



An
Coimisiún
Pleanála

Inspector's Report PL-501297-CE-26

Development	Retention of vehicular and pedestrian entrance gates to existing dwelling.
Location	Doonass Demense, Clonlara, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2660071
Applicant(s)	Michelle Caffrey & Derek Cox
Type of Application	Retention
Planning Authority Decision	Grant Retention with Conditions
Type of Appeal	Third Party Normal Planning Appeal
Appellant(s)	Rosemary Hannan
Observer(s)	Tom & Kitty O'Brien Tom Galvin Timothy O'Donoghue
Date of Site Inspection	23/07/2026
Inspector	Caryn Coogan

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History	6
5.0 Policy Context	7
6.0 EIA Screening	8
7.0 The Appeal	8
7.1. Grounds of Appeal	8
7.2. Applicant Response	12
7.3. Planning Authority Response	12
7.4. Observations	12
8.0 Assessment	16
9.0 AA Screening	22
10.0 Water Framework Directive	22
11.0 Recommendation	23
12.0 Reasons and Considerations	23
Appendix 1: Form 1 EIA Pre-Screening	25

1.0 Site Location and Description

- 1.1. The site is located on the northern banks of the River Shannon in the townland of Doonass c.2.8 km southeast of the village of Clonlara in County Clare. Doonass graveyard immediately adjoins the site to the east. The River Shannon flows along the southern boundary and is separated from the buildings by grassed areas.
- 1.2. The site is located at the end of a local cul de sac road running southeast from Clonlara and serves as access to the graveyard and numerous residential properties, and GAA grounds.
- 1.3. The subject site is known as the former Anglers Rest site, which was originally a public house. A dwelling bounds the site to the north and is separated from the site by defined boundaries. The two-storey building on the site, which was originally Angler's Rest, is now in residential use. The carpark associated with the former use of the site is overgrown and not in use. There was no evidence, during my site inspection, that the structures associated with the former use as a public house remain in operation.
- 1.4. The car parking area has been fenced off with locked gates. There is no access to the River Shannon along the eastern side of the site at present due to gates across the access. A private amenity space is located to the north of the 'dwelling' and is fenced off. A front door and porch/canopy is located on the eastern gable of the 'dwelling'.
- 1.5. The fence, pedestrian gate and vehicular gate which are the subject of this appeal provide a defined boundary that separate the property from the public road.

2.0 Development

- 2.1. The public notices describe the development as :

The development will consist of retention of vehicular and pedestrian entrance gates to existing dwelling.

3.0 Planning Authority Decision

3.1. Decision

Clare County Council granted planning permission for the retention vehicular and pedestrian entrance subject to one condition, that the development is in accordance with the drawings and particulars received with the planning application.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- There were submissions from 54No.third party persons detailed below.
- The development consists of the retention of vehicular and pedestrian entrance gates to existing dwelling.
- The applicants are the stated owners of the site. The land registry details for this property (Folio CE58407F) has been owned by the applicants since 2018. There is no detail in the land registry documents in terms of any right of way or any right of passage.
- As per the land registry details it is stated on the folio text that: “The property is subject to the sporting rights within the meaning of the Irish Land Act, 1903, reserved by Fiat of the Land Commission”. Sporting rights within the meaning of the Irish Land act 1903 do not include a general right to members of the public to pass through or cross over an area of land. Sporting rights under the Irish Land Act 1903 do include a limited right to pass through the land, but this right exists solely to allow the exercise of the sporting rights themselves. It is not a general right of public access or a general easement of passage.
- It is important to note that the subject land where permission is sought to retain two gates is in private ownership and there is no right of way or right of passage registered as a burden on the land registry folio details as apply to this area of land. Furthermore, there is no designated or formalised right of way at this location and from examination of the Development Plan (Appendix 6), no right of way at this location has been identified. In addition to the above, the Departmental Guidelines, ‘Development Management – Guidelines for

Planning Authorities' Department of the Environment Heritage and Local Government 2007, provide guidance in respect of issues relating to title to land in the assessment of a planning application and the following guidance is provided at section 5.13- 'Issues relating to title to land':

"The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts.

