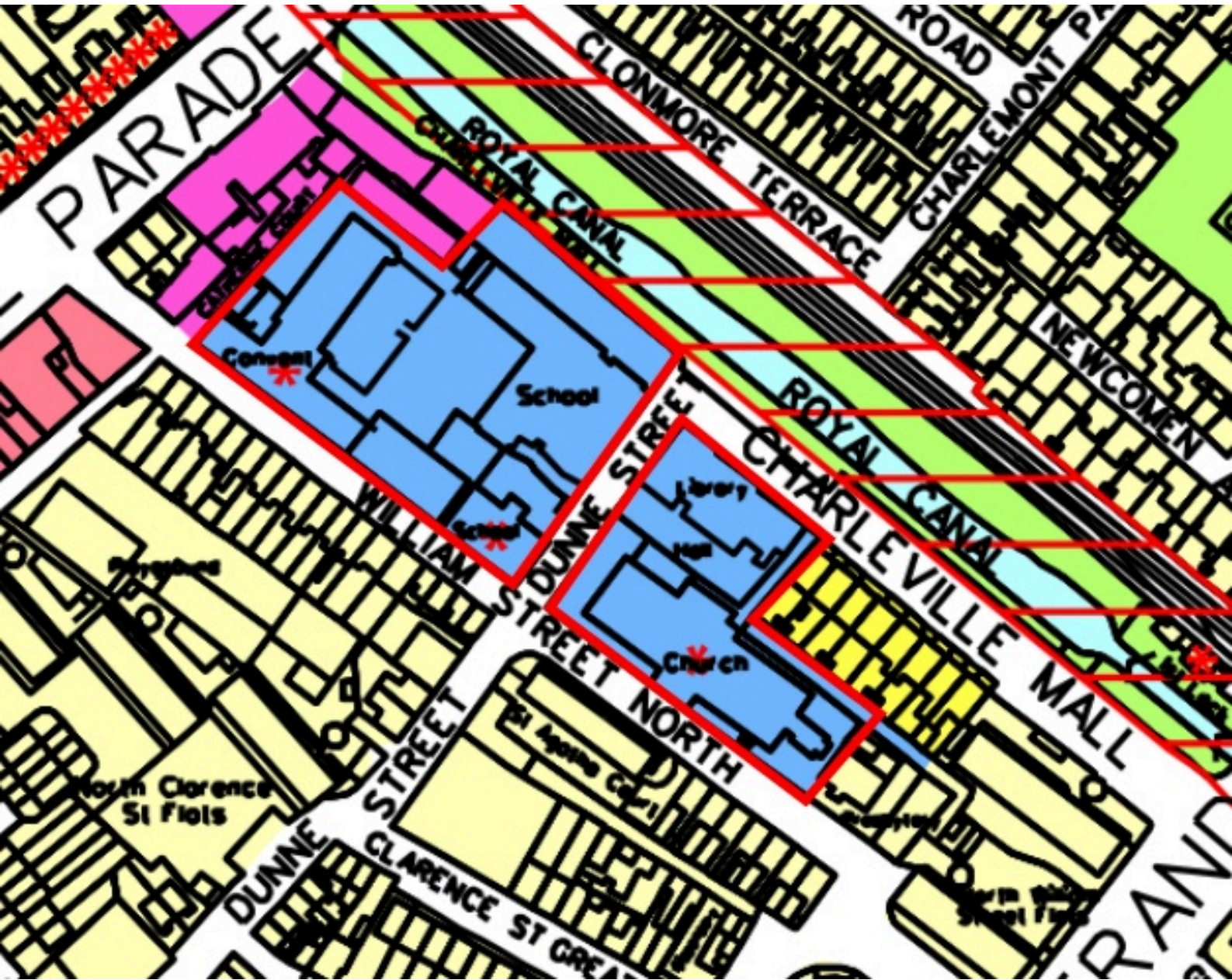


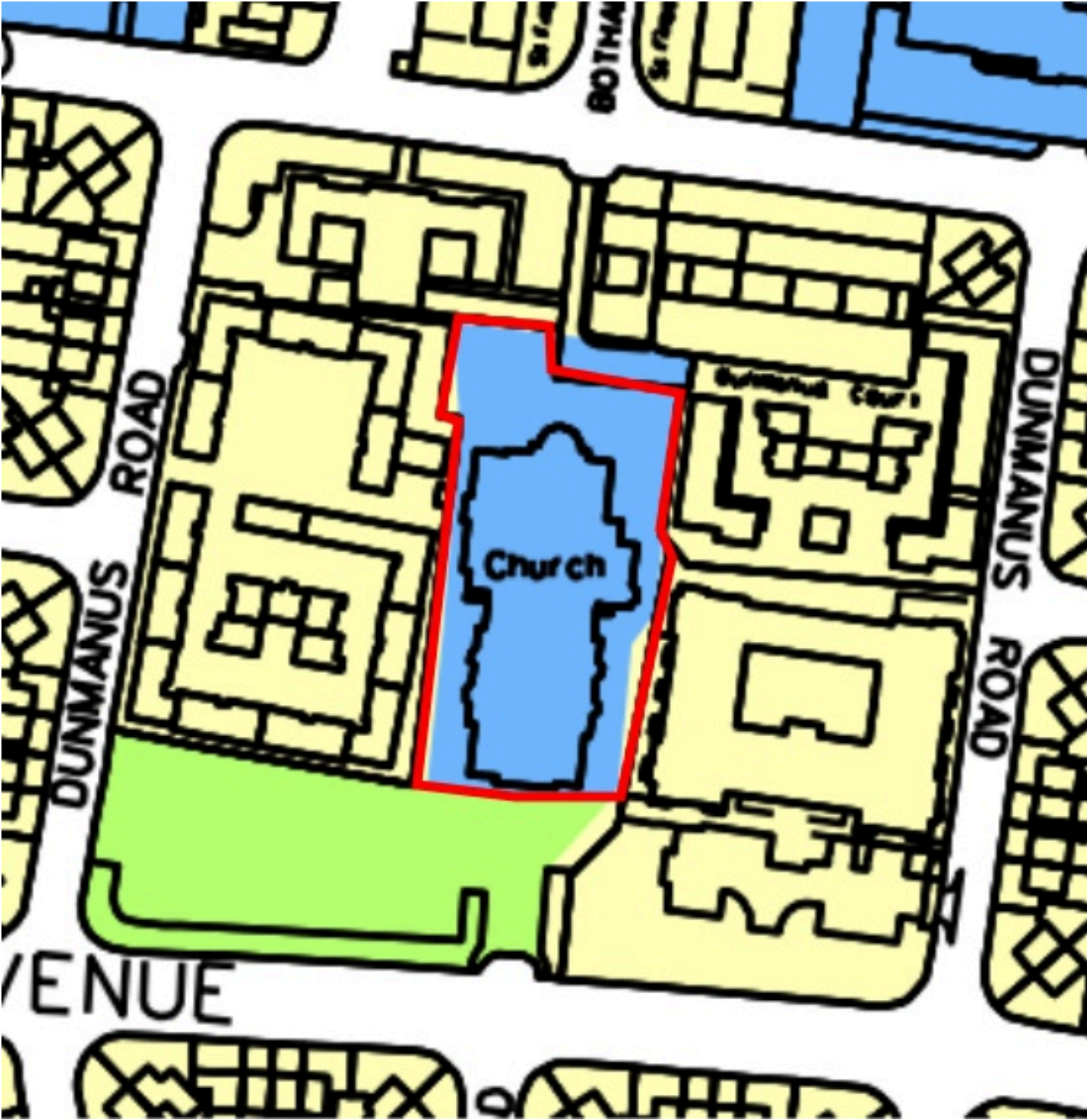


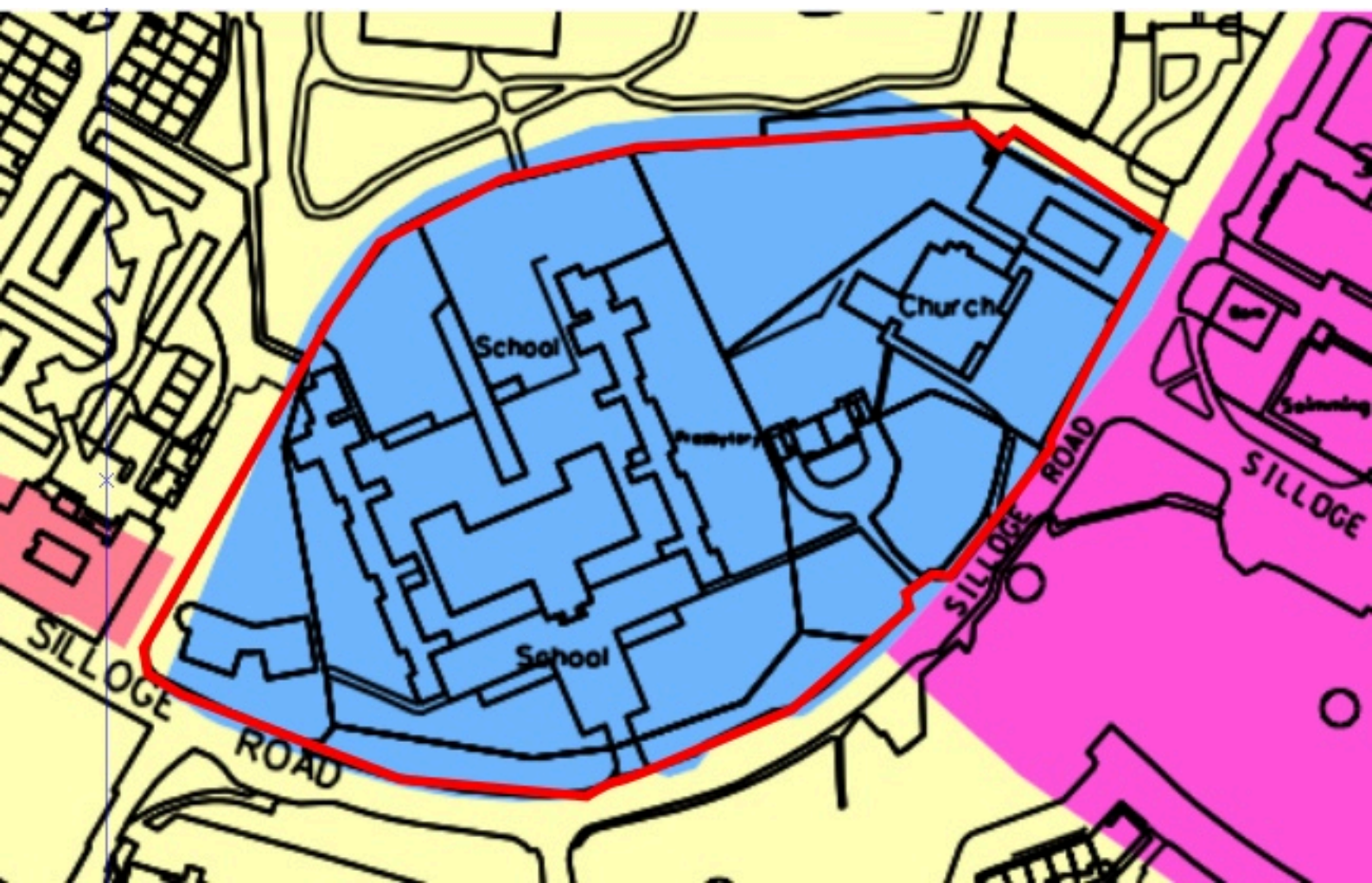


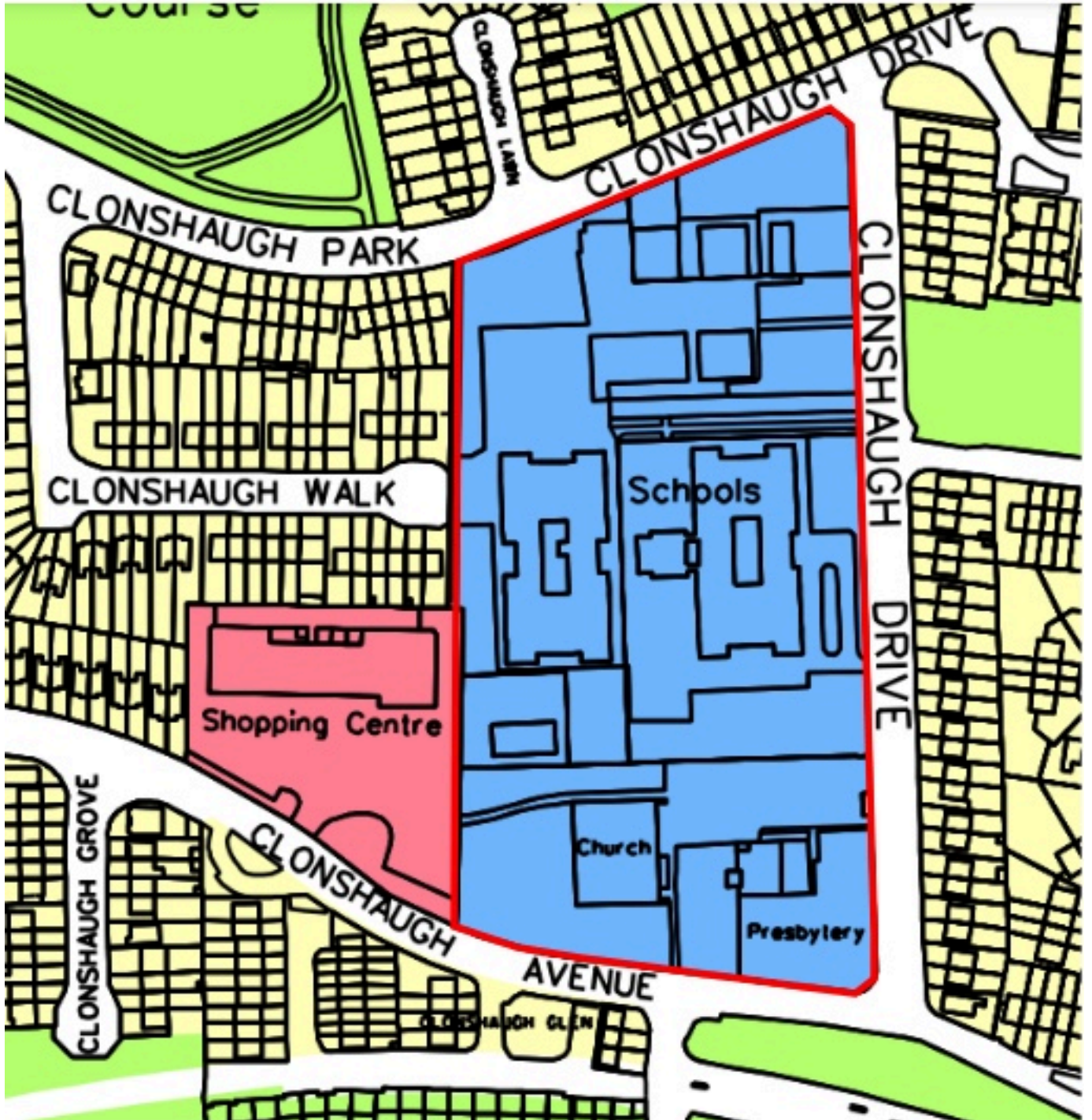


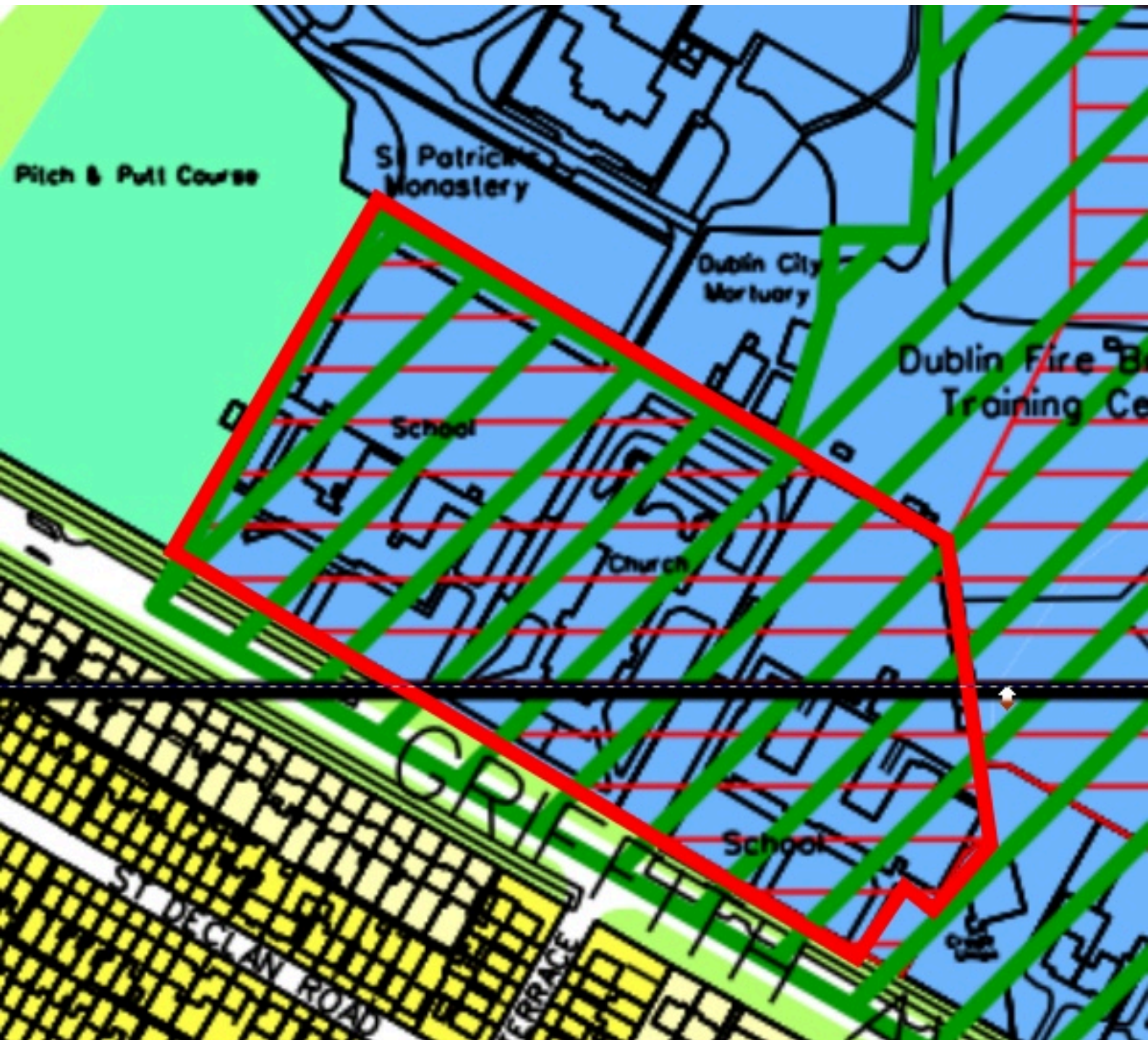




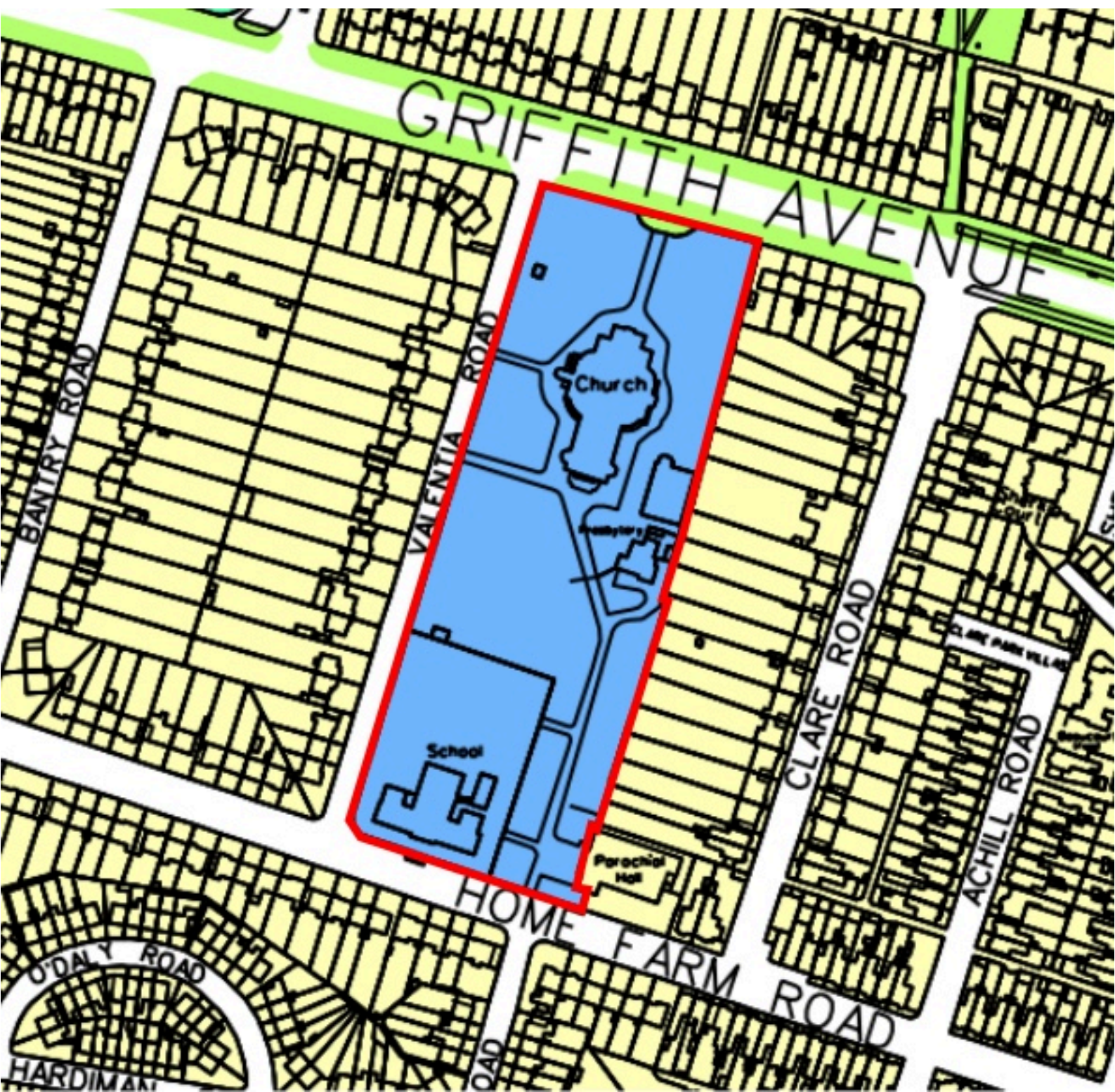


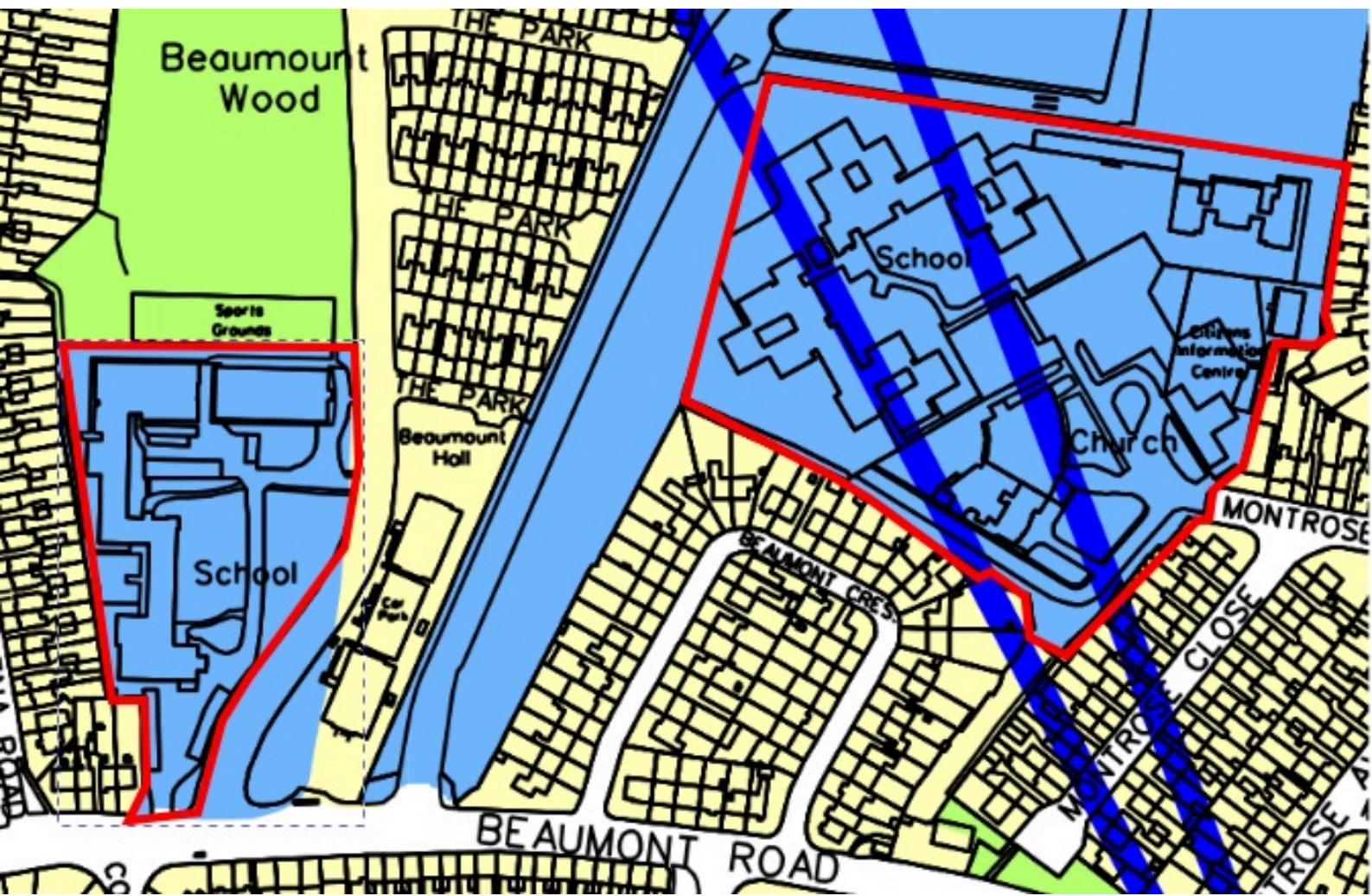












Beaumont Wood

Sports Grounds

School

Beaumont Hall

School

