

AN BORD PLEANÁLA
LDG- LDG-008698-18
ABP- _____
03 OCT 2018
Fee: € 50 Type: Cheque
Time: _____ By: Reg.
cc

6 Royal Canal Terrace
Broadstone
Phibsborough
Dublin 7

By Registered Post

An Bord Plenala
64 Malborough Street
Rotunda
Dublin 1
D01 V902

30th September 2018

Re: Revision to Approved Granny Flat – 5 Royal Canal Terrace, Broadstone, Dublin 7 - APB-302528-18

Dear Sirs,

We refer to the above mentioned appeal for consideration by An Bord Planeala (the "Bord"). We are the owners of the adjoining property No. 6 Royal Canal Terrace and wish to make a number of observations in connection with the appeal.

The origin of this appeal lies in a planning application by the appellant to Dublin City Council in 2011 (Ref: 2026/11). The stated purpose for the development in the application documents was to provide accommodation for his mother, who died in 2016. Planning permission was granted and we appealed that decision to the Bord (Ref: PL 29N 238610). The Bord confirmed the grant of permission subject to a number of conditions and building commenced in earnest in June 2016.

The first condition of the grant of planning permission by the Bord was that *"the development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as otherwise may be required in order to comply with the following conditions. Where such conditions require such details to be agreed with the planning authority the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars."*

The development is not yet completed, however it is clear that the appellant does not intend to complete the development in accordance with the first condition of the grant of planning permission i.e. in accordance with the plans and particulars lodged.

The second condition of the grant of planning permission was that *"the ancillary family accommodation shall be incidental to the use of the main house. It shall not be sold or let as an independent living unit. Once the accommodation is no longer required to ancillary accommodation purposes, it shall revert back to being part of the original family house in accordance with the*

submitted Reversion Floor Plan shown in Drawing Number PKA0111-3 submitted to the planning authority on 13 January 2011."

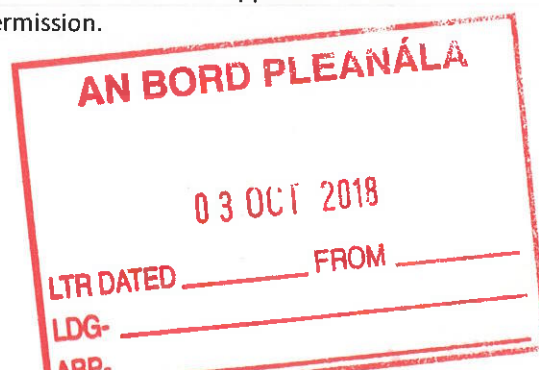
An influencing factor in the application and granting of permission was the family circumstances at the time and the desire to provide accommodation for the appellant's mother. Without such a factor the application would have been an application for a mews development and in accordance with the Dublin Development Plan the location is not suitable for a mews development. The appellant stated in the original application that the accommodation would be used to accommodate his mother and he further stated that *"a grant of planning permission conditioned to limit the residential use of the development to a specific period, after which its continued residential use would be subject to a further planning application or would revert to its original non-residential use, would be acceptable."*

The Bord's planning inspector, Deirdre MacGabhann notes in her report dated 20 June 2011 *"The applicant proposes that when the accommodation is no longer needed for his mother, that it be returned to a garage/workshop and garden room. He has indicated his willingness to accept any such condition. This approach seems reasonable and consistent with practice in respect of such accommodation. Any on-going use of the accommodation as ancillary accommodation would require an application for planning permission or enforcement action as appropriate."* The Bord's order under the heading Reasons and Considerations notes *"the temporary nature of the proposed use and proposal for reversion when the temporary use ceases."*

As the development cannot be required for its stated ancillary accommodation purpose (i.e. the provision of accommodation for the appellant's late mother) it should be completed in accordance with the Reversion Floor Plan shown in Drawing Number PKA0111-3 submitted to the planning authority on 13 January 2011. It appears from the appeal documentation that the appellant intends to complete the development and use it for different ancillary accommodation purpose. This contravenes condition two and amounts to a clandestine application for a mews.

The appellant, who is an architect with over 40 years' experience, states that compliance is not defined in the Planning and Development Act 2000 (as amended) our contention is that he should be aware of what is meant by compliance with the conditions of planning permission. Our expectation is that the development is built to the dimensions and includes the features and finishes shown on the drawings submitted as part of the application and does not include any features or finishes which are not shown on those drawings.