- The P.A. satisfied that it has been not been demonstrated that there is a registered right of way at this location. Further, whilst the land may have been habitually used by the public as a recreational route in the past, this route is not identified in the Development Plan in Appendix 6.
- There are no traffic issues arising, no public health issues arising or flood risk.
- It is noted that the subject site is within the zone of archaeological notification of a recorded monument associated with the adjacent graveyard. Having regard to the very limited nature of the works to be retained it is considered that the development to be retained will not impact on archaeology and has no negative impact in this regard.

3.2.2. Other Technical Reports

No technical reports on file.

3.3. Prescribed Bodies

There were no submissions received.

3.4 Third Party Observations

There were submissions from 54No. persons. The following is a summary of the concerns expressed:

- A long-established public right of way to the River Shannon, riverbanks, Salmon Pool, Falls of Doonass, Castleconnell footbridge, Landscape House, and the Céad Míle Fáilte stile has been blocked.

- Closure has removed access to one of the area's few safe off-road walking routes. Negative impacts on walking, fishing, swimming, kayaking, nature enjoyment, and general recreation. Considered a major loss to local and visiting communities.
- Loss of access disrupts long-standing traditions, including Pattern Day, grave visits, and community gatherings.
- Loss of former graveyard car park/turning area is causing congestion, unsafe manoeuvres, and difficulties for elderly or mobility-impaired visitors. Funerals more difficult to manage safely.
- Development widely described as unauthorised. Fencing omitted from the retention application ("project splitting"). ABP decisions referenced confirming the gates/fencing are not exempted development.

4.0 Planning History

4.1 Older planning history files dating back to 1964-1987 relate to the former use as a Public House, the Angler's Rest.

4.2 ***Enforcement File UD 21-022***

On 13/05/2024 Warning letters were sent to Michelle Caffrey and Derek Cox regarding the alleged unauthorised construction of a fence, pedestrian gate and vehicular gate on the road at Doonass, Clonlara, Co. Clare.

4.3 ***ABP: 313930-22***

Section 5 Referral (R 20-44)

The landowners submitted a Section 5 referral to Clare County Council with the referral question being whether the construction of a fence, pedestrian gate, and vehicular gate at the Former Anglers Rest, Doonass Demesne, Clonlara, constituted development or exempted development.

Clare County Council referred this to An Bord Pleanála for determination.

An Bord Pleanála issued a decision on 26 February 2021 confirming that the works constituted development and were not exempted development.

This decision was later challenged and subsequently quashed by the High Court, with the perfected order issued on 10 May 2022, quashing the decision of An Bord Pleanála and remitting the matter to An Bord Pleanála to be reconsidered and determined. Following the High Court ruling, the Board reassessed the referral under a new case number (ABP-313930-22) and issued a fresh decision on 22 February 2024, again concluding that the works were development and not exempt, particularly due to restrictions on public recreational access or as a means of access to any riverbank or other place of recreational utility as outlined in Article 9(1)(a)(x) of the Planning and Development Regulations 2001 (as amended).

5.0 Policy Context

5.1 Development Plan

Clare County Development Plan 2023-2029

The site is located in a rural area. The site is within the zone of notification of a recorded monument. The site is close to but outside of the Lower River Shannon SAC.

CDP16.8 Sites, Features and Objects of Archaeological Interest

It is an objective of Clare County Council:

- a) To safeguard sites, features and objects of archaeological interest generally.
- b) To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally.
- c) In securing such preservation, to have regard to the advice and recommendations of the Department of the Culture, Heritage and the Gaeltacht;

d) To have regard to the government publication Framework and Principles for the Protection of the Archaeological Heritage 1999 in relation to protecting sites, features and objects of archaeological interest; and

e) To advocate for greater financial assistance for the maintenance and improvement of features of archaeological interests in County Clare.