Church

Information Centre

BEAUMONT ROAD

MONTROSE

MONTROSE CLOSE

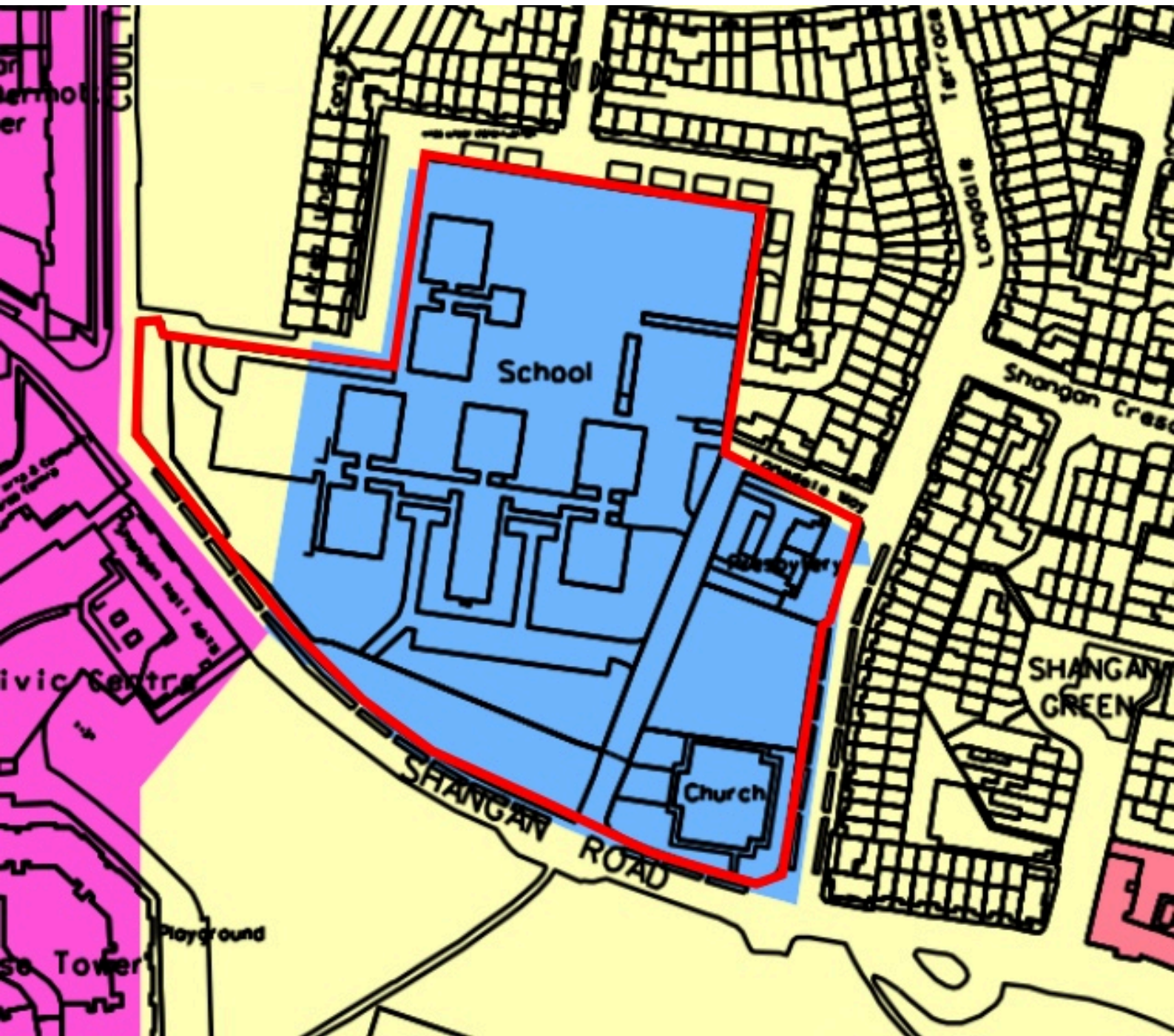
THE PARK

THE PARK

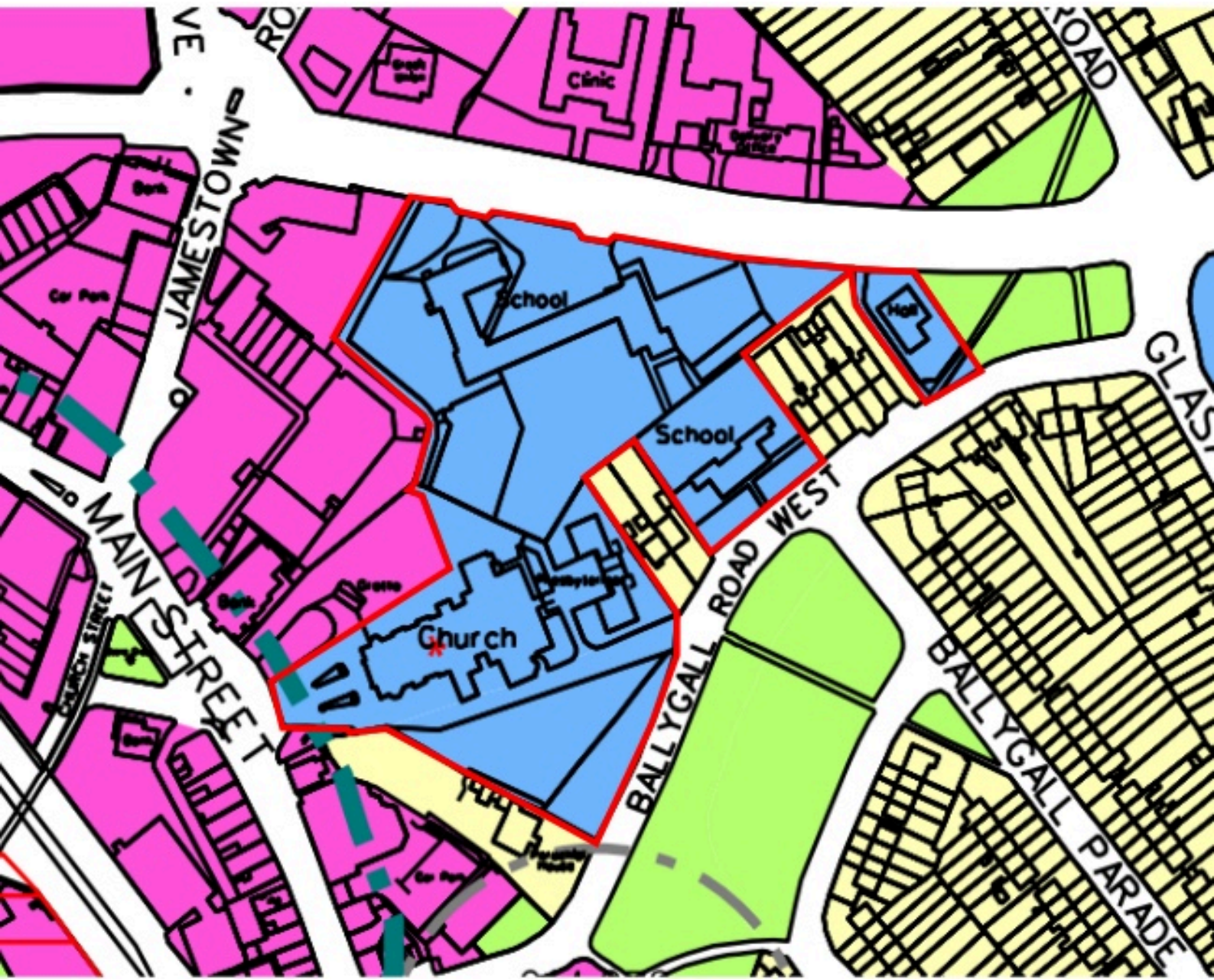
THE PARK

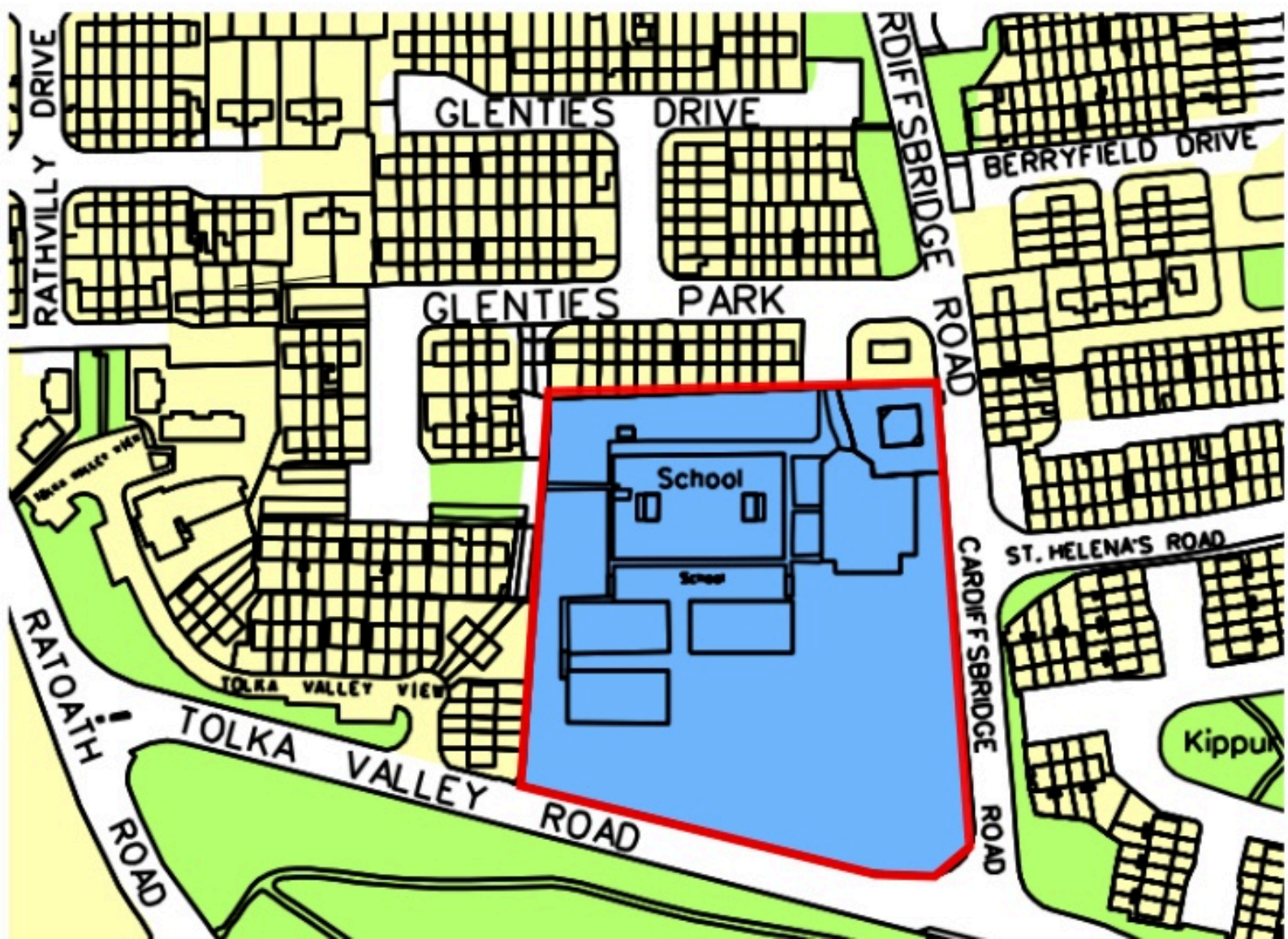
BEAUMONT CRES

MONTROSE

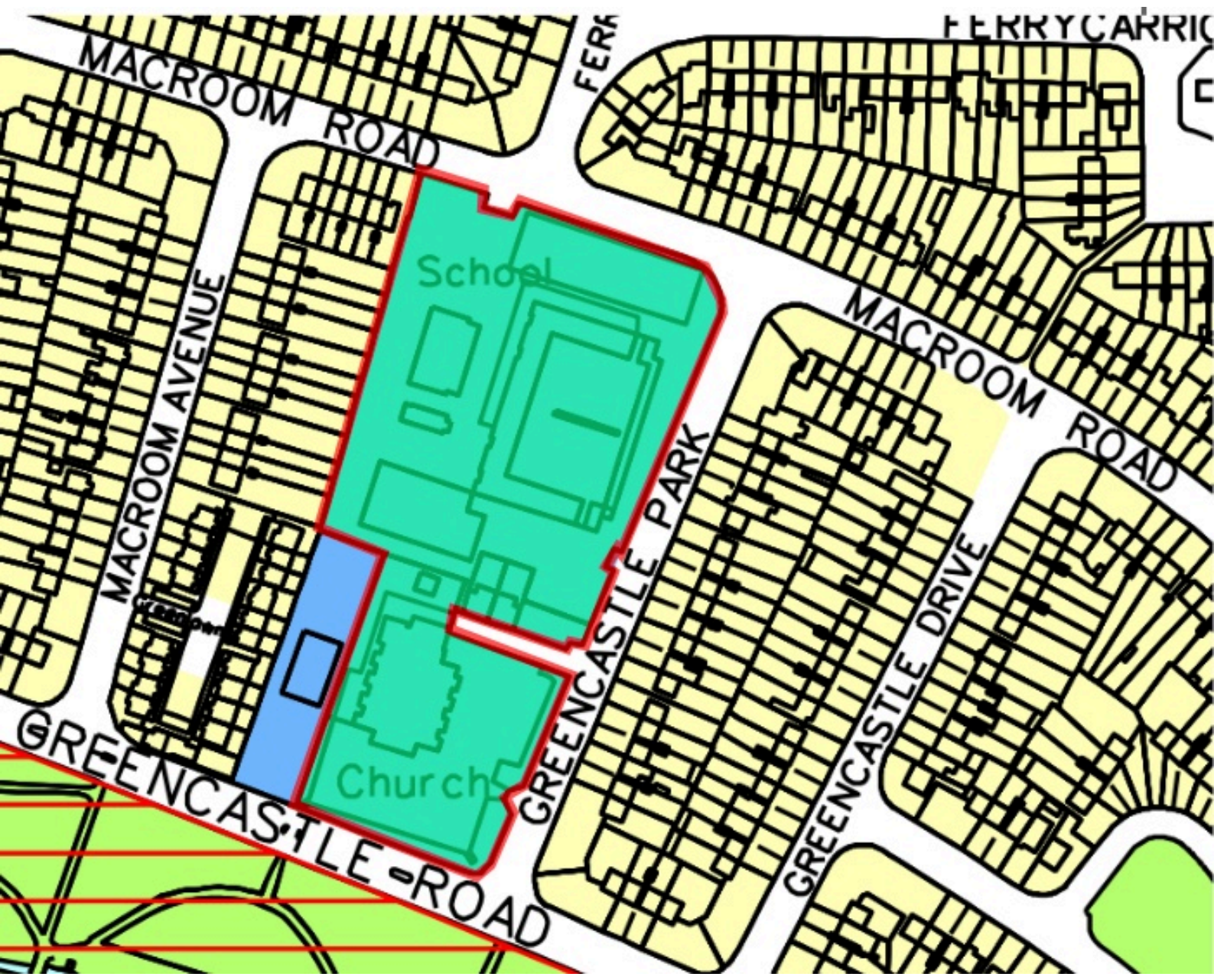








Appendix I(d) - Proposed Rezoning



MACROOM ROAD

FERRY CARRICK

School