Article 9 of the Planning and Development Regulations 2001 (as amended) sets out restrictions on exempted development and states "(1) Development to which Article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would – (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a condition under the Act." As the modifications and extension described in the Section 5 request were carried out at the time of construction of the granny flat (i.e. before completion of the permitted development) this conflicts with first condition of the grant of planning permission and in accordance with Article 9(1) the modifications are not exempt. Also by not completing the development in accordance with the Reversion Floor Plan the appellant is not complying with the second condition of the grant of planning permission.



In essence by this appeal the appellant is asking the Bord to overturn its previous decision. We believe the Bord does not have the authority to consider an appeal of its own decisions. The mechanism to appeal a decision of the Bord is to request a judicial review within a specific time of the Bord's decision being published.

While the appellant admits that the development is not being completed in accordance Condition 1 of the grant of permission, he is suggesting that *"the deviations are minor and frivolous and does not represent a significant material variation to the approved design, nor does it have any deleterious effect on the proper planning and development of the area."* However, we disagree with this assertion for the following reasons:

1. Chimney flu - on the roof of the development which will discharge noxious fumes into our garden was not shown on the original drawings and therefore contravenes the terms and conditions of grant of planning permission.
2. Velux window - on the roof of the development abutting the property of No. 6. This was not shown on the original drawings and therefore contravenes the terms and conditions of grant of planning permission. The original drawing shows a roof light and there is no mention of it opening yet in the appeal the appellant has replaced the non-opening roof light with an opening Velux. According to the FAQ section on the Planning Section of the Dublin City Council in order to be exempt a window at ground level should be at least one metre from the boundary it looks onto. It also states that if Velux windows are proposed to the side/front elevation the development is not exempt. The Velux window on the side of the development and facing into our garden is less than one metre from the boundary. If you take the view that this window is above ground level the website states that a window at above ground level is required to be at least 11 metres from the boundary to which it faces. Again this Velux window is less than the permitted distance. The window facing onto the lane at the back of the development faces directly onto the boundary.
3. Integrated guttering - on the development between the properties of No. 5 and No. 6 Royal Canal Terrace there is not an integrated guttering system as shown on the original drawing submitted and therefore contravenes the terms and conditions of grant of planning permission.
4. Cladding - an industrial type metal cladding has been fixed on the north wall of the development, which faces into our garden. This is not visible from the appellant's property. The application stated that this wall would be rendered and this industrial type metal cladding, which does not appear on the drawings, contravenes the terms and conditions of grant of planning permission.
5. Drainage - The appellant contends that he acquired an interest in the private lane and is "one" of the owners however at the time of granting of planning permission and in line with the drawings submitted the development does not comply with permission granted and therefore contravenes the terms and conditions of grant of planning permission. If the appellant has acquired the fee simple and some part of ownership of the private lane it is subject to the right of way and the egress of the other residents on the terrace (approximately 15 in number).
6. Drainage - the plans submitted and the revised plans submitted do not show and disclose the discharge pipe placed on the exterior of the rear wall by the appellant (see picture attached).

AN BORD PLEANÁLA

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7. Window on lane - not shown on the original drawings and therefore contravenes the terms and conditions of grant of planning permission. The window facing onto the lane at the back of the development faces directly onto a boundary.
8. Party wall between No. 5 and No. 6 in the laneway - the corner of the wall between the garages of No 5 and No. 6 was curved to facilitate vehicular access between the lane and the garage of No. 6. This was designed by the appellant when acting for the previous owner of No. 6 Royal Canal Terrace in circa. 1982. The appellant squared the corner on this party wall (without our knowledge, consent or agreement in February/March 2018) which has resulted in a reduction in the turning circle available and renders it virtually impossible for us to take our car out of our garage, resulting in a loss of our amenity. This was an integral point in our observation to the Planning Application No. 3941/10 by the appellant for the extension and conversion of an existing garage for use as a detached two storey granny flat at the rear of his premises in 2010 (which was withdrawn by the appellant). In the planning application documents the appellant's stated that *"Parking and access are readily accommodated in the lane this will be unaffected by the construction of the Granny flat."* The application also stated that *"Internal insulation is now proposed to obviate any encroachment (40mm) on the Lane"*. Clearly by squaring the curve on the corner of the wall an encroachment has occurred and our access to the lane has been hindered. This is an ongoing interference with our use of our amenities (picture attached) and it is only a matter of time before our car is damaged while taking it out of our garage.
9. Revision of Extension Roof Overlap - not show on the original drawings and therefore contravenes the terms and conditions of grant of planning permission.
10. Purpose - the central argument to the appellant's application was that the development was to accommodate his mother and the grant of permission was time critical. Permission was granted in 2011. The development commenced in earnest in 2016. The development is a self-build by the appellant. Sadly the appellant's mother passed shortly after the commencement of the development (some 5 years after the grant of permission). We contend that the reversion plans as submitted by the appellant are now the basis on which the development should be completed pursuant to the planning permission granted.