5.2 Natural Heritage Designations

The site is close to but outside of the Lower River Shannon SAC.

6.0 EIA Screening

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

There have been two previous appeals associated with the subject site.

7.1.1 *The Use of a Structure on Site as a Dwelling House*

The applicant claims that the development will consist of retention of vehicular and pedestrian entrance gates to existing dwelling. There is no dispute the applicants use the structure as a dwelling, there is no evidence supplied that they either have planning permission for same or that such conversion amounted to exempted development.

The structure on site was used as a public house. There was planning permission applied for by Mr. Michael Mason and granted in 2000 to retain a two-storey bed and breakfast block, which the application also referred to a previous grant of permission for a restaurant under P8/24854.

There was no permission for the change of use to a dwelling house. There is no mention in the planning assessment of exemptions from vacant commercial properties to residential use some time ago (Planning and Development Regulations 2018 (S.I. 30/2028) if the applicants did not avail of the exemption, then the use of the structure as a house is unauthorised. The public notice refers to a vehicular and pedestrian gate to an existing dwelling.

7.1.2 *Planning Assessment: Implications of Vehicular and Pedestrian Gates.*

The principle objection to the development relates to the fact to constitute with the construction of a fence, a pedestrian gate and vehicular gate on the road which encloses land habitually open to/ used historically by the public for recreational purposes and as a means of access to the river bank and place of recreational utility.

The main purpose of the fence/ gate is to control and limit access to the public across the property, access that has been there from historic times.

In terms of the Referral there were 57No. persons signed a submission to the Board giving testimony that all had used blocked road/ pathway between what was Angler's Rest and the graveyard to the River Shannon Bank and the Cead Mile Failte steps at Doonass for recreational and access purposes during the last 10 years preceding the first blockage of the road/ pathway. Under Board reference ABP-313930-22, the reporting inspector stated it had been clearly demonstrated that lands enclosed by the fence on the road do not relate to lands that were habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as means of access to the river bank.

The applicants have submitted no information to clearly demonstrate this historical habitual use did not take place prior to the erection of the fence or gate. They did however request the planning authority to give the permission to block the historic access to an area traditionally used by pedestrians to the banks of the River Shannon and to the turret. It is accepted that the Board was not adjudicating on the planning merits of the case, merely on whether what was involved constituted development or exempted development.

7.1.3 The planning authority then decided on the planning merits of the case, whether it was consistent with the overall proper planning and sustainable development of the area.

Issue No. 1

The planning authority assessed the case as if it were a right of way issue alone. All references in the Planning report refer to Right of Way issues. No issue is made to the issue of enclosure of an area to which the public have habitually had access to and which gave access to amenity facilities. This is a serious issue and results in a fundamental matter- and a matter on which the Board's decision was based – being omitted from consideration. It is submitted that as a result, the decision of the planning authority is fatally flawed and should be set aside.

Issue No. 2

The second issue is the right of way. The planning authority did not consider the question of the right of way in a balanced manner, but sidestepped the issue by an over restricted view on private ownership in the planning report. The points made in the report are as follows:

- (i) There is no right of way or right of passage registered as a burden on the land registry folio details;
- (ii) There is no designated or formalised right of way at this location
- (iii) The Development management Guidelines is quoted in so far as the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, these are ultimately matters to be resolved in the courts.

It should be noted historic rights of way/ passage over land are not by their nature registered on land registry folios. This issue should not be given planning weight.

Section 10(7) of the Planning and Development Act 2000, as revised, in relation to the development plan. This recognises the absence of any mention of public right of way in the plan does not affect the validity of same.

In relation to (iii) no evidence has been submitted of the non-existence historic use while a weight of evidence has been lodged by the objectors about the historic use, while a weight of evidence has been lodged by the objectors both now and in the past. The planning authority did not raise this issue with the applicants. The planning authority did not wish to get involved with the dispute over the right of way.

The issue of the right of way was not properly dealt with. This case is different because it relates to public passage over land.