MACROOM AVENUE

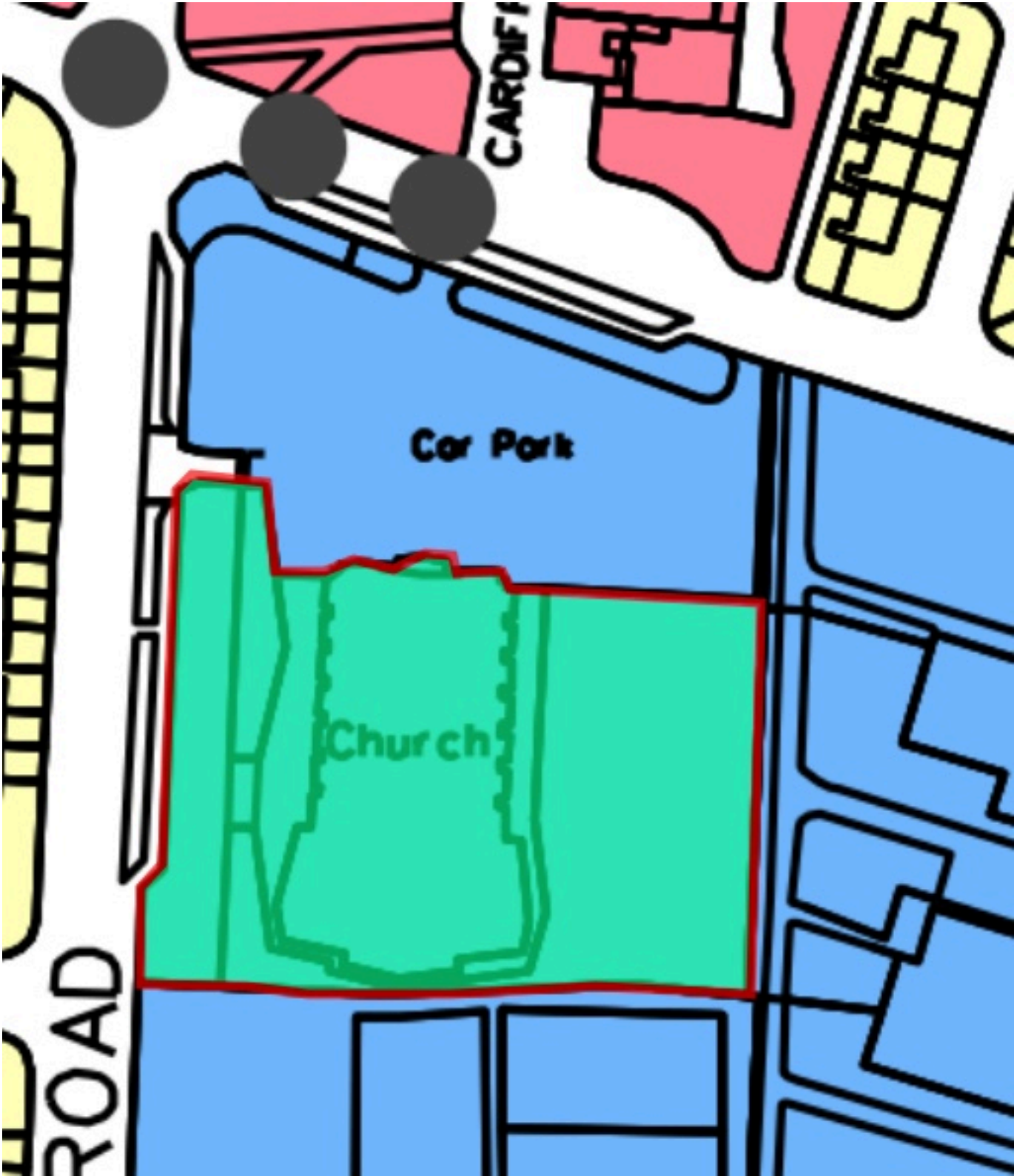
MACROOM ROAD

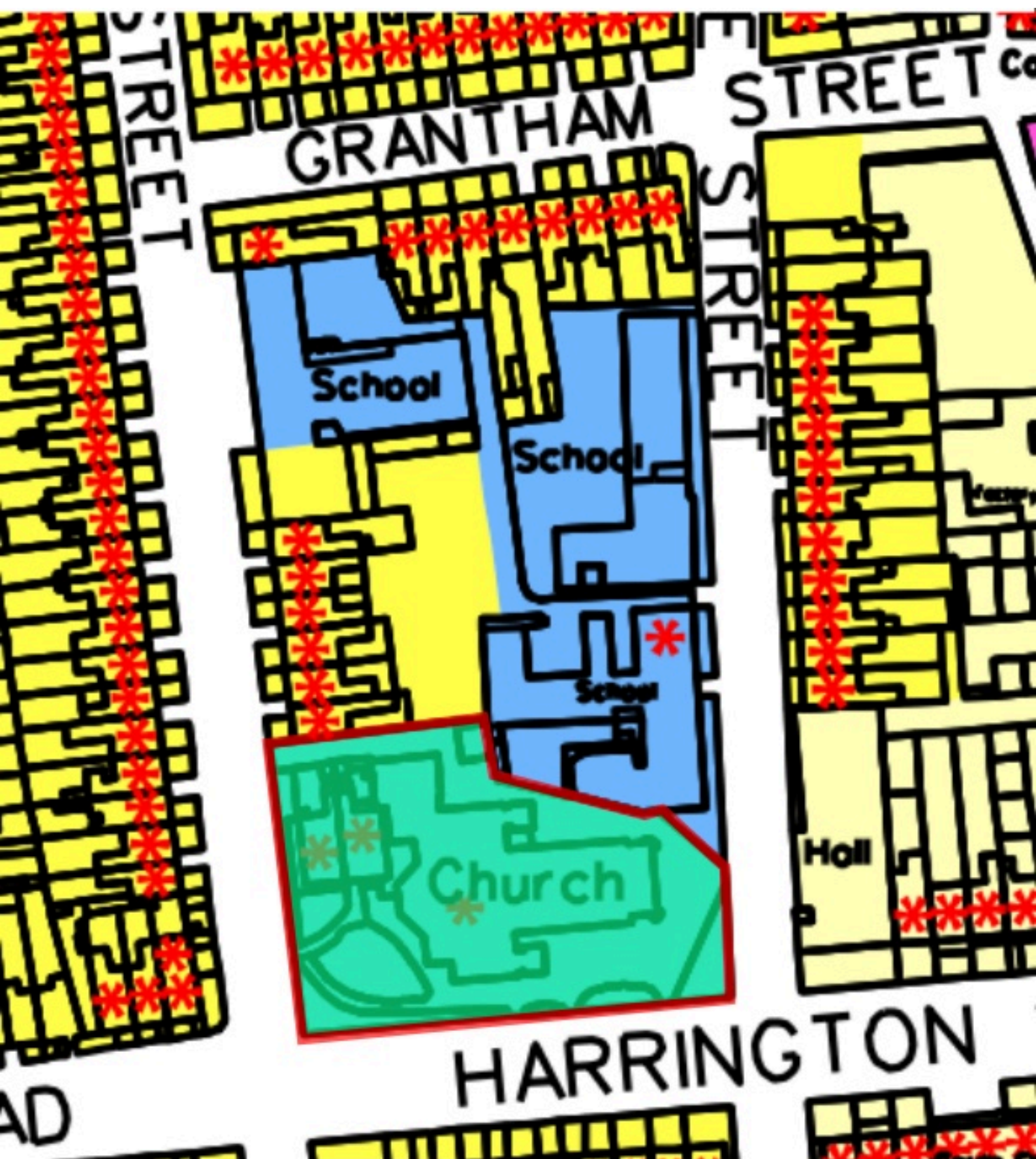
GREENCASLE PARK

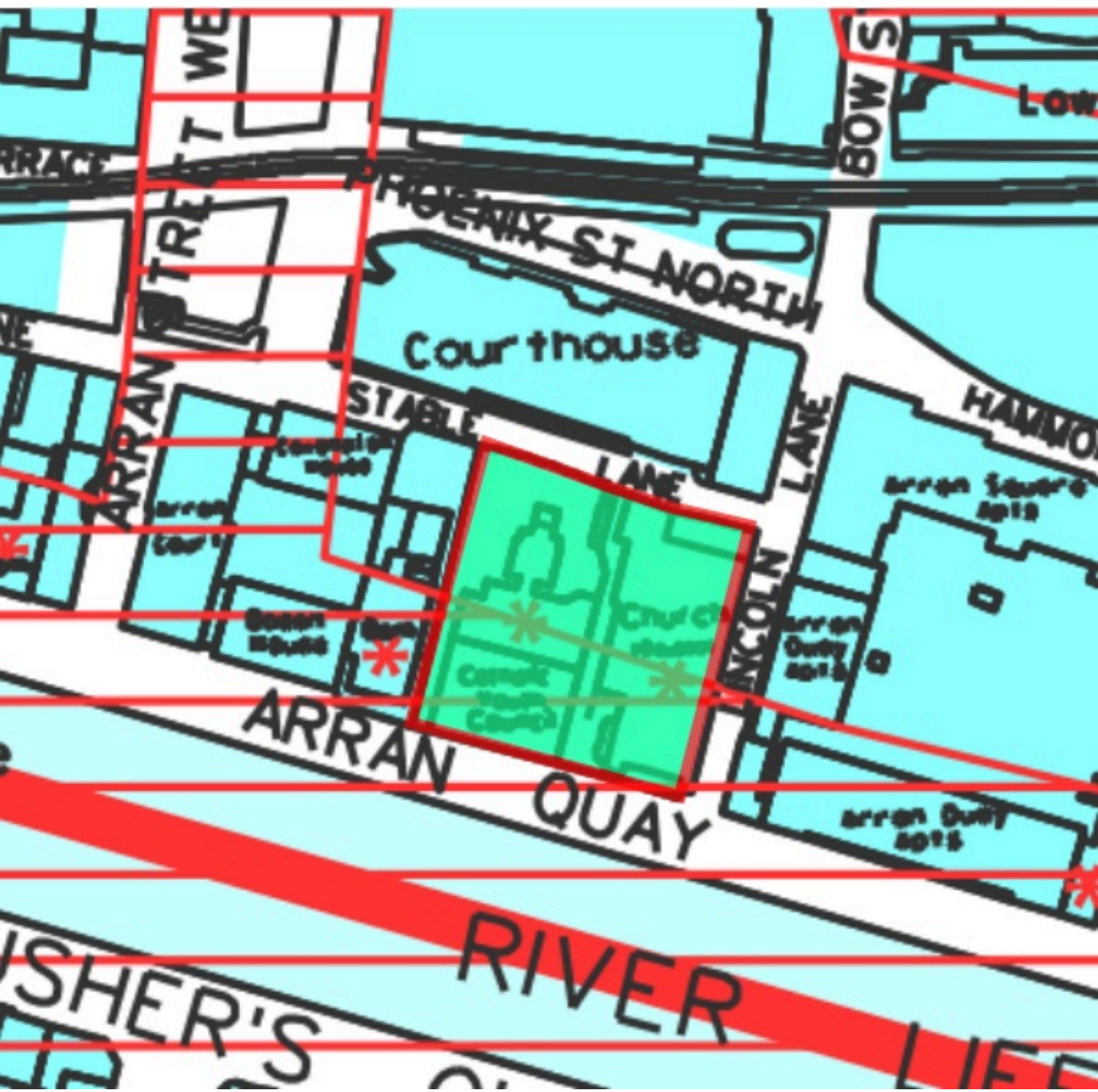
Church

GREENCASLE DRIVE

GREENCASLE ROAD







WE

BOW S

Low

BRACE

PHOENIX ST NORTH

Courthouse

TRE

STABLE

LANE

HAMMO

Arran Square 2012

Arran Court

Arran Court

Arran Court

INCOLN

LANE

Arran Quay 2012

Arran Quay 2012

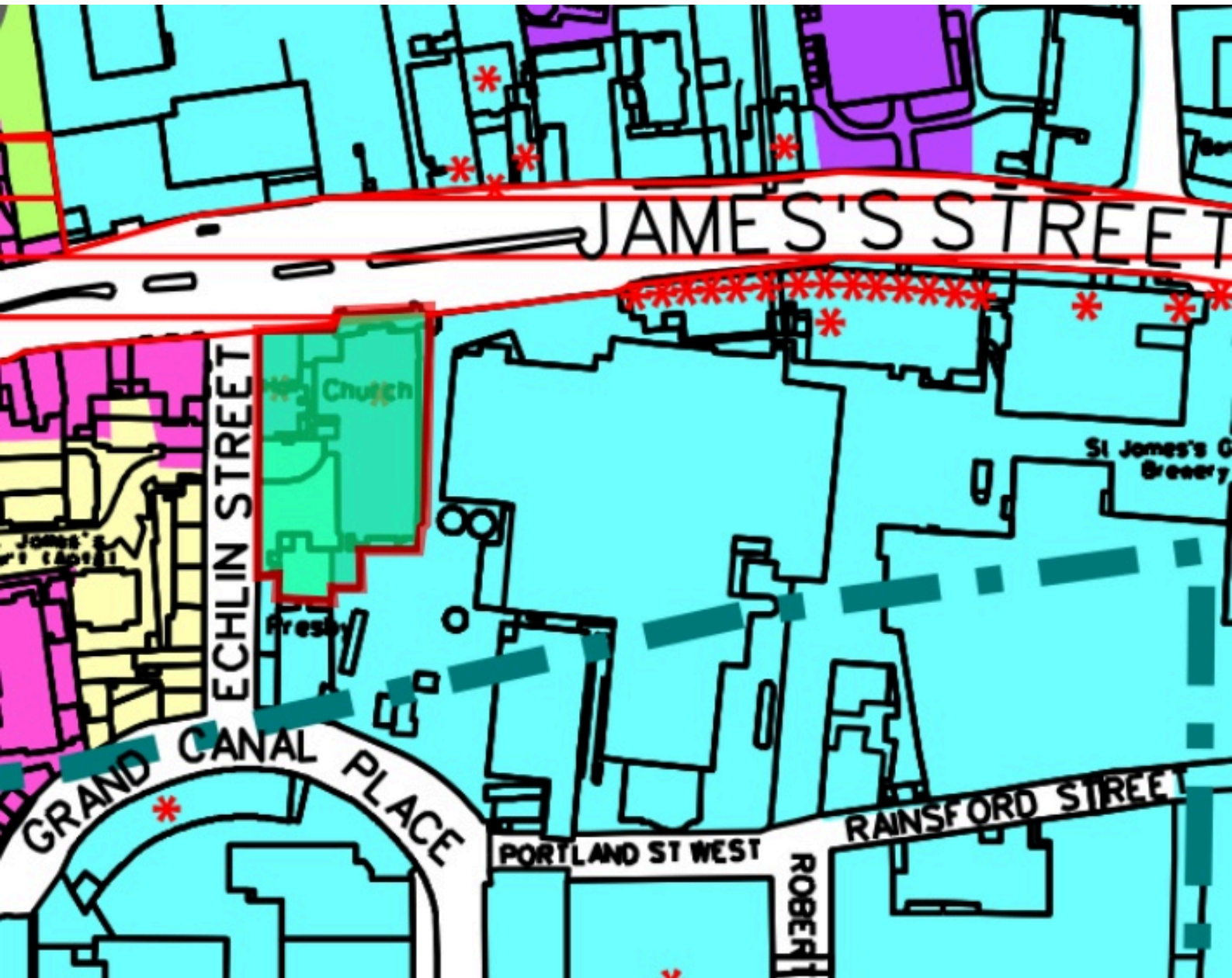
ARRAN

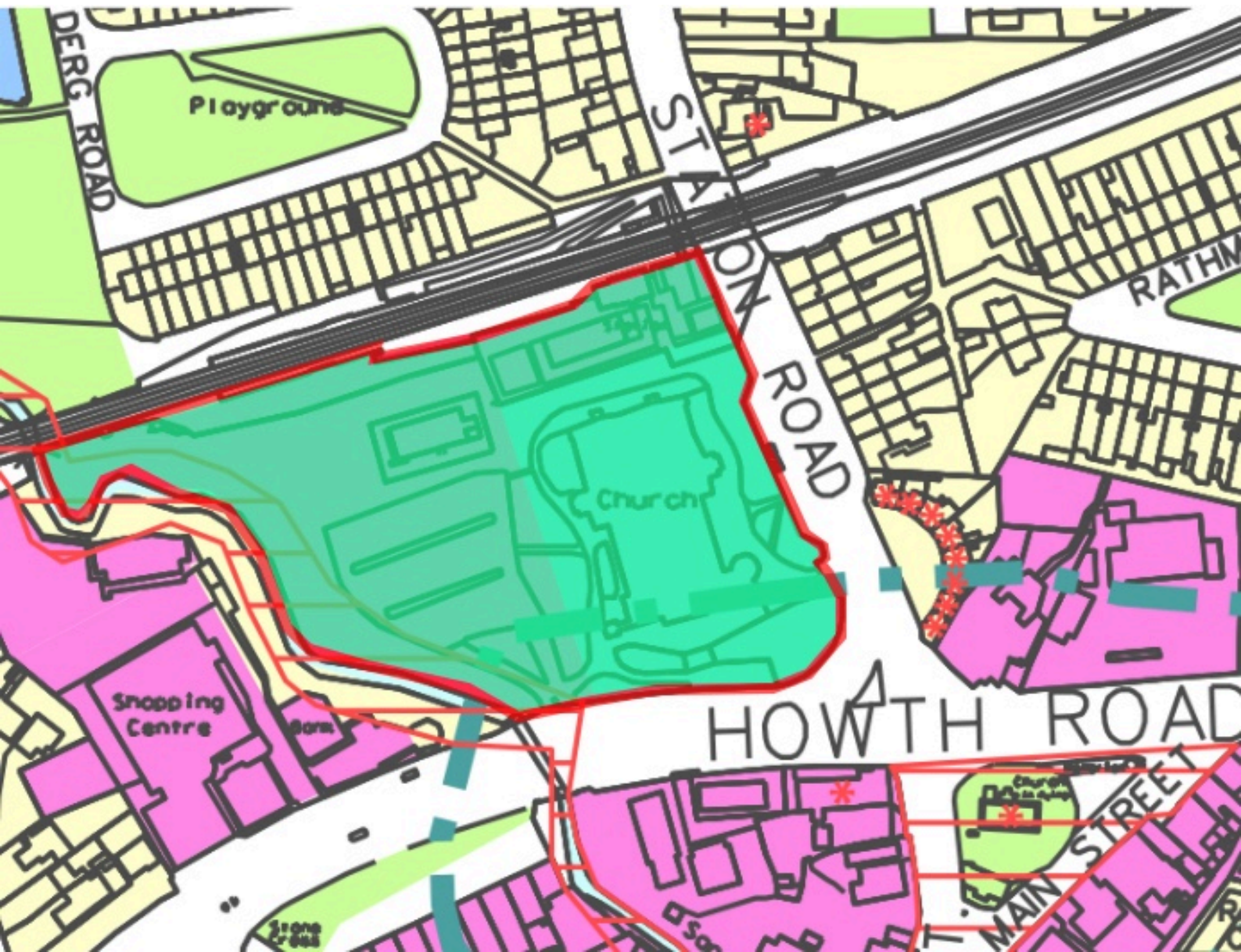
QUAY

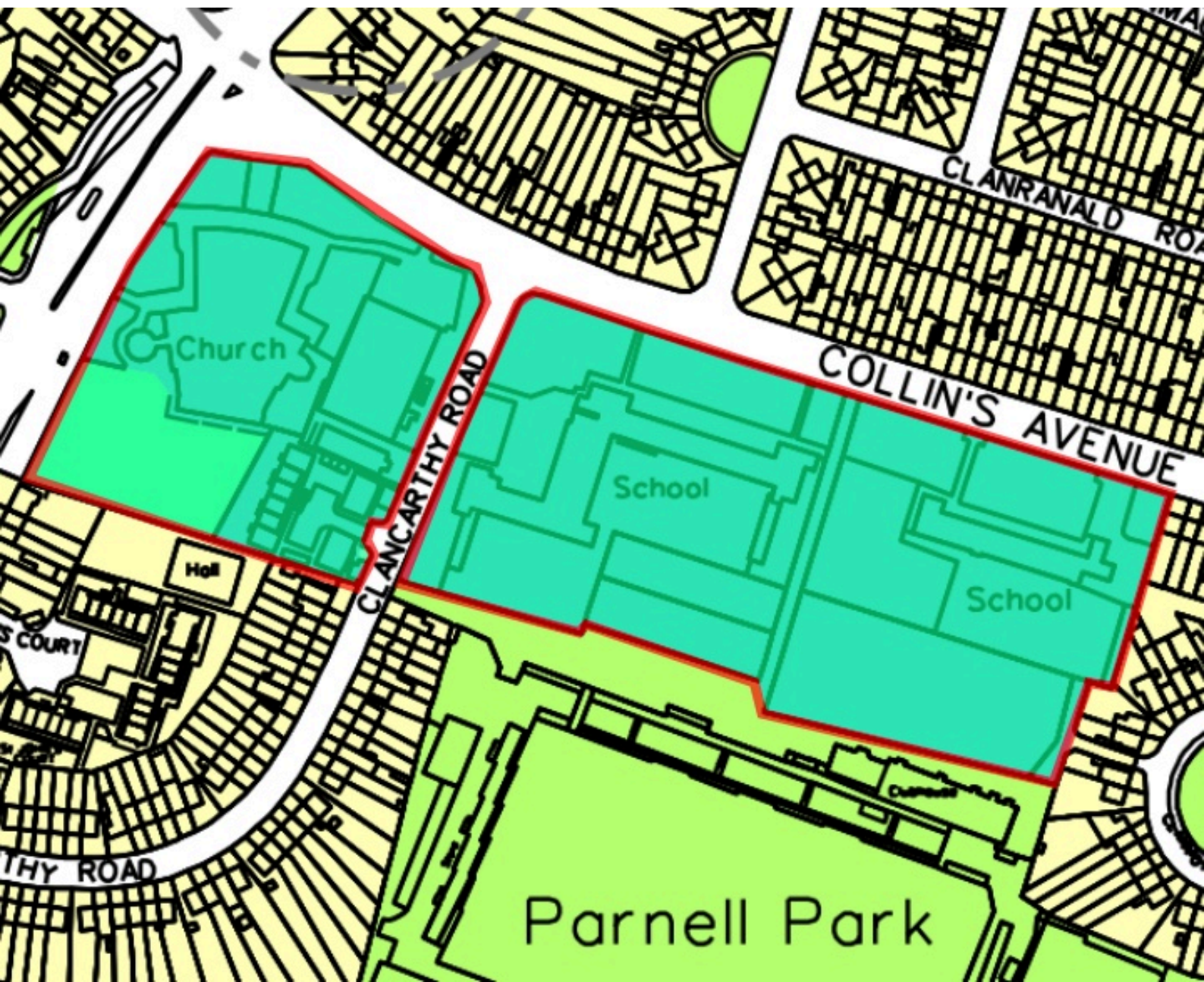
ISHER'S

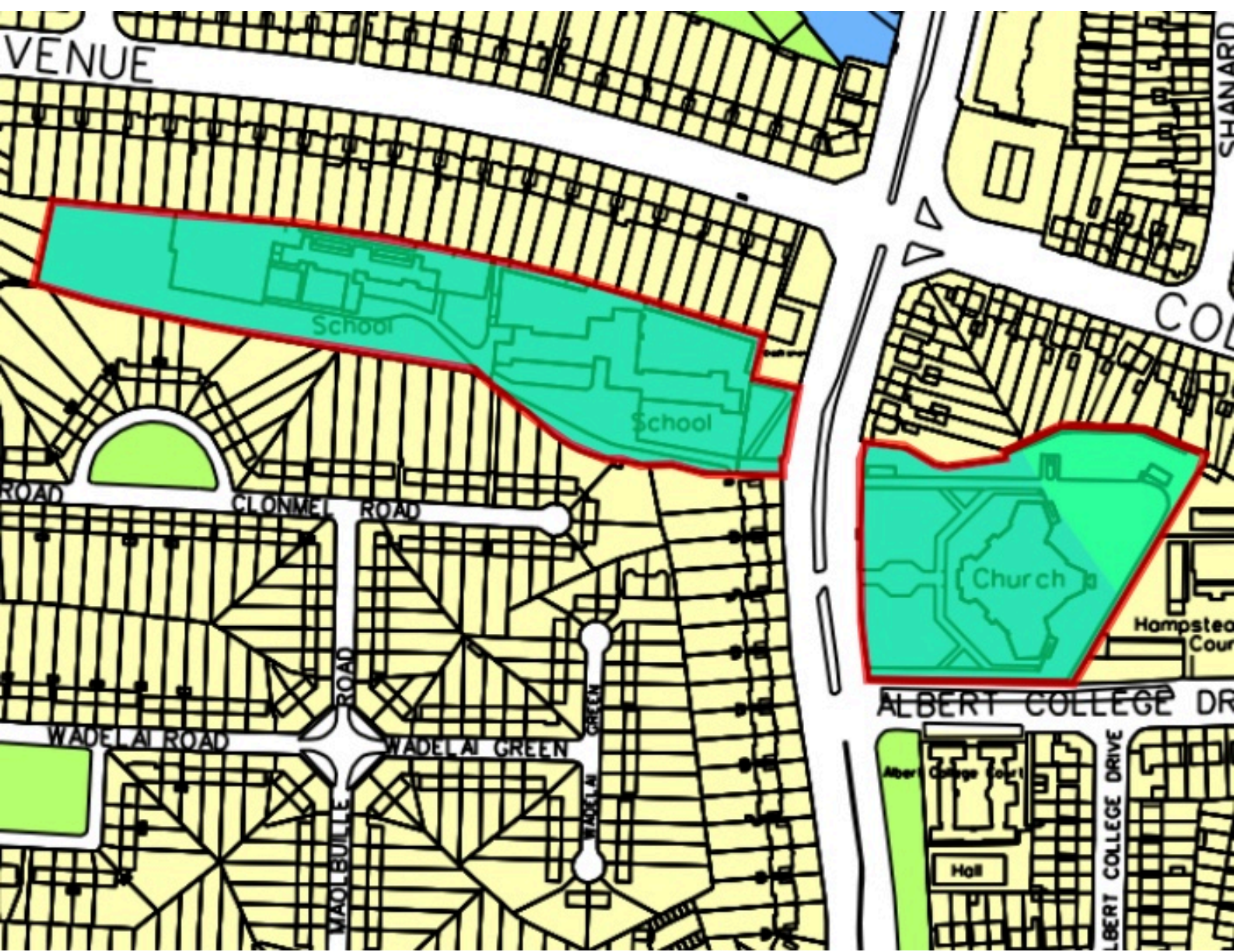
RIVER

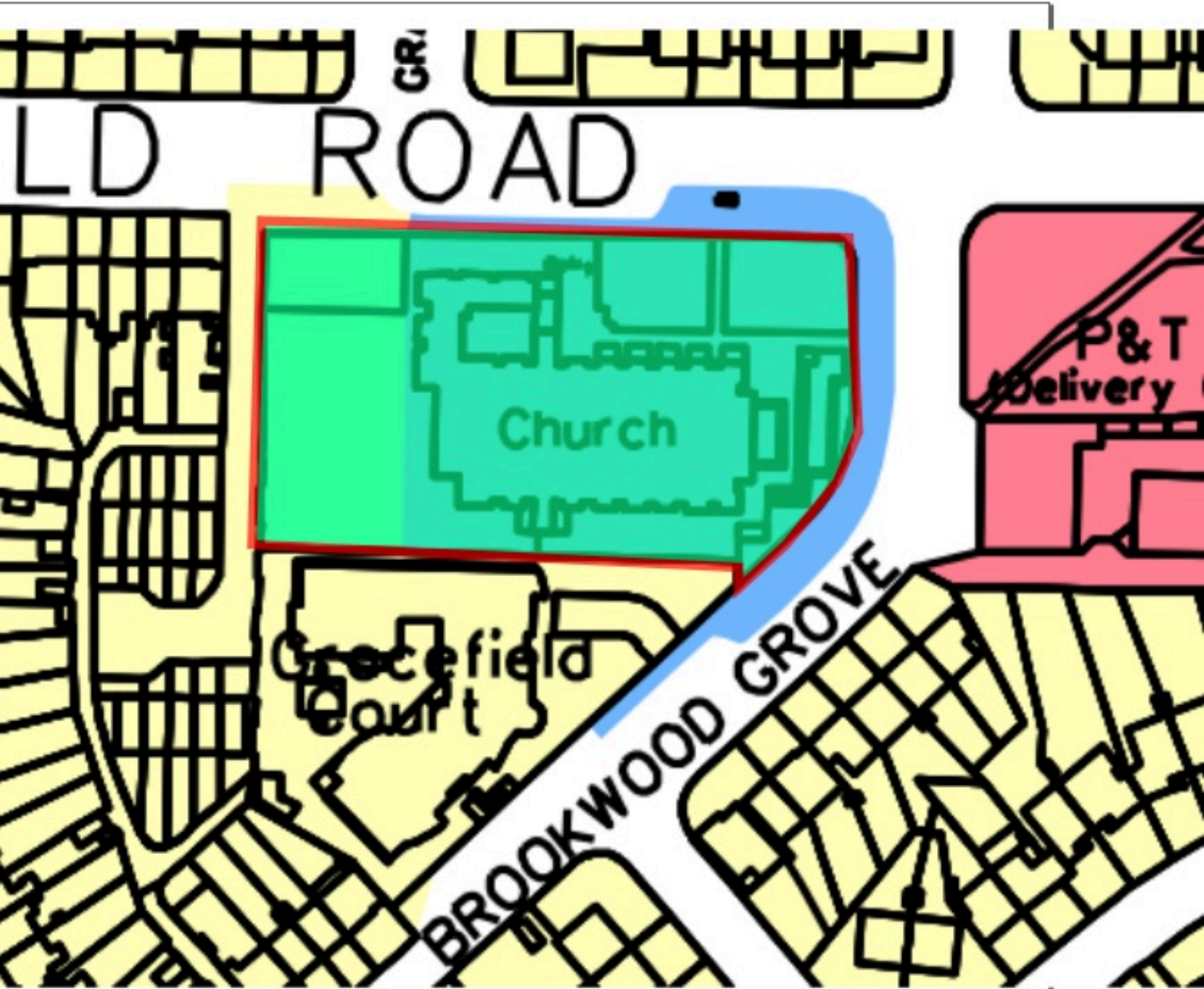
LIFE













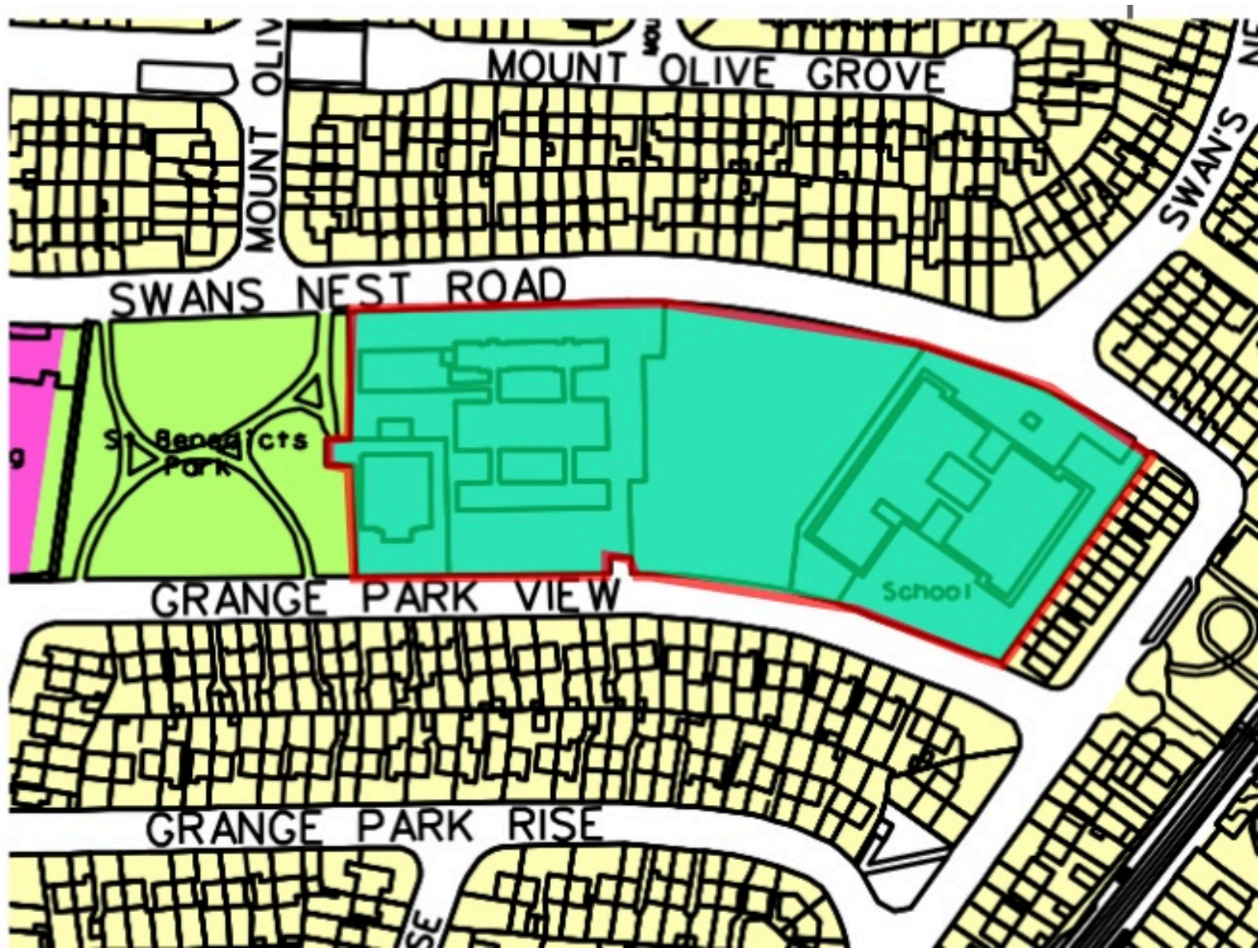
HAZELWOOD PARK

CHANEL ROAD

CHANEL AVENUE

FIELD AVE.