It is submitted the planning authority's decision was based on evidence available to the Board that related to the public use of the land for recreational purposes/ as a means of access to the river bank. This distinguishes this matter from a dispute over title/ private right of way that might come up in the run of the mill planning applications. What is at issue here is a matter of public rights and the use of the land which falls within the remit of the planning authority and of the Commission.

The following sections of the Clare County Development Plan 2023-2029 recognises:

10.12 Physical Recreation and Active Living

The aim of the National Physical Activity Plan is to “increase physical activity levels across the entire population thereby improving the health and wellbeing of people living in Ireland, where everybody will be physically active and where everybody lives, works and plays in a society that facilitates, promotes and supports physical activity and an active way of life with less time spent being sedentary.”

CDP 10.10 b)

To promote Active Living as a means of enhancing health, wellbeing and social inclusion;

CDP 12.9

It is an objective of Clare County Council: To facilitate and promote the sensitive and sustainable use of the Shannon Estuary's assets in an integrated manner to develop a dynamic and sustainable tourism, recreation and leisure sector that delivers maximum social and economic benefit to the communities of the estuary while safeguarding valued landscape, heritage and environmental interests. All proposed developments shall be in accordance with the Birds and Habitats Directive, Water Framework Directive and all other relevant EC Directives.

Allowing a development to block historic access to the River Shannon at this location would be at total variance with the above objectives. The access has been traditionally used by the public for recreational purposes to access the riverbank and should be retained for such purposes.

Access to the River Shannon at this location is relatively easy (excluding the applicant's gate and fence, as the public road runs down to the beginning of the applicant's property and there is easy access onwards to the Cead Mile Failte steps.

The planning legislation recognises areas '*habitually open to the public*' as having special status, hence the restrictions on exception recognise at national level. The Coimisiun is requested to refused permission for the development.

7.2. Applicant Response

The applicants are not going to engage with the historical access arrangements raised in the appeal.

The application concerns planning grounds only.

It is submitted that the 'way' referred to throughout the appeal is not recorded and the Comision cannot make a finding on the way.

No 'way' exists.

The other matters raised in the appeal are superfluous and irrelevant, they have no bearing on the planning application.

7.3. Planning Authority Response

The planning authority request the Coimisiun uphold the decision of Clare Co. Co.

7.4. Observations

There were a number of third party observations on appeal.

7.4.1 **Mr. Tom O'Shea and Kitty O'Brien** submitted an observation to the appeal. A summary of their submission is as follows:

The structures do not allow pedestrians and vehicular access to historic sites (Cead Mile Failte and the Turret). The existing structures obstruct the public rights of way of at least 5 generations and were continuing to use until these structures were installed. It would be greatly appreciated if the access was reinstalled for them to enjoy and future generations to visit the historic landmarks via the right of way.

7.4.2 **Mr. Tom Galvin and Mr. Timothy O Donoghue** have made two separate observations that can be collectively summarised to avoid undue repetition because both submissions are very similar in content. The submissions place a strong emphasis on the historical, cultural, community and amenity significance of the location, the impact of the development on the long established public access point to the River Shannon, and the failure of the planning authority to adequately consider these matters in its assessment.

- The access point at the former Angler's Rest provided a long standing, uninterrupted open and peaceful public access to the River Shannon for decades . The community used this access for generations for swimming, walking, fishing and general recreation. The access remained in continuous use prior to the establishment of Angler's Rest, during its operation as a public house, and following its closure.
- The riverside walk was part of a greater ancient walk extending from the South Doonass Circular Road to a formal entrance arch 18m from the River Shannon. The walk extended past 'The Turret' and folly and ancient settlement on the elbow of the river and further through the trees canopy bordering on the Falls Doonass.
- It is only since the arrival of the current owners that attempts have been made to restrict access and characterise the long established community use as trespass. This characterisation is inconsistent with the historical pattern of use and documentary evidence available.
- Particular weight should be given to a newspaper report published in the Limerick Leader on 3rd of April 1971 entitled 'Right of Way: Landowner John Walkers'. The article provided independent documentary evidence that:
 - (i) A public walk was organised to keep the public right of way along the River Shannon at Doonass open;
 - (ii) The event attracted significant public participation
 - (iii) The route was widely used by the public;
 - (iv) Miss Marie O Sullivan of Doonass House joined the walkers
 - (v) Concerns existed at the time regarding obstructing the access.