Church



MOUNT OLIVE GROVE

SWANS NEST ROAD

St. Benedict's Park

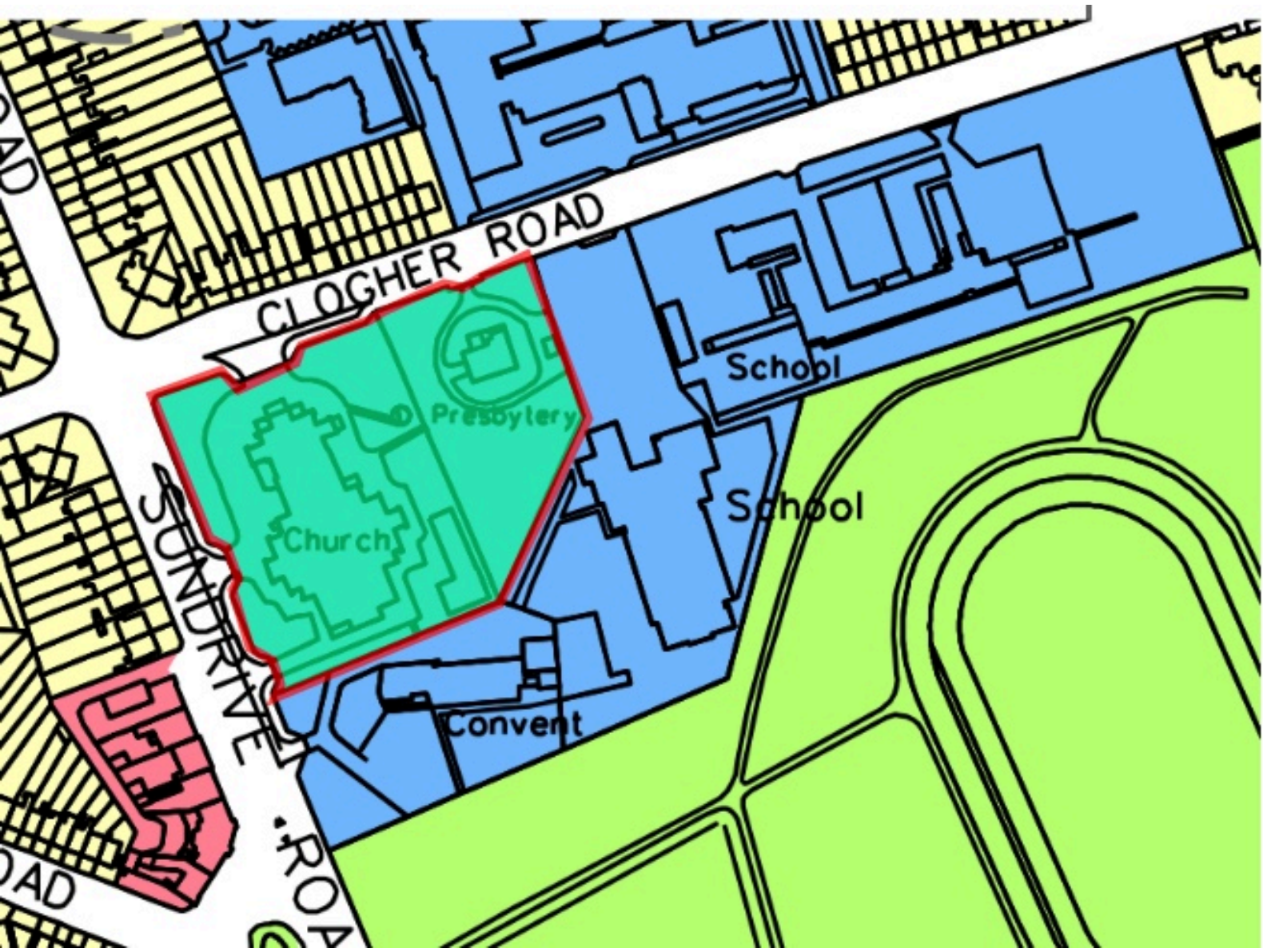
GRANGE PARK VIEW

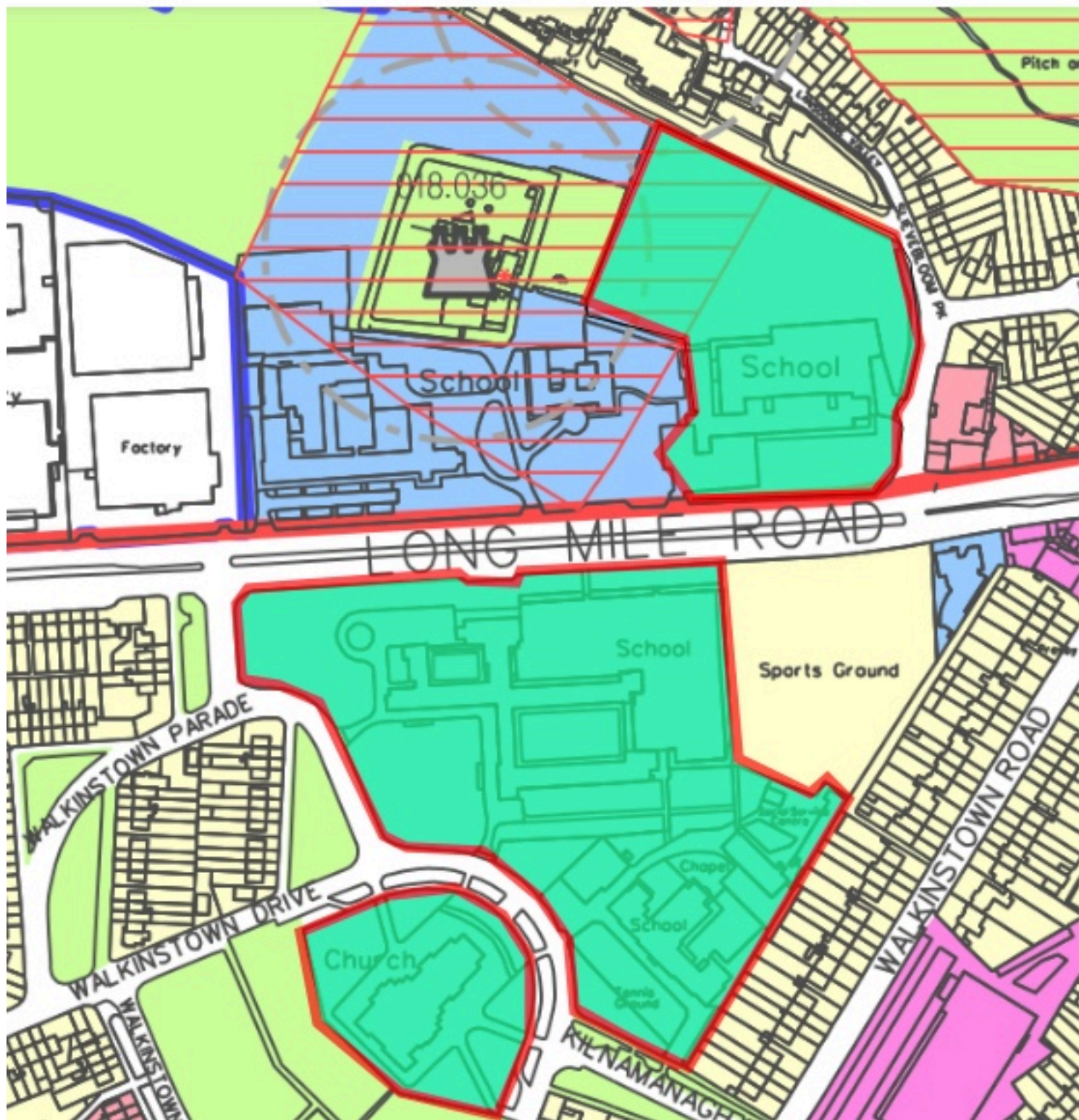
School

GRANGE PARK RISE

SWAN'S

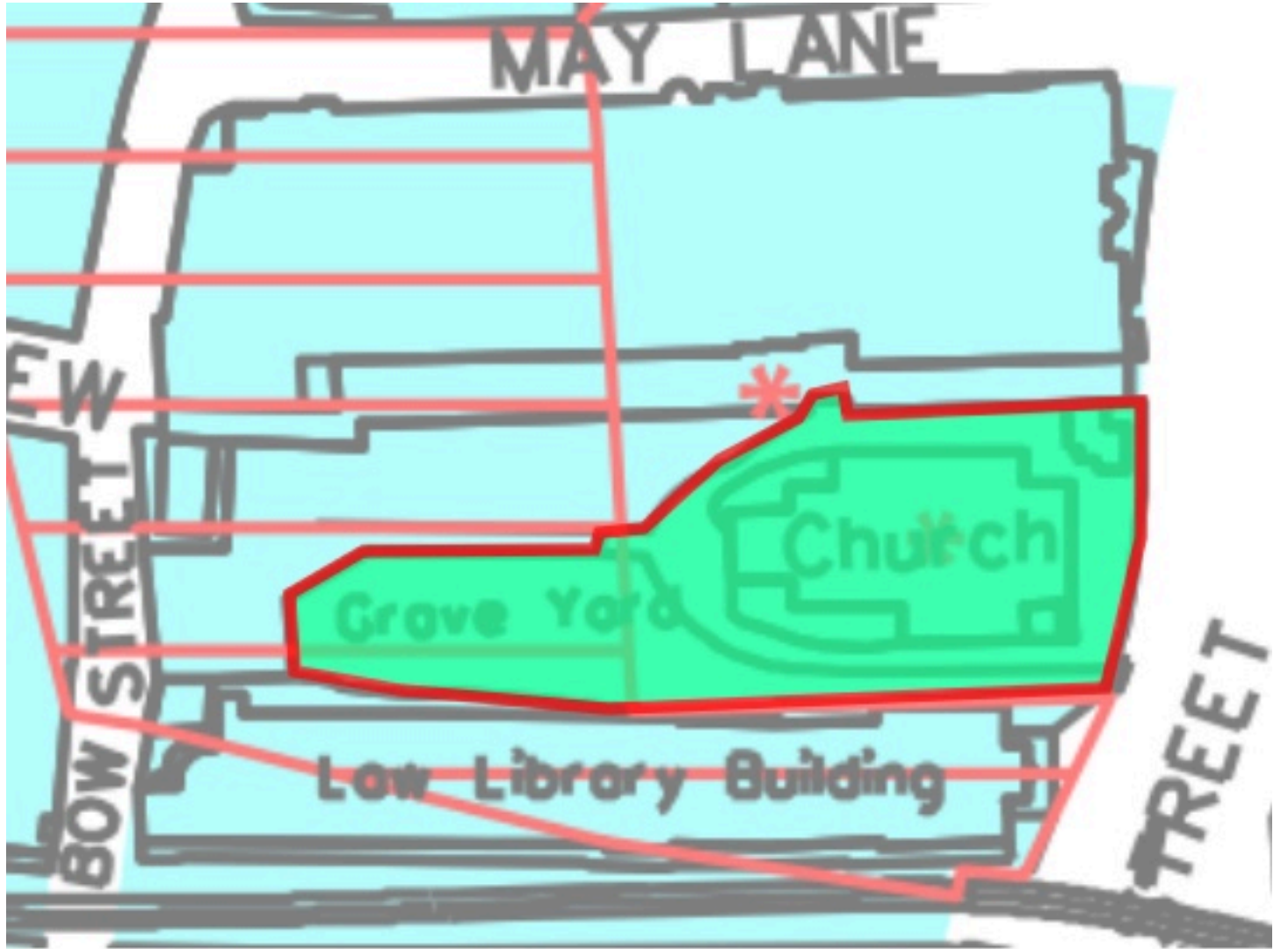
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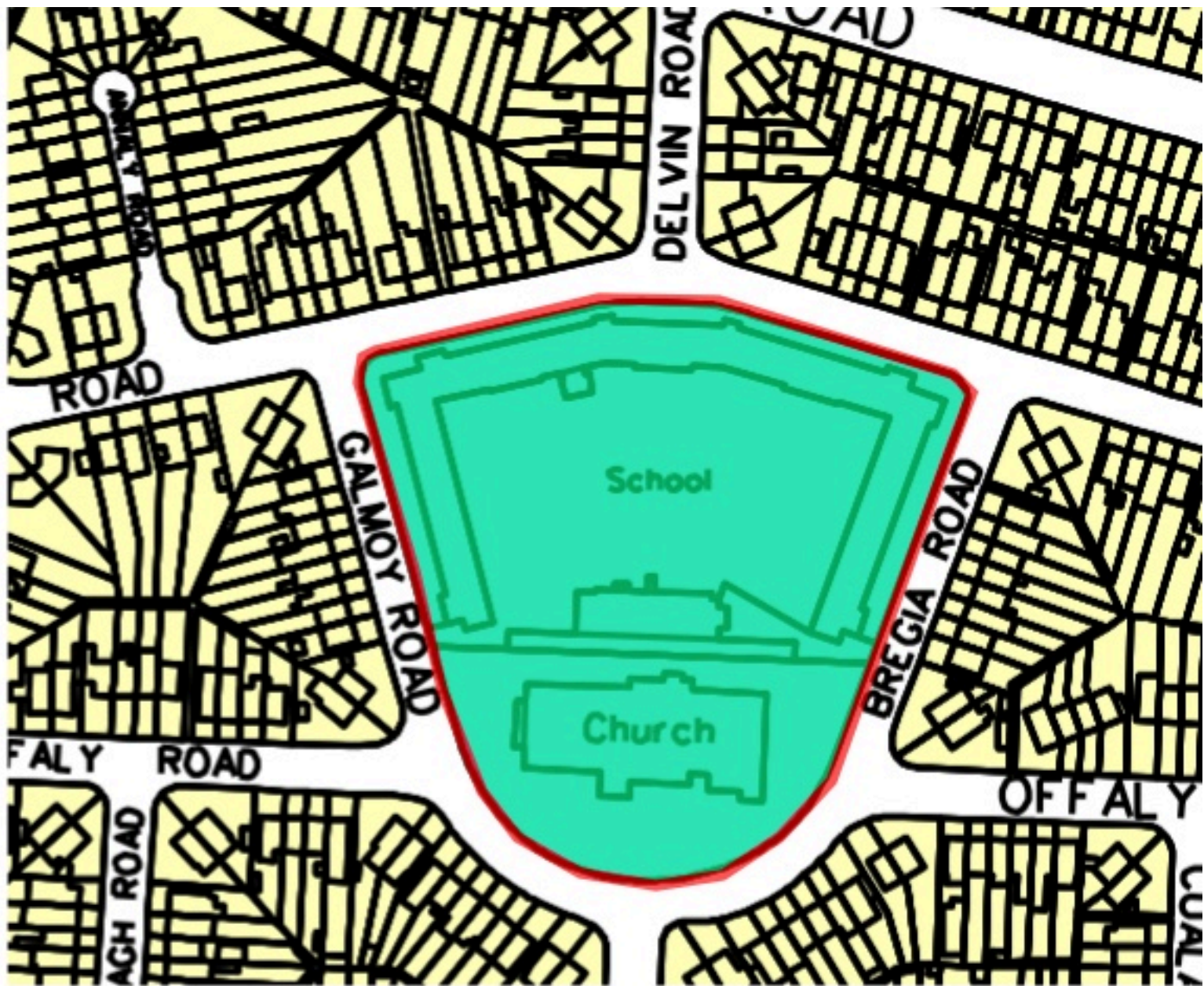


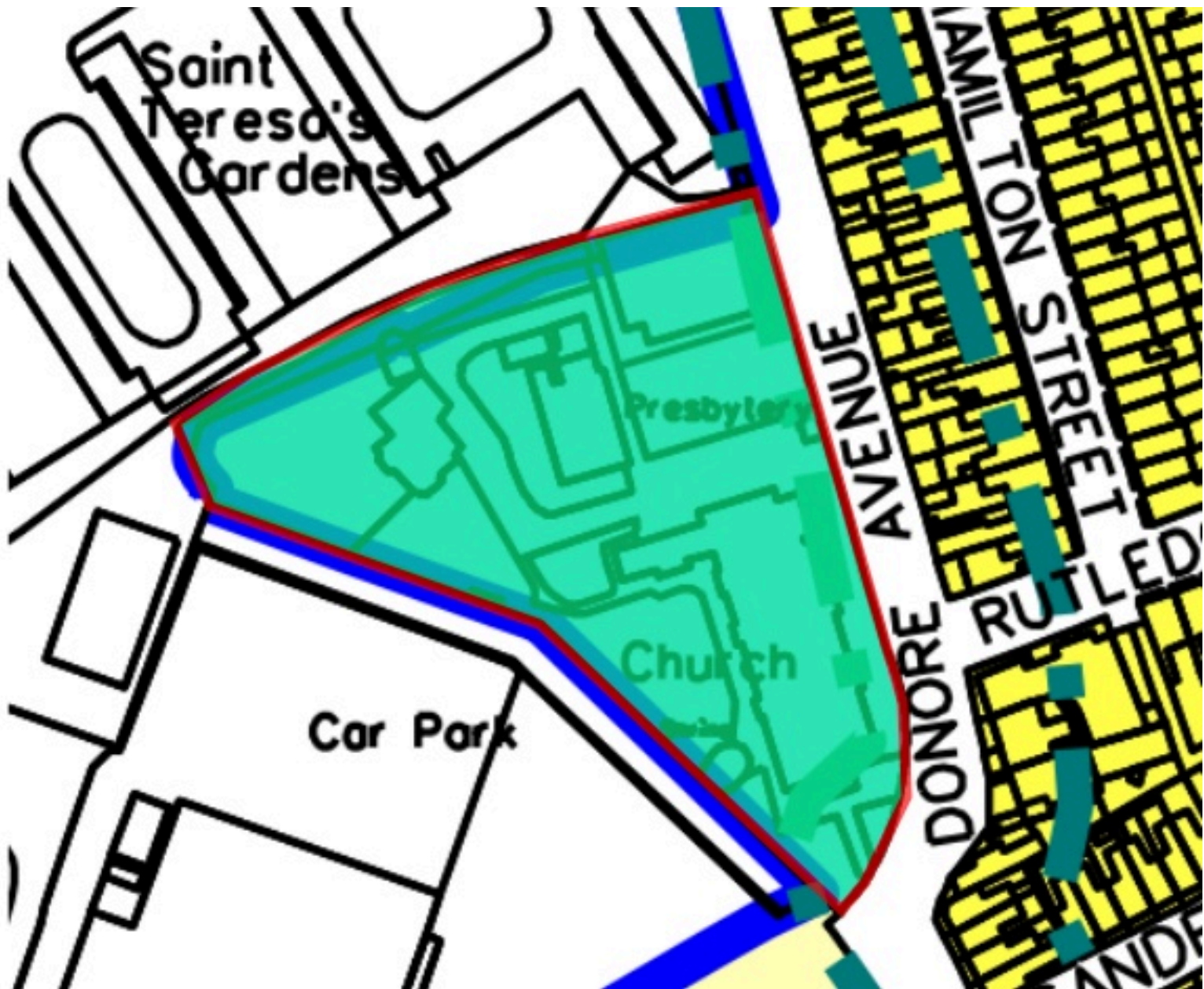


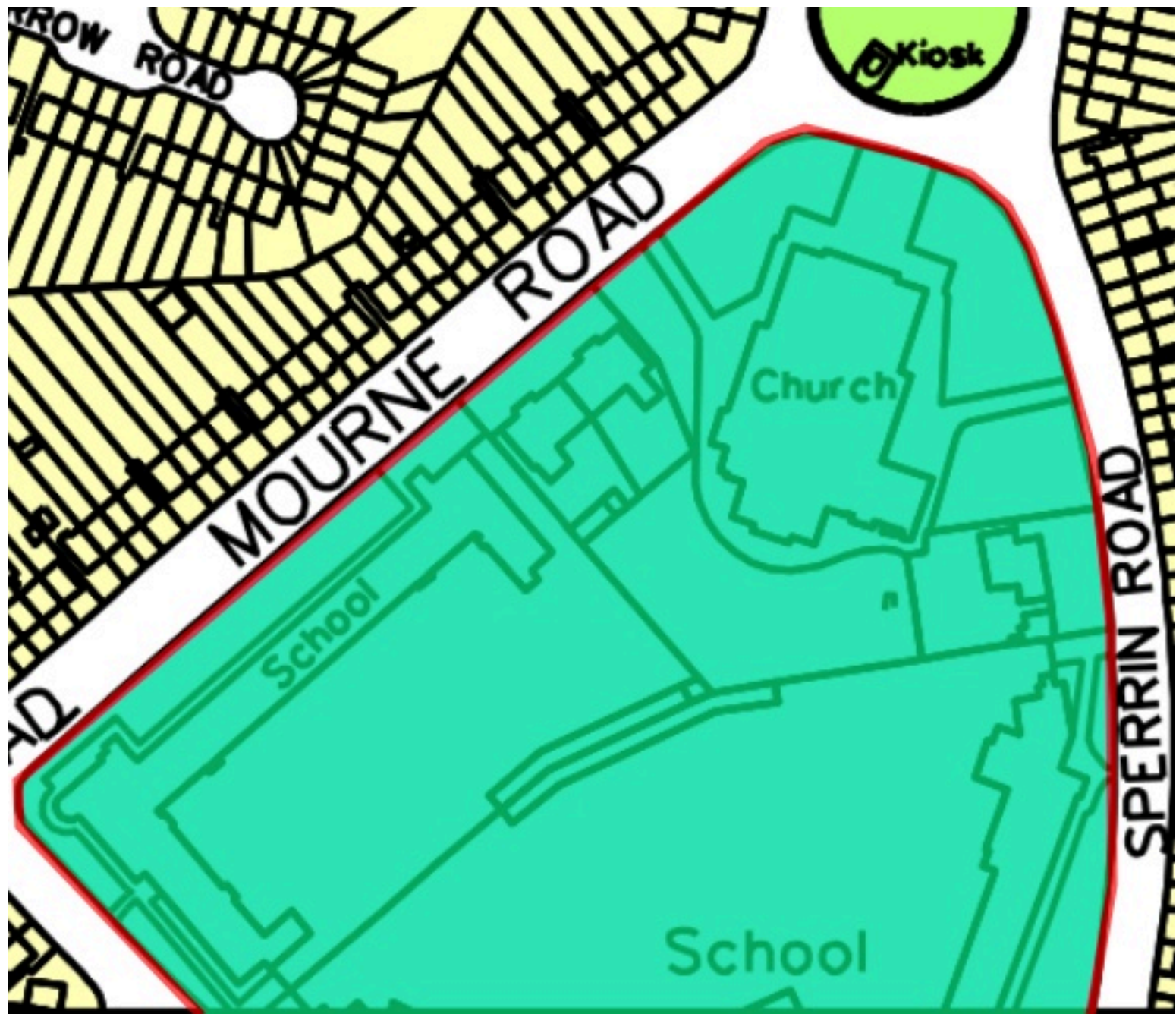












CROW ROAD

ROAD

MOURNE ROAD

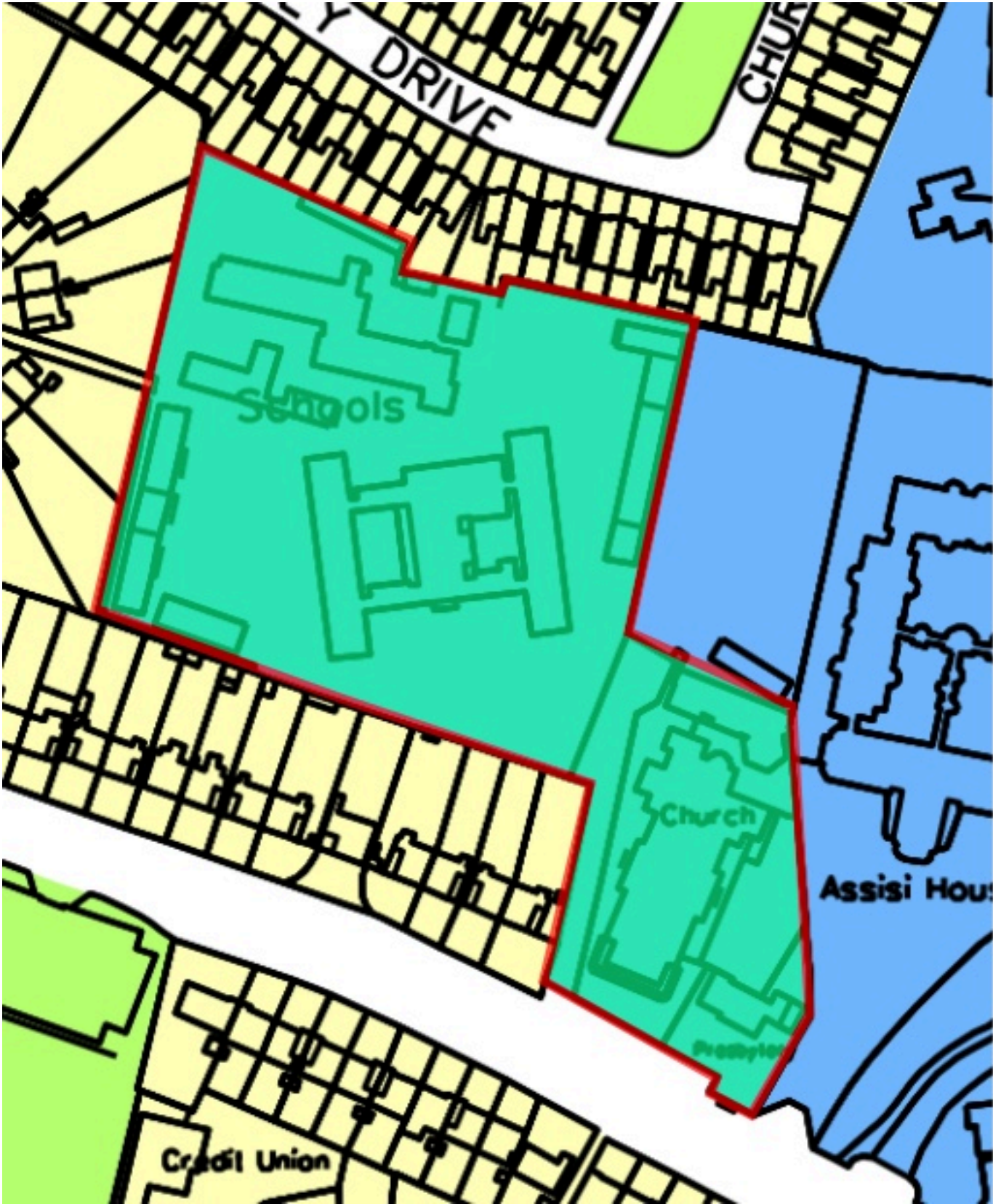
Kiosk

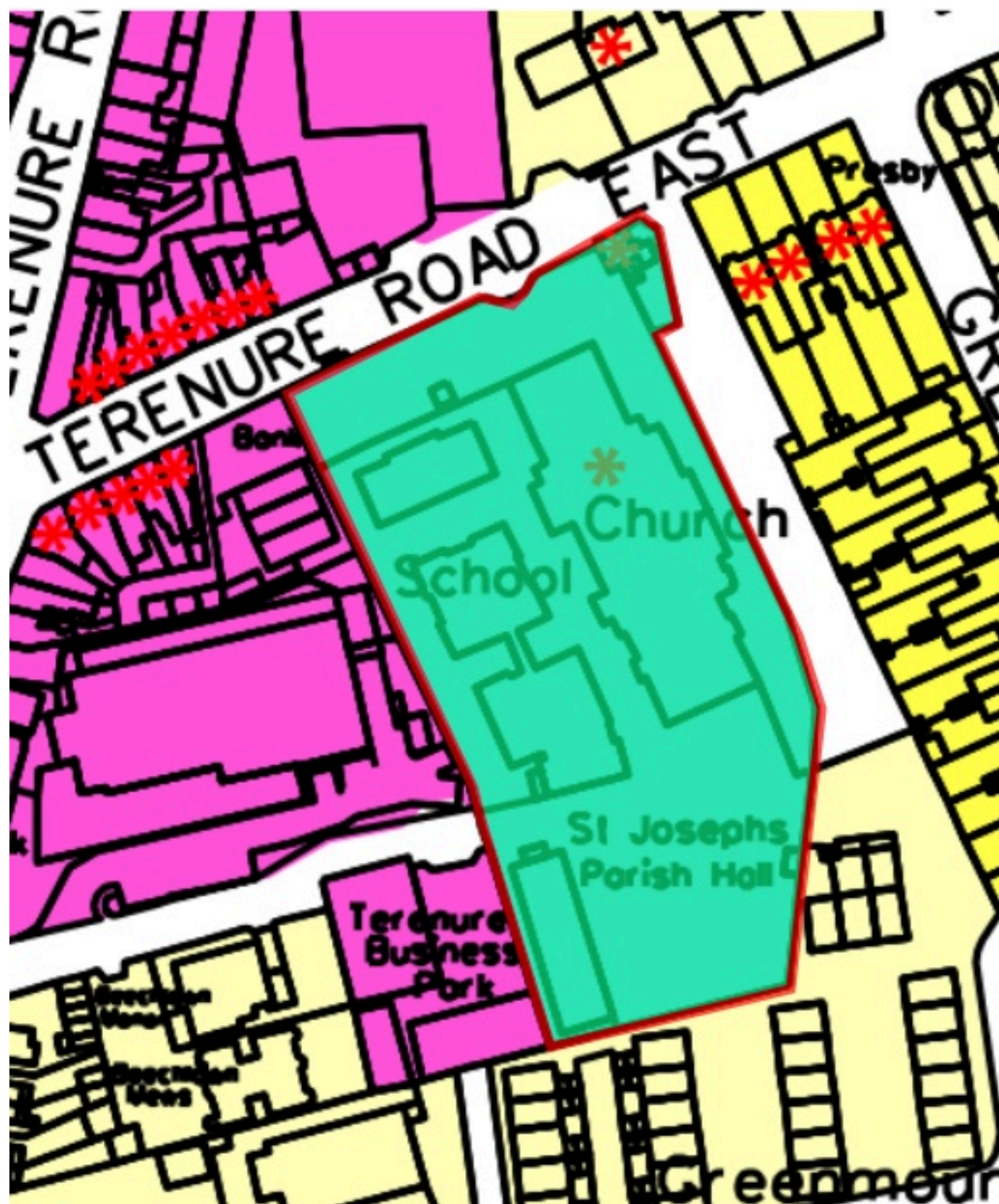
Church

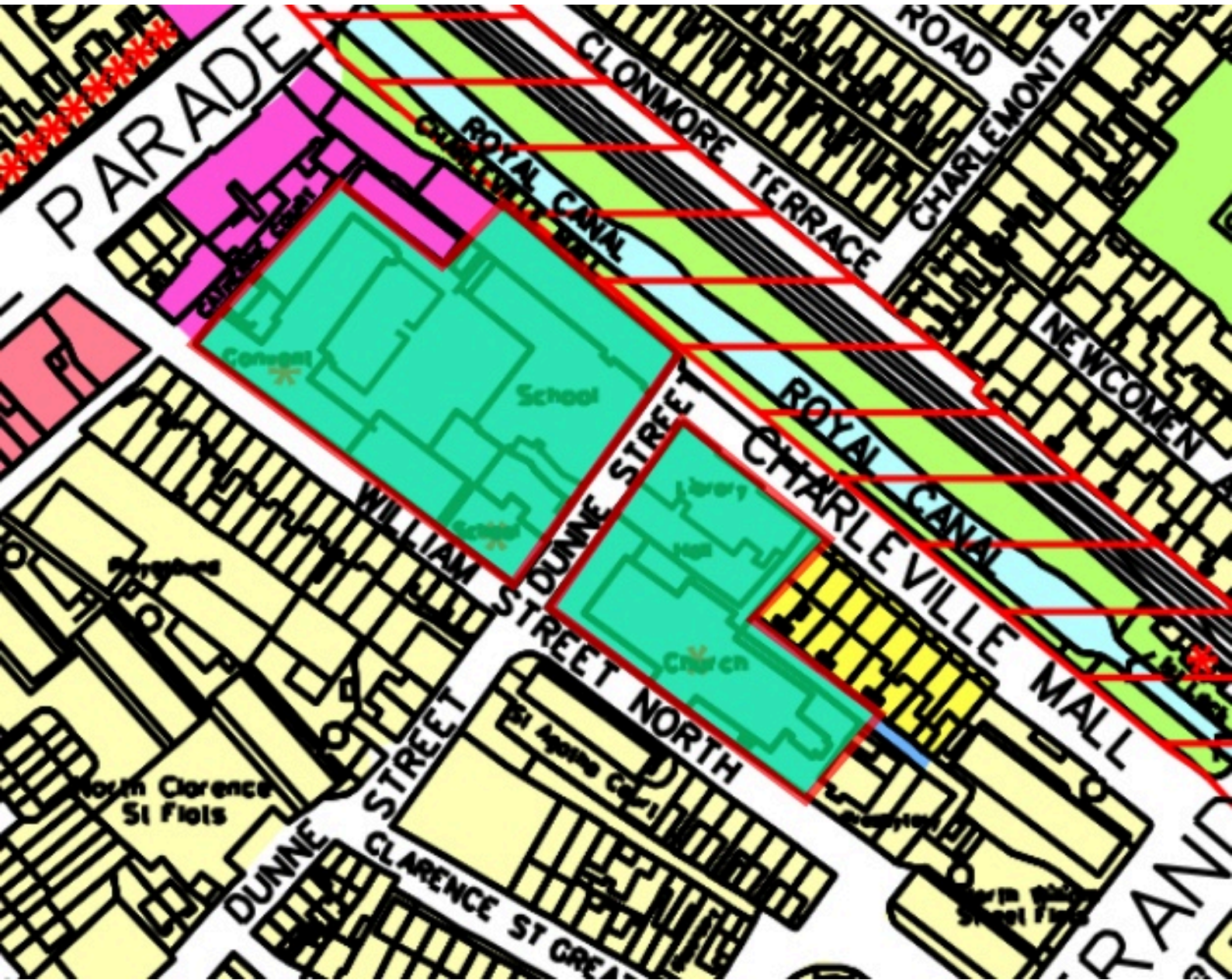
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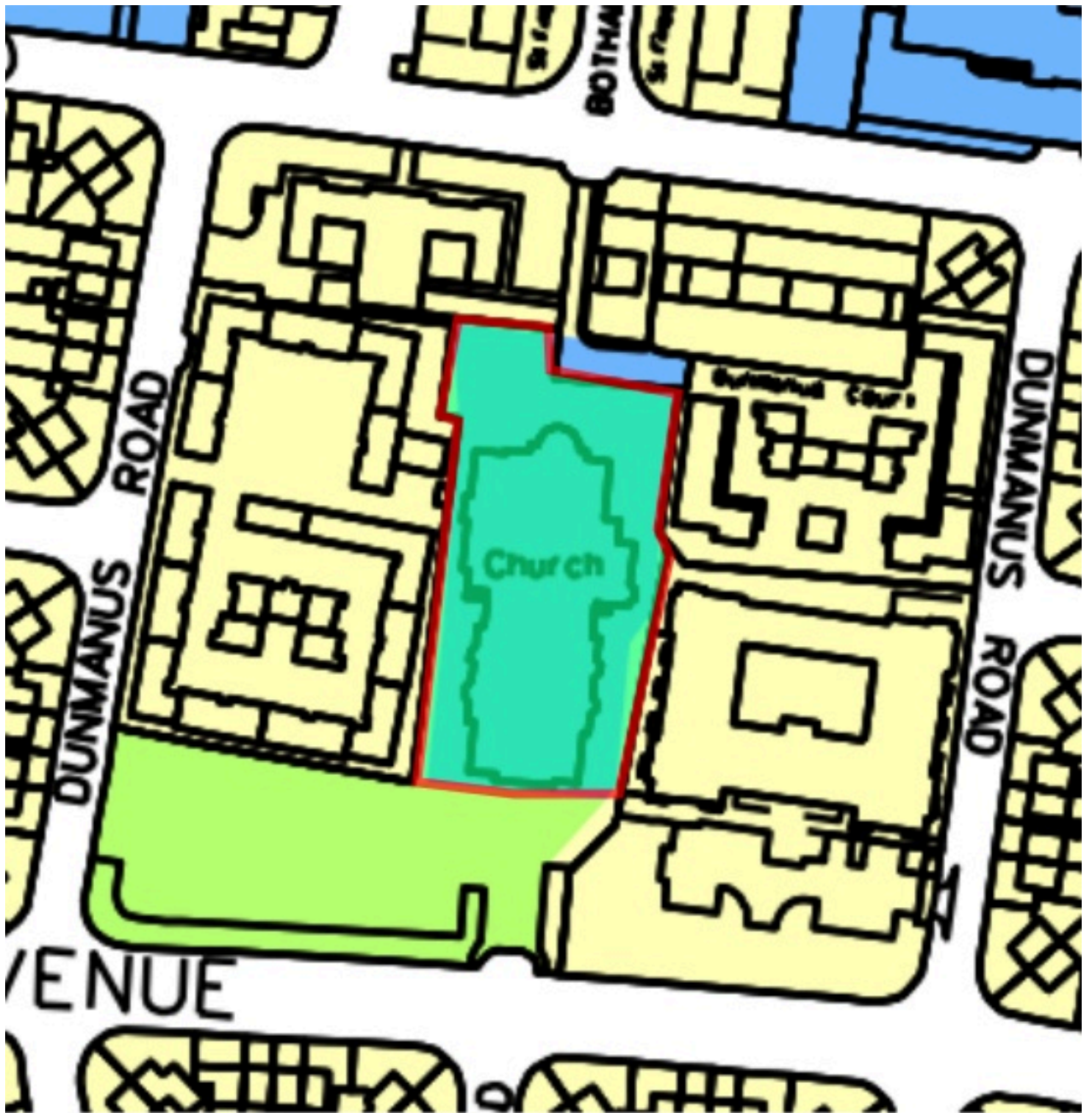
School