The article records the route was regarded locally as being of great antiquity and confirms public access issues have existed at the location for along time.

- The access point has signifigant cultural and community value. It is associated with St. Senan's Patron Day on 15th of August. Large number of people traditionally gathered to used the route to access the riverbank and participate in lots of customs and community activities. The relationship between the local community and the River Shannon forms part of the areas intangible heritage, and should be recognised as a material planning consideration.
- The application concerns the retention of entrance gates. These gates cannot be considered in isolation. The practical restriction of access arises from the cumulative effect of vehicular entrance gates, pedestrian gates, fencing, additional barriers, a grid panel installed and other associated structures. The combined effect has altered the character of the location. The planning authority considered the gates as individual structures rather than assessing the cumulative effect the barriers create together.
- The River Shannon is one of the most important amenities of the region. The retained development has had the practical effect of restricting and discouraging access to this valued amenity. This is a substantive issue in the planning considerations.
- Historically this access point formed part of an open riverside setting and contributed to the character of the area. The gates the fencing and associated structures introduce an enclosed and urbanised appearance at the location that has been traditionally open and accessible. The development has altered the visual character of the entrance and the approach to the River Shannon, and there is a cumulative visual impact.
- The planning authority's assessment is materially deficient and that signifigant planning issues raised by the objectors were not adequately considered before retention permission was considered. The overall assessment reframes the issue of a registered right of way over the land. The planning report continually notes there is no right of way on the Land Registry folio and the route is not specifically identified within Appendix 6 of the Clare County

development Plan. However the objections are based on the loss of a long-established public amenity, the obstruction of an historic access to the River Shannon, and the impact of the development on community heritage.

- The planning authority failed to properly assess the wider planning implications arising from the closure of a route that had been habitually used by the public for generations.
- Under the cases assessment of ABP 313930-22, the inspector determined the gates and associated fencing were not exempted development because the land had been habitually open to or used by the public during the ten years preceding construction of the development. It confirms the public use of the area was a material planning consideration.
- The report failed to meaningfully assess the implications of that finding when considering whether retention permission should be granted. The report also records extensive concerns regarding the loss of public amenity, and there was no public health issues arising despite the evidence to suggest otherwise. The report also said there were no traffic issues arising despite the management of the graveyard parking. The report fails to adequately consider cultural and historical significance of the location. There was no visual assessment provided, with no analysis of the visual impact of the gates on the character of the area. This is particularly important when the development has transformed an historically open riverside walk.
- The report fails to assess the cumulative impact of the development in terms of the Cead Mile Failte Steps.
- The planning authority has an obligation to assess the planning consequences of development that restricts access to a long-established public amenity.
- The planning authority failed to recognise the site of the works does not constitute the curtilage of a private dwelling but constitutes a place where the public has access overtime.
- The planning authority failed to take account of the National Physical Activity Plan (Chapter 12 point 9) in making its decision.

- The planning authority confused public use with right of way. These are entirely separate matters defined by origin, statute and effect and the applicant has block the use of the public use and this is unacceptable in the common interest and the proper planning and development of the area.
- It should be noted Mr. Timothy O'Donoghue's submission is accompanied by 7No. pages of a signed petition from the local community. It also included a letter from the former owners of the site, the Angler's Rest (Angela and John O'Mahoney) who state the premises was a commercial entity to serve the local community. They owned it up to 1986. It included a public access to an unregistered Right of Way during their tenure for walking, fishing and sharing the religious heritage at Doonass. The public access ran along the eastern end of the premises to the river's edge. At no point was the were the public obstructed from using the right of way. In addition, other former owners Joe Hannon and John Lenihan owners form 2003-2010 also state the public had access to the unregistered right of way.
- Mr. Timothy O'Donoghue's submission is also accompanied by a Report on the Right of Way prepared on 20th of May 2022 by Denis McKeon. In the sale of the property by AllSops the conditions of sale did state the Vendors are aware that there may be an unregistered public right of way in respect of a pathway forming part of the property beside the river. The report also includes historical maps illustrating pathways, a site layout from 2018, google street images from 2009 and 2019. There is also a history of how the property was sold to the current owners and the approximate dates the gates were erected and the associated planning history. The report includes detailed photographs of the immediate vicinity and the history of the closure of the access.