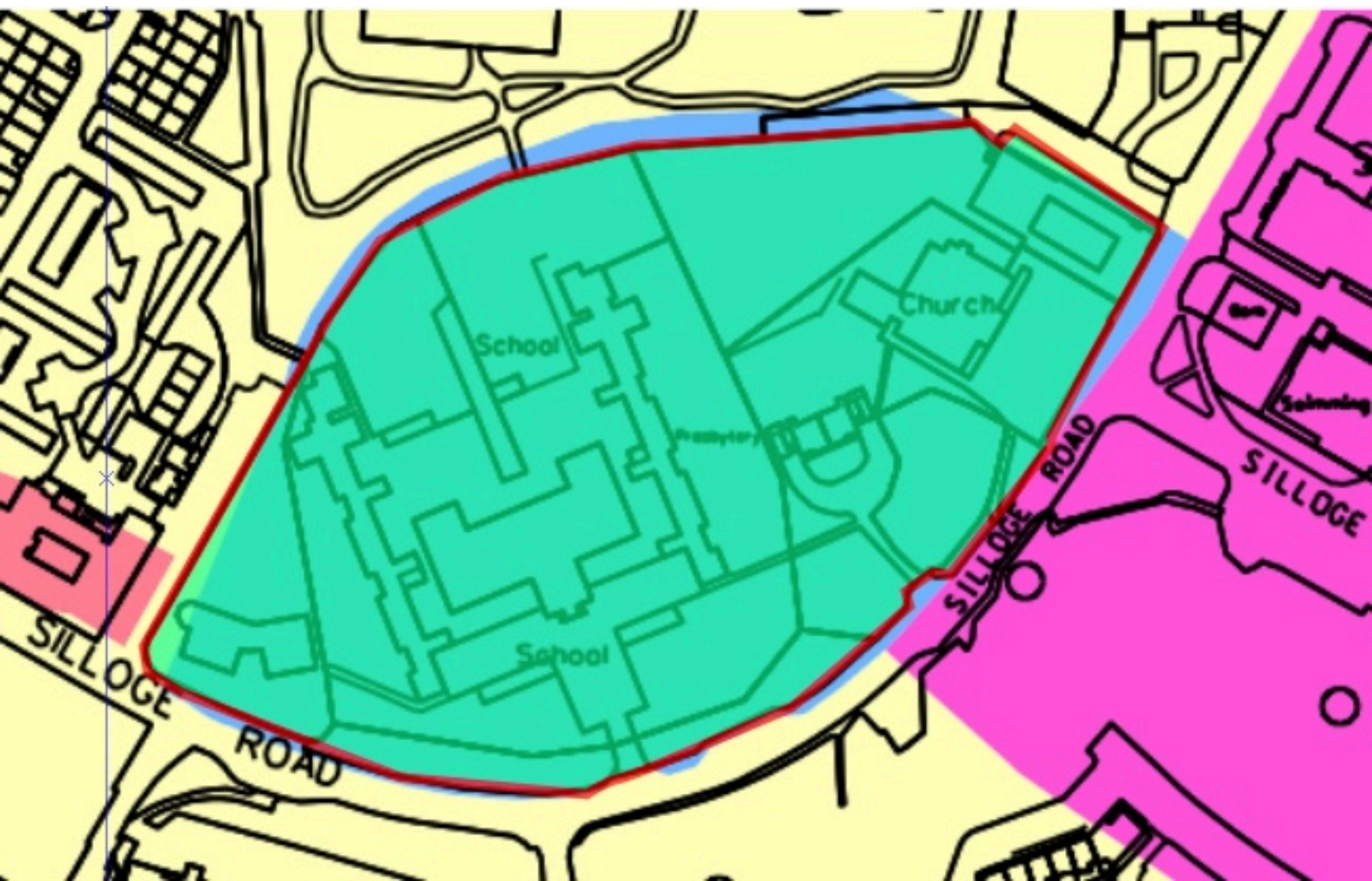
SPERRIN ROAD

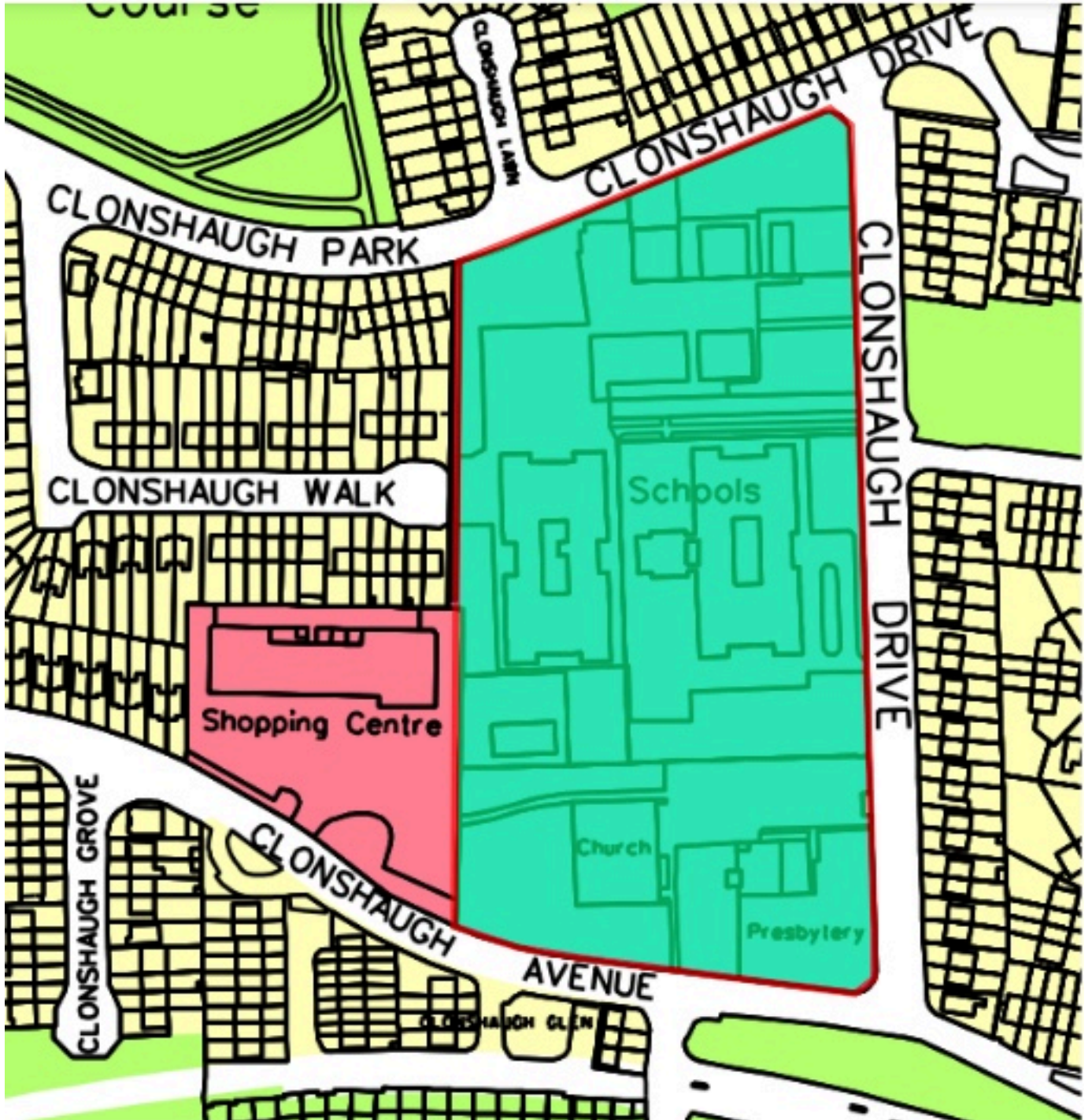




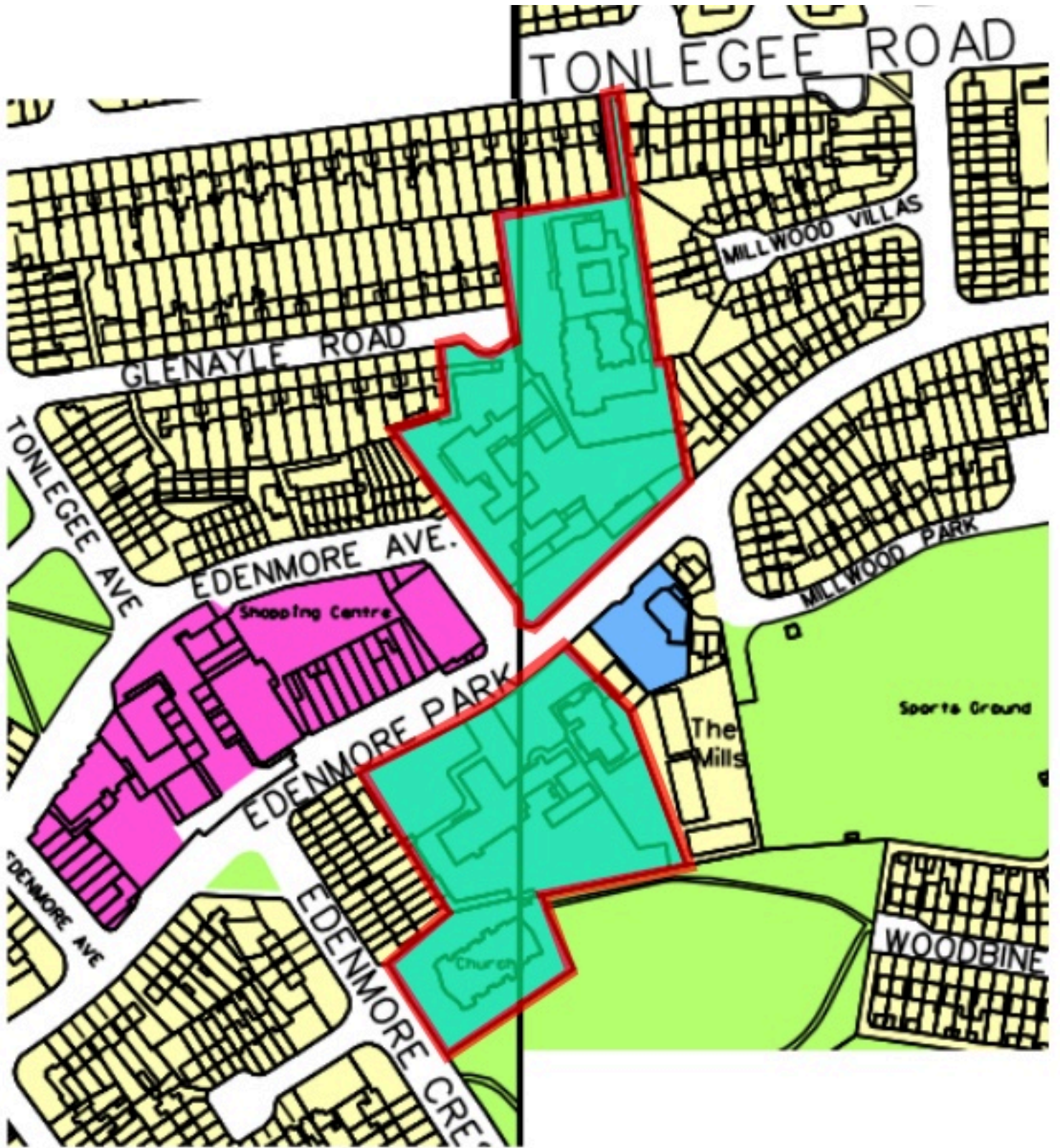


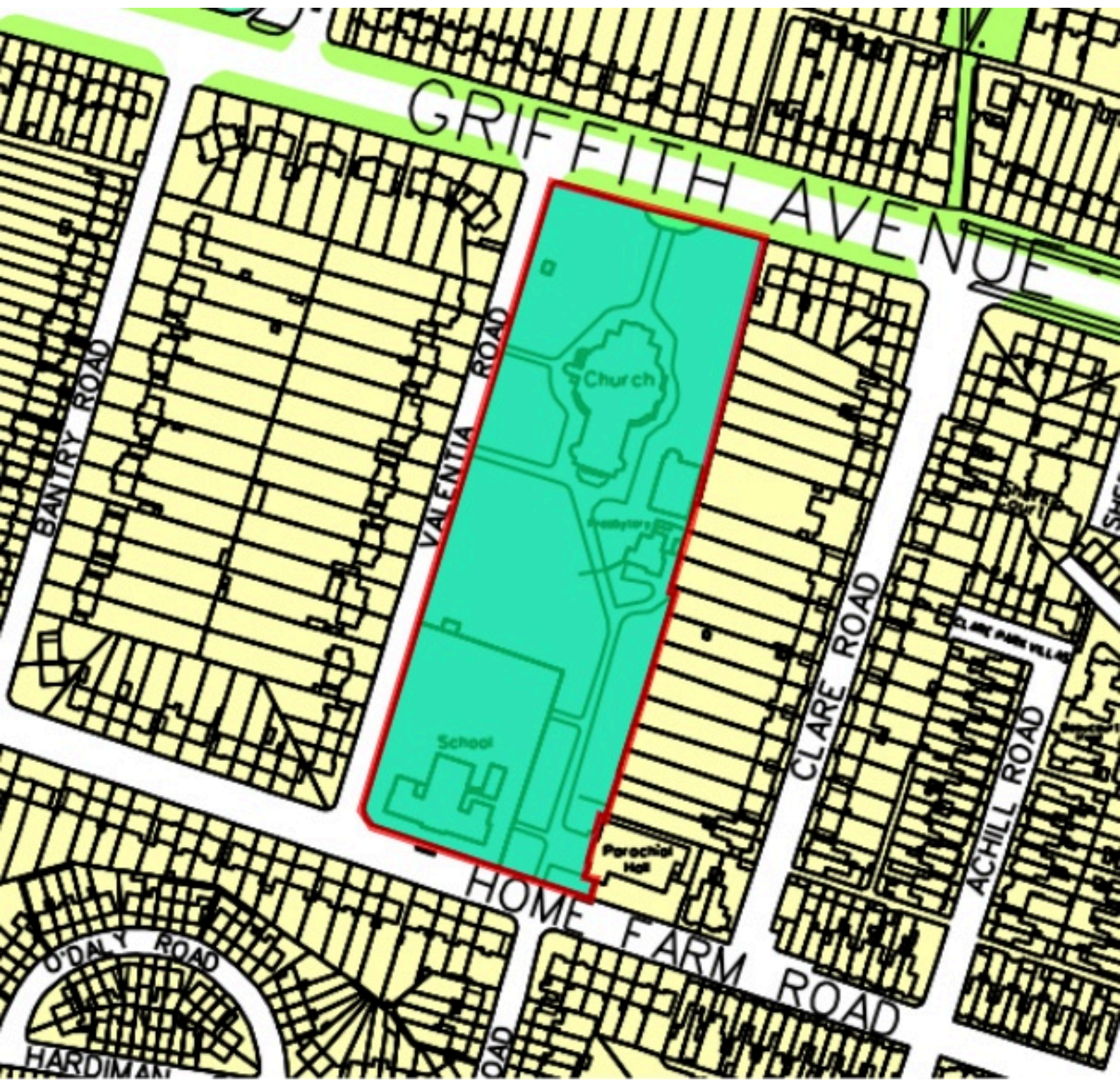


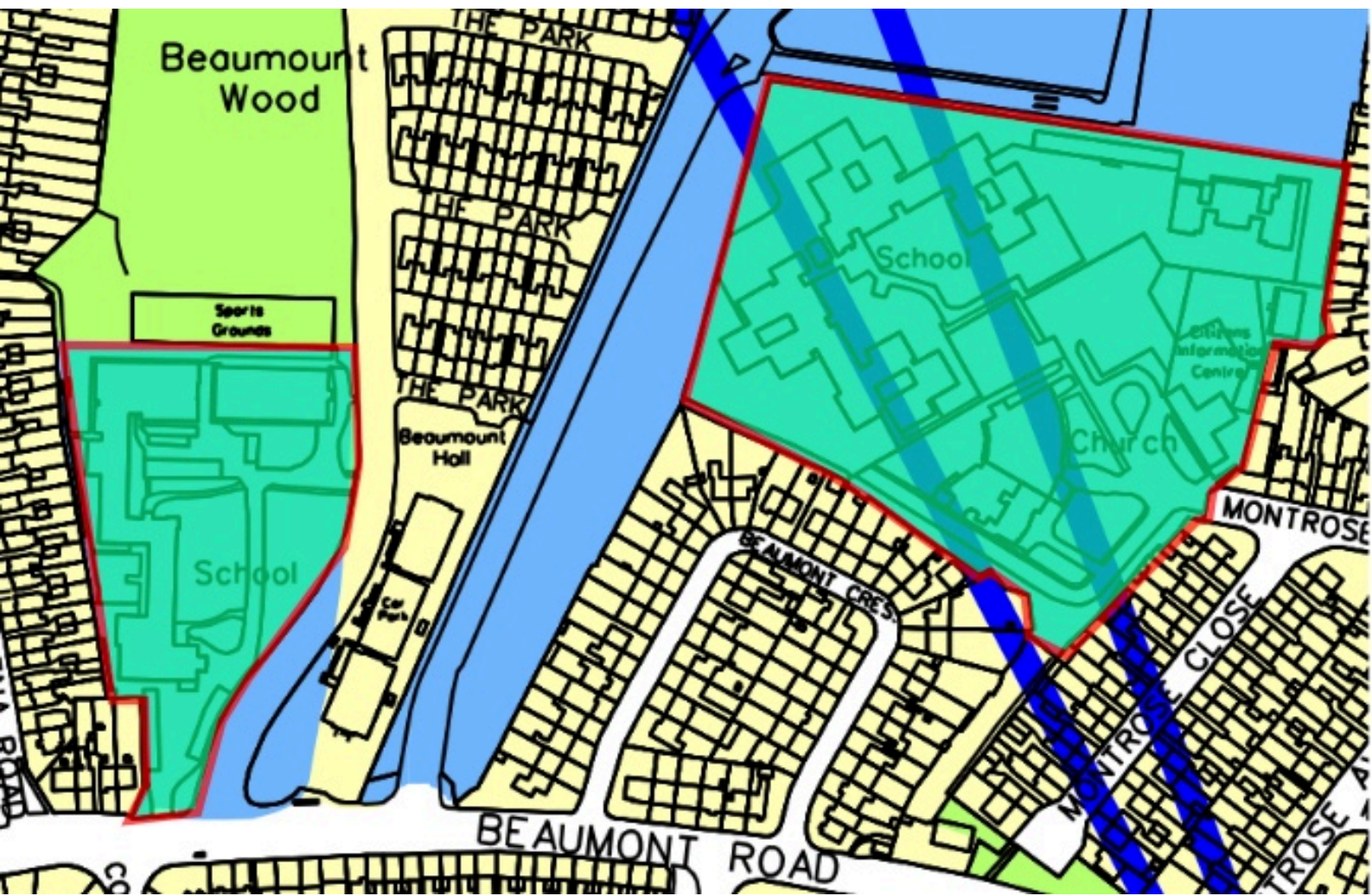


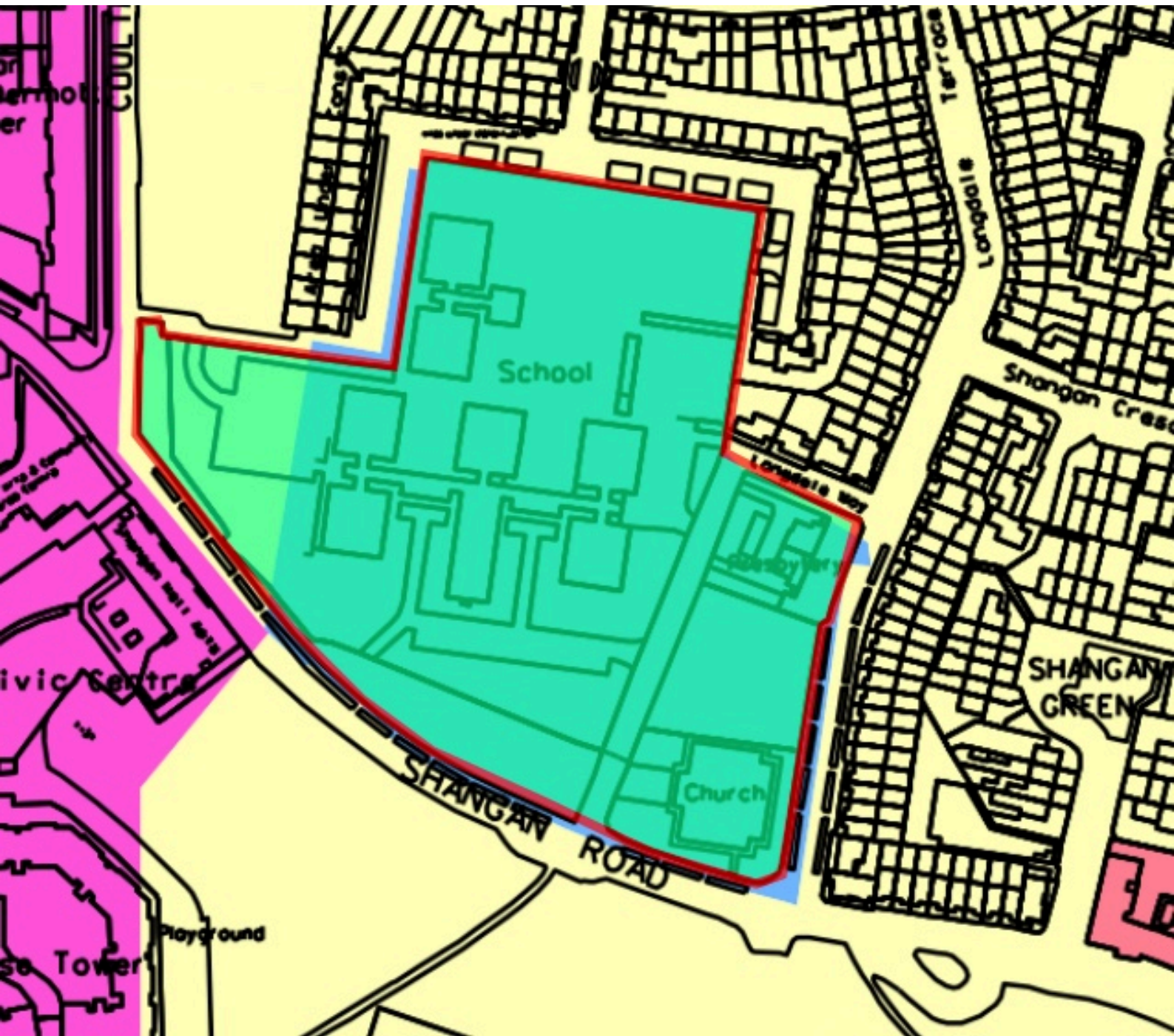




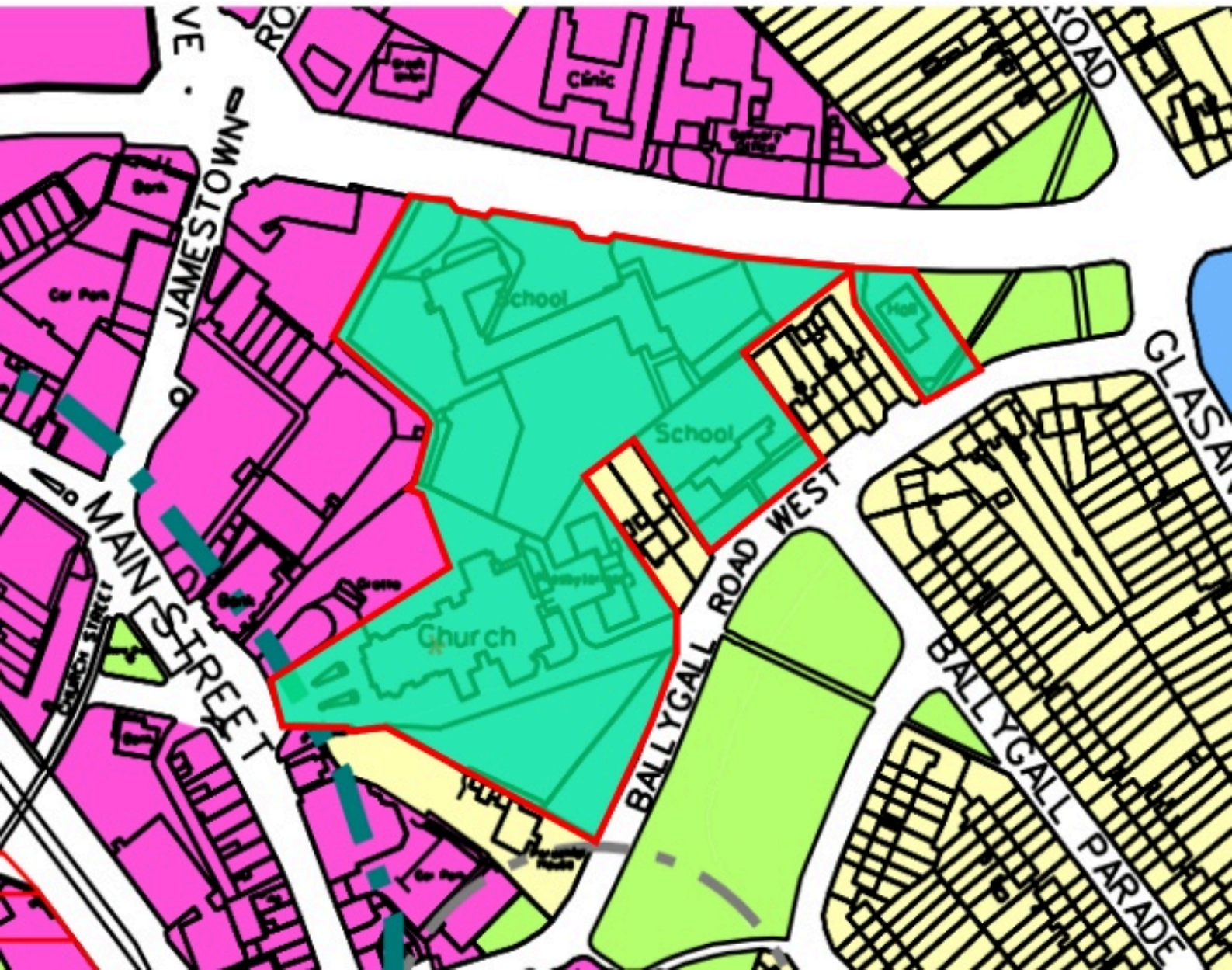














Appendix II – List of School Sites to which this submission relates.



St. David's Boys' N.S.	Kilmore Road Artane Dublin 5
St. John of God G.N.S.	Kilmore Road Artane Dublin 5
Scoil Neasáin	Baile Hearman Baile Átha Cliath 5
St. Brendan's Boys' N.S.	McAuley Road Artane Dublin 5
St. Gabriel's N.S.	Cowper Street North Circular Road Dublin 7
Stanhope St. Convent Primary School	Manor Street Dublin 7
St. Paul's Junior N.S.	Ard na Gréine Ayrfield Malahide Road Dublin 13
St. Paul's Senior N.S.	Ayrfield Malahide Road Dublin 13
St. Joseph's Junior N.S.	Balcurris Road, Ballymun, D. 11
St. Joseph's Senior N.S.	Balbutcher Lane North Balcurris Ballymun Dublin 11
St. Laurence's N.S.	Brookstone Road Baldoyle Dublin 13
St. Gabriel's N.S.	Dominican Campus Ballyfermot Dublin 10
St. Michael's N.S.	Kylemore Road Ballyfermot Dublin 10
St. Raphael's N.S.	Kylemore Road Ballyfermot Dublin 10
Mary Queen of Angels B.N.S. (1)	Gurteen Road Ballyfermot Dublin 10
Mary Queen of Angels B.N.S. (2)	Gurteen Road Ballyfermot Dublin 10
St. Louise de Marillac N.S.	Drumfinn Road Ballyfermot Dublin 10
Mother of Divine Grace P.S.	Ferndale Avenue Ballygall Dublin 11
Sacred Heart Boys' N.S.	St. Canice's Road Ballygall Dublin 11
Scoil Chiaráin	St. Canice's Road Glasnevin Dublin 11
Scoil an tSeachtar Laoch	Bóthar Bhaile Munna Baile Átha Cliath 11
Virgin Mary Boys' N.S.	Shangan Road Ballymun Dublin 9
Virgin Mary Girls' N.S.	Shangan Road Ballymun Dublin 9
Our Lady of Victories Boys' N.S.	Ballymun Road Dublin 9
Our Lady of Victories Girls' N.S.	Ballymun Road Dublin 9
Our Lady of Victories Infant N.S.	Ballymun Road Dublin 9
Scoil Mhuire & Iósef Junior	Verbena Avenue Bayside Sutton Dublin 13
Scoil Mhuire & Iosef (Bayside S.N.S.)	Verbena Avenue Bayside Sutton Dublin 13
St. Fiachra's Junior N.S.	Montrose Park Beaumont Dublin 5
St. Fiachra's Senior N.S.	Montrose Park Beaumont Dublin 5
St. Paul's Special School	Beaumont Woods Beaumont Dublin 9
St. Mary's Primary School	St. Mary's Place Dorset St. Dublin 7
Our Lady of the Wayside N.S.	Bluebell Road Bluebell Dublin 12
St. Cillian's N.S.	Robinhood Road Bluebell Dublin 12
St. Joseph's N.S.	Macroom Road Bonnybrook Dublin 17

Christ the King Boys' N.S.	Annaly Road Cabra Dublin 7
Christ the King Junior Girls' N.S.	Annaly Road Cabra Dublin 7
Christ the King Senior Girls' N.S.	Annaly Road Cabra Dublin 7
Casa Caterina Special School	Dominican Campus, Ratoath Road, Cabra, Dublin 7
Holy Family School for the Deaf	Navan Road Cabra Dublin 7
St. Catherine's Infant N.S.	Ratoath Road Cabra West Dublin 7
St. Catherine's Senior Girls' N.S.	Ratoath Road Cabra Dublin 7
St. Finbarr's Boys' N.S. (Fionnbarra Naofa)	Kilkieran Road Cabra West Dublin 7
St. Michael's School	Holy Angels Glenmaroon Chapelizod Dublin 20
St. Patrick's N.S.	Chapelizod Village Chapelizod Dublin 20
St. Ultan's National School	Cherry Orchard Ballyfermot Dublin 10
City Quay N.S.	Gloucester Street South Dublin 2
Marist National School	Clogher Road Crumlin Dublin 12
Scoil Íosagáin CBS	Aughavannagh Road Crumlin Dublin 12
Belgrove Senior Boys' N.S.	Seafield Road Clontarf Dublin 3
Belgrove Senior Girls' N.S.	Seafield Road Clontarf Dublin 3
St. John the Baptist Inf. Girls' School	Seafield Road Clontarf Dublin 3
St. John the Baptist Junior B.N.S.	Seafield Road West Clontarf Dublin 3
Scoil Chaitríona Cailíní	Measc Avenue Coolock Dublin 5
Scoil Chaitríona Infants	Measc Avenue Coolock Dublin 5
Our Lady of Hope School	Armagh Road Crumlin Dublin 12
Scoil Eoin	Armagh Road Crumlin Dublin 12
Scoil Úna Naofa	Armagh Road Crumlin Dublin 12
St. Damian's N.S.	Quarry Drive, Perrystown, Dublin 12
Our Lady Immaculate Junior N.S.	Darndale Dublin 17
Our Lady Immaculate Senior N.S.	Darndale Dublin 17
Scoil Mhuire Ógh 1	Loreto Senior Primary School Crumlin Road Dolphin's Barn Dublin 12
Scoil Mhuire Ógh II	Loreto Junior School Crumlin Road Dublin 12
Gaelscoil Choláiste Mhuire	4 Cearnóg Pharnell Baile Átha Cliath 1
Henrietta Street School	8 Henrietta Street Dublin 1
Holy Trinity Senior N.S.	Grange Road Donaghmede Dublin 13
Scoil Bhríde Junior	Grange Road Donaghmede Dublin 13
Scoil Cholmcille Senior	Newbrook Road Donaghmede Dublin 13
St. Francis of Assisi Primary School	Belmayne Balgriffin Dublin 13
St. Kevin's Junior N.S.	Newbrook Avenue Donaghmede Dublin 13
Our Lady of Consolation N.S.	Collins Avenue East Donnycarney Dublin 5

Scoil Chiaráin C.B.S.	Collins Avenue East Donnycarney Dublin 5
Scoil Treasa Naofa	Petrie Road Donore Avenue Dublin 8
Corpus Christi Girls' N.S.	Home Farm Road Drumcondra Dublin 9
St. Patrick's Boys' N.S.	Millbourne Avenue Drumcondra Dublin 9
St. Joseph's N.S.	East Wall Road East Wall Dublin 3
St. Eithne's Girls' N.S.	Edenmore Raheny Dublin 5
St. Malachy's Boys' N.S.	Edenmore Raheny Dublin 5
St. Monica's Infant Girls' N.S.	Edenmore Raheny Dublin 5
St. Joseph's Adolescent Special School	St. Vincent's Hospital 193 Richmond Road Fairview Dublin 3
St. Joseph's CBS Primary School	Marino Park Avenue Fairview Dublin 3
St. Mary's N.S.	Windsor Avenue Fairview Dublin 3
Mary Queen of Ireland N.S.	Toberburr St. Margaret's Co. Dublin
St. Canice's Boys' N.S.	Glasanaon Road Finglas Dublin 11
St. Canice's Girls' N.S.	Seamus Ennis Road Finglas Dublin 11
St. Margaret's N.S.	St. Margaret's Co. Dublin
St. Brigid's Infant School	Wellmount Avenue Finglas West Dublin 11
St. Brigid's Senior Girls' N.S.	Wellmount Avenue Finglas West Dublin 11
St. Fergal's Boys' N.S.	Cappagh Road Finglas West Dublin 11
St. Joseph's Girls' N.S.	Barry Avenue Finglas West Dublin 11
St. Kevin's Boys' N.S.	Barry Avenue Finglas West Dublin 11
Francis St. C.B.S. (Primary)	Francis Street Dublin 8
Presentation Primary School	Warrenmount Blackpitts Dublin 8
St. Brigid's Primary School	The Coombe Dublin 8
Gardiner Street Primary School	76 Upper Gardiner Street Dublin 1
Scoil Mobhí	Bóthar Mobhí Glasnaíon B.Á.C. 9
St. Benedict's & St. Mary's N.S.	Grange Park Raheny Dublin 5
St. Christopher's Primary School	Haddington Road Ballsbridge Dublin 4 D04FP20
St. Conleth's College	28 Clyde Road Ballsbridge Dublin 4
St. Declan's Special School	35 Northumberland Road Ballsbridge Dublin 4
Presentation Primary School	George's Hill Halston Street Dublin 7
St. Paul's CBS Primary	North Brunswick Street Dublin 7
Harold's Cross N.S.	Clareville Road Dublin 6W
Scoil Mológa	Bóthar Thigh Chláir Crois Araidh Baile Átha Cliath 6W
St. Clare's Primary School	Harold's Cross Road Harold's Cross Dublin 6W
Scoil Sancta Maria C.B.S.	Christian Brothers Synge Street Dublin 8
Inchicore N.S.	Sarsfield Road Inchicore Dublin 10

Scoil Mhuire gan Smál	Tyrconnell Road Inchicore Dublin 8
Gaelscoil Inse Chór	An Cuar Bhóthar Theas Droichead na hInse Baile Átha Cliath 8
Our Lady of Lourdes Girls' N.S.	Goldenbridge Inchicore Dublin 8
St. Columba's N.S.	Iona Road Glasnevin Dublin 9
St. Vincent's C.B.S.	St. Philomena's Road Glasnevin Dublin 11
St. James's Primary School	Basin Lane James Street Dublin 8
St. John of God School	Islandbridge Dublin 8
Gaelscoil Míde	Br. an Ghleanntáin Ghlais Cill Bharróg Baile Átha Cliath 5
Scoil Eoin	Greendale Road Kilbarrack Dublin 5
St. Brigid's Boys' N.S.	Howth Road Killester Dublin 5
St. Brigid's Girls' N.S.	St. Brigid's Road Killester Dublin 5
Scoil Fhursa	Cromcastle Green Kilmore West Dublin 5
Scoil Íde	Cromcastle Green Kilmore West Dublin 5
Holy Child Boys' N.S.	Larkhill Road Whitehall Dublin 9
Holy Child N.S.	Larkhill Road Whitehall Dublin 9
Scoil Mhuire Marino	Griffith Avenue Marino Dublin 9
St. Joseph's Primary School for Children with Visual Impairment	Gracepark Road Drumcondra Dublin 9
St. Vincent de Paul Infant N.S.	Griffith Avenue Marino Dublin 9
St. Vincent de Paul Senior Girls' N.S.	Griffith Avenue Marino Dublin 9
St. Audoen's N.S.	Cook Street Dublin 8
St. Michael's College Jun. School	Ailesbury Road Ballsbridge Dublin 4
Our Lady of Good Counsel B.N.S.	Mourne Road Drimnagh Dublin 12
Our Lady of Good Counsel G.N.S.	Mourne Road Drimnagh Dublin 12
Our Lady of Good Counsel Inf. N.S. (Muire Na Dea Chomhairle Infant NS)	Mourne Road Drimnagh Dublin 12
Our Lady's Hospital School	Crumlin Dublin 12
Mary Help of Christians G.N.S.	Navan Road Dublin 7
St. John Bosco Jnr. Boys' N.S.	Navan Road Dublin 7
St. John Bosco Senior Boys' N.S.	Navan Road Dublin 7
St. Vincent's Special N.S.	Navan Road Dublin 7
O'Connell C.B.S. Primary	North Richmond Street N.C.R. Dublin 1
St. Vincent's Girls' N.S.	North William Street Dublin 1
St. Vincent's Infant Boys' N.S.	North William Street Dublin 1
St. Peter's N.S.	St. Peter's Road Phibsboro Dublin 7
St. Francis Junior N.S.	Clonshaugh Drive Priorswood Dublin 17

St. Francis Senior N.S.	Clonshaugh Drive Priorswood Dublin 17
Naíscoil Íde	All Saints Drive Raheny Dublin 5
Scoil Áine	All Saint's Drive Raheny Dublin 5
Scoil Assaim B.N.S.	All Saints Drive Raheny Dublin 5
St. Peter's Special School	St. John of God Centre Lucena Clinic 59 Orwell Road Rathgar, D. 6.
Scoil Bhríde	Bóthar Feadha Cuileann Ragnallach Baile Átha Cliath 6
St. Louis Infant N.S.	William's Park Rathmines Dublin 6
St. Louis Senior N.S.	William's Park Rathmines Dublin 6
St. Mary's College Jun. Sch.	73-79 Lower Rathmines Road Rathmines Dublin 6
St. Patrick's Boys' N.S.	Cambridge Road Ringsend Dublin 4
St. Patrick's Girls' N.S.	Cambridge Road Ringsend Dublin 4
Scoil Mhuire	15 Gilford Road Sandymount Dublin 4
Star of the Sea B.N.S.	Leahy's Terrace Sandymount Dublin 4
Holy Child Pre-School	(Rutland St. Project) Lower Seán McDermott Street Dublin 1
Rutland N.S.	Lower Gloucester Street Dublin 1
St. Laurence O'Toole C.B.S. P.S./Naomh Lorcan O'Tuathail	Seville Place Dublin 1
St. Laurence O'Toole Special School	Aldborough Parade North Strand Dublin 1
St. Laurence O'Toole N.S.	Seville Place North Wall Dublin 1
Holy Spirit Boys' N.S.	Silloge Road Ballymun Dublin 11
Holy Spirit Girls' N.S.	Silloge Road Ballymun Dublin 11
Presentation Primary School	Terenure Road West Terenure Dublin 6 W
St. Joseph's Boys' N.S.	Terenure Road East Dublin 6
Catholic University School	89 Lower Leeson Street Dublin 2
Loreto College Junior School (Girls)	53 Stephen's Green Dublin 2.
Assumption Junior School	Walkinstown Dublin 12
Assumption Senior Girls' N.S.	Walkinstown Dublin 12
Drimnagh Castle Primary School	Long Mile Road Walkinstown Dublin 12
Catherine McAuley School	59 Lower Baggot St. Dublin 2
Scoil Chaitríona Baggot St.	59 Lower Baggot Street Dublin 2
St. Enda's Primary School	Whitefriar Street Dublin 8
Scoil Chaoimhín	Marlborough Street, Dublin 1
Central Model Infants' School	Marlborough Street, Dublin
Central Model Senior School	Marlborough Street, Dublin 1

Appendix III - Mason Hayes Curran Legal Opinion



Dublin City Council
Development Plan Team,
Planning and Property Development Department,
Dublin City Council,
Wood Quay, Dublin 8

BY ONLINE SUBMISSION

14 February 2022

Your ref:

Our ref: a/DIOC13.699

MHC-27425557-3

**Matter: Submission on behalf of Diocese of Dublin
Draft Development Plan 2022 – 2028: Changes to Z15 zoning**

Dear Sir/Madam

We act for the Diocese of Dublin and are writing in respect of Dublin City Council's (**DCC**) Draft Development Plan 2022 – 2028 (the **Draft Plan**). Our client objects to the proposed changes to Zoning Z15 in the Draft Plan. The planning implications of these changes on our client has been set out in detail by Brock McClure in their accompanying submission. Overall, the changes will make it significantly more difficult to obtain planning permission for residential development at land zoned Z15.

As noted in Brock McClure submissions, there are many reasons why our client may need to obtain planning permission for residential uses on its land, and these proposed changes will make it very difficult to achieve. As such they are particularly discriminatory against our client, and will only serve to hinder the religious institutions they intended to protect.

For the reasons set out in this letter, the proposed changes are unlawful insofar as they affect religious institutions such as our client. If DCC intends to retain these changes to protect areas such as open spaces, our client's land should be re-zoned in Z12 so as not to be affected by the changes.

Reducing the amount of land available for housing

The housing crisis is a critical issue in Ireland and promoting the delivery of housing, particularly affordable housing, is one of the Government's key policies¹. The revised Z15 policy will

¹ See for example the Government's Housing for All: A New Housing Plan for Ireland 2021.

unnecessarily and inappropriately place further policy constraints on the development of housing and in particular infill and affordable housing which is encouraged in national policy (see for example National Policy Objective 11 of Project Ireland 2040 National Planning Framework) and other parts of the Draft Plan (see for example, Policies CS07 and QHSN32).

Lack of planning justification to single out housing

DCC has not provided any rationale as to why the Z15 zoning has undergone such a radical amendment from the position taken in the current Development Plan. With the proposed changes, Z15 is now unnecessarily restrictive insofar as it affects land owned by our client.

Indeed DCC, had previously proposed changes to Z15 which included, amongst other things, removing residential from being open to consideration. Those changes were held by the High Court in *Sisters of Charity v Dublin City Council (2012 IEHC 163)* to be unlawful as, *inter alia*, insufficient reasons had been given to support those changes. DCC's proposed changes to the Draft Plan are unlawful for the same reasons.

In *Sisters of Charity*, Mr. Justice Clarke held that DCC had failed to provide sufficient reasons behind its changes to allow a Court to exercise its role in determining whether the changes are lawful, and also so they can be understood by interested parties.

All DCC have provided to support their changes is noted on page 629 of the Draft Plan as follows: *"Z15 lands have come under increased pressure for residential development. However, protecting and facilitating the ongoing use of these lands for community and social infrastructure is a key objective of the Council. The Council are committed to strengthening the role of Z15 lands and will actively discourage the piecemeal erosion and fragmentation of such lands"*. In the preceding paragraphs, the DCC has listed the type of uses that it aims to protect including *"schools, colleges, sports grounds, residential institutions and healthcare institutions... the RDS and St. James' Hospital"*.

This brief section does not provide the justification required to understand why DCC has placed such significant limitations on how a religious institution may be able to deal with land zoned Z15. Moreover, simply because there is increased demand for housing is not a sufficient reason to support the changes. Indeed, there is high demand because of the significant social need for housing in Dublin. This social need and wider objective of DCC should not be hindered by overly restrictive zoning.

Test for proposing a new use

The Draft Plan states at page 631 that when the existing use has ceased: *"i.e. cessation of use on a Z15 site or disposal of all or part of a Z15 site), a variation to the Development Plan will be required to develop such lands for other uses including residential/ office purposes. Any such variation would need to be supported by a detailed masterplan which should clearly demonstrate why the land is not viable / suitable for social and community use"*.

It is not clear how this requirement can actually be achieved. In the *Sisters of Charity*, Justice Clarke made the following comments in respect of a similar requirement: *"to take a perhaps practical example, some areas in the past had a very large number of young people when newly developed (on the basis that many of those moving into new areas will be youngish couples more likely to have children) but as the area matures a more balanced or even aging population may develop. It is*

possible that the demand for school places may decline in such a situation but that the need for community facilities for the elderly or facilities more likely to be availed of by the elderly might increase. Would it be enough to simply show that a site was no longer necessary for a school or would it be necessary to show that there were not other community or institutional uses (perhaps for the elderly) to which the site concerned might be applied? It seemed to me that, at different stages in the process, both in the presentation of evidence, in the filing of written submissions and in oral argument, Dublin City Council seemed to take up both positions although they are, of course, incompatible....if it is necessary to keep land in institutional or community use for a whole range of such uses widely defined, then it is not so clear as to why such a measure is required (without some analysis of demand) particularly when many such uses do not necessarily require large sites.

As such the test for having to demonstrate why the land is not viable or suitable for any type of social or community use is not practical to demonstrate, and this could amount to a complete restriction on the use of the land. This is an unlawful approach.

Imposition of planning use when use has ceased

The Draft Plan at page 631 also notes that: *“The cessation of an existing social/community use on a site or change in land ownership does not extinguish / negate the function of such lands for community and social infrastructure use”*. In effect DCC are seeking to place a planning use on the land notwithstanding the actual planning use may have ceased. There is no basis for this imposition of a planning restriction in law.

When a use ceases to exist, the planning use is considered to have been extinguished or abandoned. Case law suggests that for abandonment to occur two elements must be present: (i) an abandonment for a considerable time (which has been held to apply where it ceased for one year); and (ii) no evident intention of resuming it and the tests in this regard are interdependent (*Pierson & Others v Keegan Quarries Ltd [2010] IEHC 404*). Any planning application to provide for a change of use, should base it on the previous use having been abandoned, not remaining in force. As such, if the use has ceased in planning terms, DCC should not be reinstating the lawful use (i.e. abandoned) for another use (i.e. community and social infrastructure).

Restriction of material contravention procedure

As noted above, the Draft Plan states that where the use has ceased, a variation to the Development Plan will be required to develop the land for other uses including residential/office purposes.

Firstly this restriction appears to also apply to currently permissible and open for consideration uses, as they will be “*other uses*”. This must have been an oversight by DCC.

Secondly this proposed wording intends to remove other legal avenues for obtaining planning permission, such as “the material contravention procedure”. A similar restriction was also held to be unlawful in *Sisters of Charity*, where Justice Clarke held that: *“10.4 Why is the provision there in the first place if it has no meaning? It is true that in respect of any aspect of the zoning of Dublin City (or indeed any other local authority) it is not possible to give a planning permission which contravenes in a material fashion the development plan without going through the material contravention process. Why then is specific mention made in the fashion already cited under Z15 and not made in respect of any other zoning if, in truth, the position is the same in all cases being that material contravention is possible? It seems to me that the only reasonable interpretation to place on the presence of the challenged provision in respect of Z15 (and its absence in respect of all other zones) is that it is*

intended to convey a prejudgment on the part of the elected members in respect of any future material contravention application and as, perhaps, a warning that no such applications will be entertained. On that basis it is clearly impermissible as an unlawful fettering of the elected members' discretion".

Legal agreement restricting use

At page 630 of the Draft Plan, DCC requires that with any application for residential/office development: *"the applicant shall submit a statement, as part of a legal agreement under the Planning Acts, demonstrating how the existing institutional facility will be retained long term on site."*

When DCC refers to legal agreement, we assume (although it is not clear) that it must be referring to an agreement made under section 47 of the Planning and Development Act 2000 (as amended). This agreement allows for: *"A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement."* Such an agreement must have a "planning purpose" (Brady v Environmental Protection Agency [2007] IEHC 58).

The intention behind a section 47 agreement is to restrict the development in question. However, DCC are intending to use it to restrict the use of adjacent land (i.e. the institutional facility rather than the residential development). This restriction does not directly relate to the development in question, and is an unlawful approach. Furthermore, this restriction also amounts to requiring long term commitment to made in respect of a property that no person will be able to properly provide, as they do not what circumstances may arise that will not allow for the retention of the institutional facility.

Breach of Constitutional and Human Rights

In the *Sisters of Charity*, the applicant also alleged that there was a breach of three discrete articles of the Constitution, namely Art. 40 on personal rights, Art. 43 on private property and Art. 44 on religion. The specific provisions of those articles relied on are in the following terms:

"Article 40... 3.2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen..."

Article 43 1.1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods. 1.2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property. 2.1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice. 2.2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good."

Article 44 [...] 2.5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or

charitable purposes. 2.6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation."

Article 1 (Protection of property) of the European Convention on Human Rights (ECHR) states as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

In the *Sisters of Charity* case, Mr Justice Clark noted that it was not possible to determine whether there was a breach of the above rights, as DCC had not provided sufficient reasons for their proposals. As such Mr Justice Clarke was not able to determine if the interference was disproportionate. As noted above, DCC has failed in the Draft Plan to provide sufficient reasons for this interference. Accordingly, we are not able to consider whether the interference is unlawful. That said, we are not aware of any specific justification (as noted above) and accordingly DCC's approach may amount to a breach of our client's constitutional rights and rights under the ECHR.

Irrationality and Natural Justice/Fairness

There is no relevant material to support DCC's decision to change the zoning to Z15 (*O'Keeffe v An Bord Pleanála* [1993] 1 IR 39). Indeed the change on zoning is so unreasonable for the reasons set out above, that no reasonable authority could ever have come to it. As such it's unreasonableness makes it unlawful.

Furthermore a decision which adversely affects rights without objective justification may be open to review on the basis that it is 'disproportionate'. This may be a breach of the principle of fairness in judicial review and we would assert that the proposed changing to zoning Z15 contravenes this principle.

Conclusion

The changes to the Z15 zoning will place significant restrictions on the ability to obtain planning permission when the existing uses are no longer required. Our client owns a substantial area of land zoned for Z15, which could be suitable for a range of uses. For example a part of the land may cease its use in due course and the ability to develop such land for housing will be important for our client.

DCC's targeting of housing appears to be solely based on the fact there is increased demand for housing, rather than any planning or environmental considerations. Of course there is an increased demand for housing as it offers a societal need that is not being met by the existing stock. Excess demand is not a lawful justification for removing it from open for consideration.

Furthermore, there are other uses that remain open for consideration that are likely to give rise to the same level of planning harm as housing. There is a lack of justification for why housing has been singled out in these circumstances.

If the existing use ceases, that use can become abandoned in planning terms. There is no legal basis for DCC to determine that an active use applies, when it doesn't under planning law. In addition, the attempt to remove the material contravention procedure as an avenue, appears to be a fettering

of DCC's members decision-making powers. Moreover if the use ceases or the land is disposed of, an applicant will need to show there is no potential for any community or social use, which may not be achievable in practice.

DCC are requiring that a legal agreement be entered into restricting the use of the land adjacent to proposed housing. This goes beyond what a section 47 legal agreement should achieve as it does not regulate the development (ie the housing development) itself. Furthermore it is seeking to place long term restrictions that will not be achievable.

The changes to Z15 will significantly impede how our client will be able to deal with its land. It appears to amount to a disproportionate interference and breach Articles 40, 43 and 44 of the Constitution and Article 1 of the ECHR. We are not able to consider this further until and unless DCC provides sufficient reasons for the proposed changes.

Furthermore the changes are not based on any supporting material, and are unreasonable. They are also disproportionate in their effect on our client.

For the reasons set out above, the new zoning Z15 in its current form appears to be unlawful and will significantly hinder our client's ability to deal with its land. As such, either the Z15 zoning as set out in the current Development Plan (2016-2022) should be retained or our client's land that is currently zoned Z15 should instead be zoned Z12.

Yours faithfully

Sent by email, no signature

MASON HAYES & CURRAN LLP