8.0 **Assessment**

8.1. I have considered the planning application, the appeal file and inspected the subject site. I will examine this case under the following headings:

- Planning History

- Former Use of the Property and Access
- The Alleged Right of Way
- Other Matters

8.2 Planning History

8.2.1 Originally, there was a referral case, ABP-308442-20, in relation to the construction of the subject fence, a pedestrian gate and a vehicular gate on the road at the Former Angler's Rest, Doonass Demense. The decision on ABP-308442-20 was quashed by the High Court and remitted back to the Board for a fresh determination. A new file was opened under reference ABP-31390-22, and it was determined the development was not exempt having regard to Article 9(1)(a)(x) as it would constitute the construction of a fence, a pedestrian gate and vehicular gate on a road which was habitually open to or used by the public during the 10 years preceding the construction of the fence, a pedestrian gate and vehicular gate on the road for recreational purposes or as a means of access to any riverbank or other place or recreational utility.

8.2.2 The reporting inspector assessed the merits of the cases presented by the current applicant/ landowners and the third parties and concluded based on the information presented that it had not been clearly demonstrated that the lands enclosed by the fence, pedestrian gates and vehicular gate on the road do not relate to lands that were habitually open or used by the public during the 10years preceding the fence and gate being erected as a means to access to the river bank for recreational purposes.

8.3 Former Use of the Property and Access

8.3.1 The subject development relates to a vehicular and pedestrian gate only to what is described in the public notices as an 'existing dwelling'. The applicants have stated on appeal that they are not going to engage with the historical access arguments presented by the third parties. The applicants submit that the 'way' referred to by the third parties in their submissions is not recorded, and that no such 'way' exists.

8.3.2 The Planning Report on the file of the planning applications stated the land registry details for this property were examined by the planning authority, (Folio CE58407F) which indicated the premises has been owned by the applicants since 2018. In

addition, there are no details on the land registry documents in terms of any right of way or any right of passage exists at the property. According to the planning report, it further stated as per the land registry details that: "The property is subject to the sporting rights within the meaning of the Irish Land Act, 1903, reserved by Fiat of the Land Commission". Sporting rights within the meaning of the Irish Land act 1903 do not include a general right to members of the public to pass through or cross over an area of land. Sporting rights under the Irish Land Act 1903 do include a limited right to pass through the land, but this right exists solely to allow the exercise of the sporting rights themselves. It is not a general right of public access or a general easement of passage. The planning authority considered that matters relating to determining rights of ways are not issues for the Planning Authority to determine and any disputes arising over same are considered to be matters for the Courts to determine.

- 8.3.3 As stated on the file, the former use of the premises for a considerable period was as a public house, called the Angler's Rest, with associated parking. The public house also included accommodation. One of the observations on appeal (Mr. Timothy O'Donoghue's submission) included a special report on the right of way issue at Angler's Rest, prepared on behalf of the third parties in the community dated 20th of May 2022. This report includes historical mapping and photographs of the site and immediate area. The applicant's have made no comment or disputed any of contents of the report when requested by the Coimisiun.
- 8.3.4 Also included with Mr. Timothy O'Donoghue's submission are two letters from former owners of the Angler's Rest public house confirming the public had public access to the banks of the River Shannon from an unregistered right of way which ran along the eastern gable of the building. The gate and fencing the subject of this appeal now block/ obstruct and close off the former unregistered right of way.
- 8.3.5 Although this appeal relates to the fence/ gateway only, to an existing dwelling, I cannot find the planning history relating to the change of use from a public house with accommodation to a dwellinghouse. In my opinion, the change of landuse as described, constitutes a material change of use. There was a temporary exemption of vacant public houses under the Planning and Development Regulations 2022, however this would have required confirmation prior to the end of 2025. The applicants have not confirmed same. Therefore, based on the evidence on the file, I

am not satisfied the property on the overall site is authorised as a dwellinghouse on the subject site. Therefore, the nature and extent of the development for retention in the public notices as an 'existing dwelling' is questionable. On this basis, to grant planning permission for retention of the development would in my opinion, consolidate and intensify an unauthorised use on the overall site.

8.4 The Alleged Right of Way

8.3.6 As stated, the former owners of the public house, Angler's Rest, have confirmed on appeal that there was public access to the riverwalk for recreational purposes.

During the sale of the property, it was stated in the Sale of Conditions (Mr. Timothy O'Donoghue's submission), that the bidders for the property should be aware there may be an unregistered right of way at the property.

8.3.7 The Right of Way remains unregistered, both on the registered owner's Land Folio maps and in the Clare County Development Plan 2023-2029 (Appendix 6).

8.3.8 The alleged right of way issue is an emotive issue for the local community who made strong objections to the obstruction of the public access across the property along the eastern side of the gable of the building. The photo plates taken during my inspection illustrate clearly the current status on site of the gates at this location. The appellant and observers have made a strong case that the right of way has existed for generations, not only providing access to the River Shannon for amenity and recreational purposes, but the alleged right of way provided access to historical sites. It is stated that right of way or right of passage forms a significant and long established passage to historic sites forming an intrinsic part of the local cultural and historical heritage of Doonass.

8.3.9 In my opinion, it is beyond the legal remit of the Coimisiun and the planning legislation to determine the validity of the alleged Right of Way. In addition, the former use of the premises was a public house with open access to the front of the property, which differs materially from the current use as a dwellinghouse. In my opinion, this dispute would need to be resolved in the Courts under perhaps the Land and Conveyancing Law Reform Act 2021, however, I am not familiar with the correct legislation. I can only advise there is no provisions under the Planning and Developments Acts or Regulations to adjudicate on such disputes. Section 12 of the Planning and Development Act 2000 as amended, was in place at the time of the

adoption of the current Clare County Development Plan 2023 2-29 and the location was not listed as a public right of way.

8.3.10 I note from the Planning Report on the planning application file that Clare Co. Co. cited the '*Development Management – Guidelines for Planning Authorities*' Department of the Environment Heritage and Local Government 2007, Section 5.13- 'Issues relating to Title to Land':

"The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.

8.3.11 Accordingly, only where it is clear that the applicant does not have sufficient legal interest should permission be refused on that basis. In this instance, it is not clear. However, the applicant did not provide the information to the planning authority, who examined the Land Registry maps independently. In this case the planning authority was satisfied that the applicants are the owners of the subject lands and hence have a legal right to make this application and any disputes arising over same are considered to be matters for the Courts to determine.

8.3.12 I note the planning authority did not include the stated footnote (section 34(13) of the Planning Act) in its decision to grant planning permission. Furthermore, the planning authority firmly and objectively based its decision on the Land Registry Maps which include no right of way and confirm the applicants are the landowners. It did not take into consideration the historical case presented by the third parties. Nor did the planning authority take into consideration the description of the development in the public notices describing a land use as a 'dwelling' and if an authorised change of use had occurred on the site. Therefore, I would question the accuracy of the public notices.

8.3.13 I concur with the advice included in the '*Development Management – Guidelines for Planning Authorities*' Department of the Environment Heritage and Local Government 2007, the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are

ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. It is not within the remit of the Coimisiun to decide on this dispute regarding the unregistered or alleged right of way. The applicant provided no counter argument or substantive evidence on appeal or throughout the planning application to the claims made and the evidence presented by the third parties, regarding the historical public access across the site. The applicants simply stated that 'way' referred throughout the appeal is not recorded and the Coimisiun cannot make a finding on this way because the applicants claim no such way exists. In my opinion, the third-party submissions demonstrate otherwise, in particular The Report of Denis McKeon dated 20th of May 2022, and based on the detailed historical evidence presented and from former owners, there may have been public right of way at the location, maybe a historical one or one associated with the former public house landuse. Again, I reiterate, in my opinion, this is not a material planning consideration, it is a civil matter.

8.3.14 Based on the evidence presented on the appeal file, the issue of the alleged unregistered right of way remains inconclusive. The issue may require further resolution under the appropriate procedures and legislation. I am unaware of any similar precedent to this case in planning terms. I am recommending a refusal in this case, however should the Coimisiun decide to uphold the planning authority's decision, I would advise including a section 34(13) of the Planning Act as footnote

8.4 Other Matters

8.4.1 The retention of a vehicular and pedestrian entrance across an existing access, which is a long-established access in private property, does not create a traffic hazard. The property is located at the end of a cul de sac adjacent to a graveyard. There are no traffic implications associated with the public road.

8.4.2 There is no site-specific objective in the Clare County Development Plan relating to the recreational and activities along the River Shannon at this location. Therefore, although it is national policy to increase physical activity in the interests of public health, this policy is not directly related to the subject site.

8.4.3 The visual impact of the gates at this location is minimal. The gates are not visible from a wide area. This is not a scenic area. The gates do not seriously impact on the visual amenities of the area.

9.0 AA Screening

9.1. Having regard to-

- the nature and scale of the development for retention in this rural area,
- the separation distances of the site to the nearest European sites (the Lower River Shannon SAC (Site code: 002165))
- the absence of any direct pathway between the appeal site and these European sites,
- the hydrological distance of indirect pathways to these European Sites via roadside drainage ditches,

no Appropriate Assessment issues are considered to arise, and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

10.0 Water Framework Directive

10.1. The subject site is in a rural area in close proximity to the River Shannon

The works the subject of the retention application, comprise of minor alterations including gates, pedestrian and vehicular with associated fencing, with no significant construction works anticipated.

10.2 There is a watercourse along the southern boundary of the site is located circa 70m from the gates. An assessment of the proposed development has been undertaken with regard to the objectives set out in Article 4 of the EU Water Framework Directive. Having considered the nature, scale and location of the development for retention it is concluded that the proposal will not result in any risk of deterioration in the status of any water body, including surface waters (rivers and lakes), groundwater, transitional waters, or coastal waters. This applies to both qualitative and quantitative status, and in respect of temporary and permanent effects.

The development will not adversely affect the achievement of established environmental objectives, including the protection, maintenance, and improvement of water body status, as required under the Directive. Accordingly, the subject development is considered to be compliant with the requirements of Article 4 of the Water Framework Directive.

11.0 Recommendation

- 11.1. I recommend that the planning authority's decision to grant planning permission for retention of the gates be overturned and the development be refused.

12.0 Reasons and Considerations

On the basis of the submissions made in connection with the planning application and appeal, it appears to the Coimisiun that the development may relate to a use of which is unauthorised dwelling use for the carrying on of vehicular and pedestrian gates to same and that the development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Coimisiun to consider the grant of a permission for the proposed development in such circumstances.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way."

Caryn Coogan
Planning Inspector

11/08/2026

Appendix 1: Form 1 EIA Pre-Screening

Case Reference	PL501297-CE-26
Proposed Development Summary	Retention of vehicular and pedestrian entrance gates to existing dwellinghouse
Development Address	Doonass Demense, Clonlara, Co. Clare
IN ALL CASES CHECK BOX / OR LEAVE BLANK	
1. Does the proposed development come within the definition of a 'Project' for the purposes of EIA?	☐ Yes, it is a 'Project'. Proceed to Q.2.
	☒ No, No further action required.
(For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here

☐ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____