On their own one, or maybe two, contraventions of the conditions of grant of planning permission could be considered 'non-material'. However as we have pointed out there are at least 10 points on which this development contravenes the original grant of planning permission and this cannot be considered immaterial.

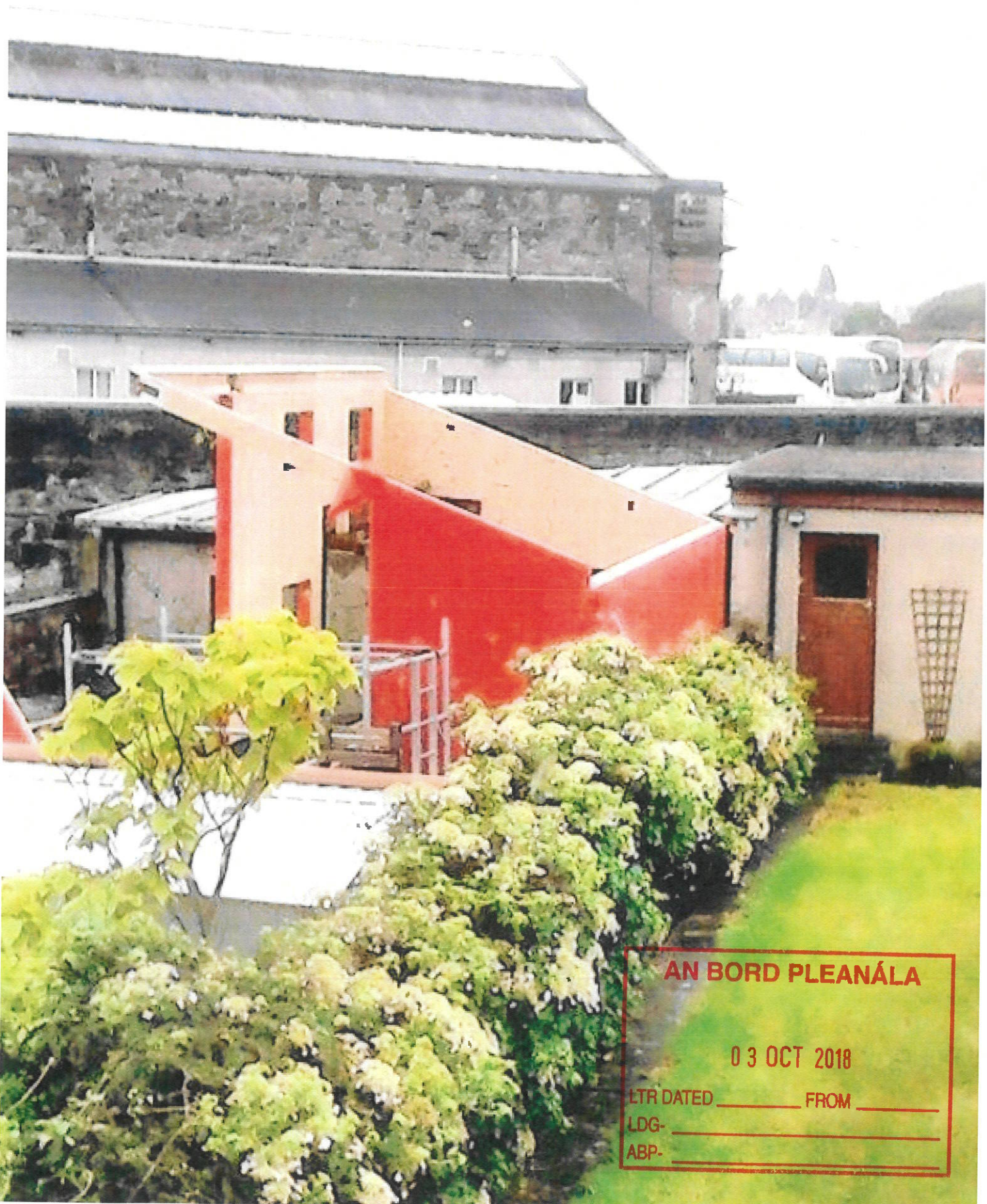
We also completely deny any allegations of intimidation, harassment by the appellant. In fact we sought to assist the appellant with his development.

Yours faithfully,


Treasa & Kenneth Faulkner

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12 June 2016



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23 December 2016

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22 April 2017

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13 June 2018



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26 May 2018

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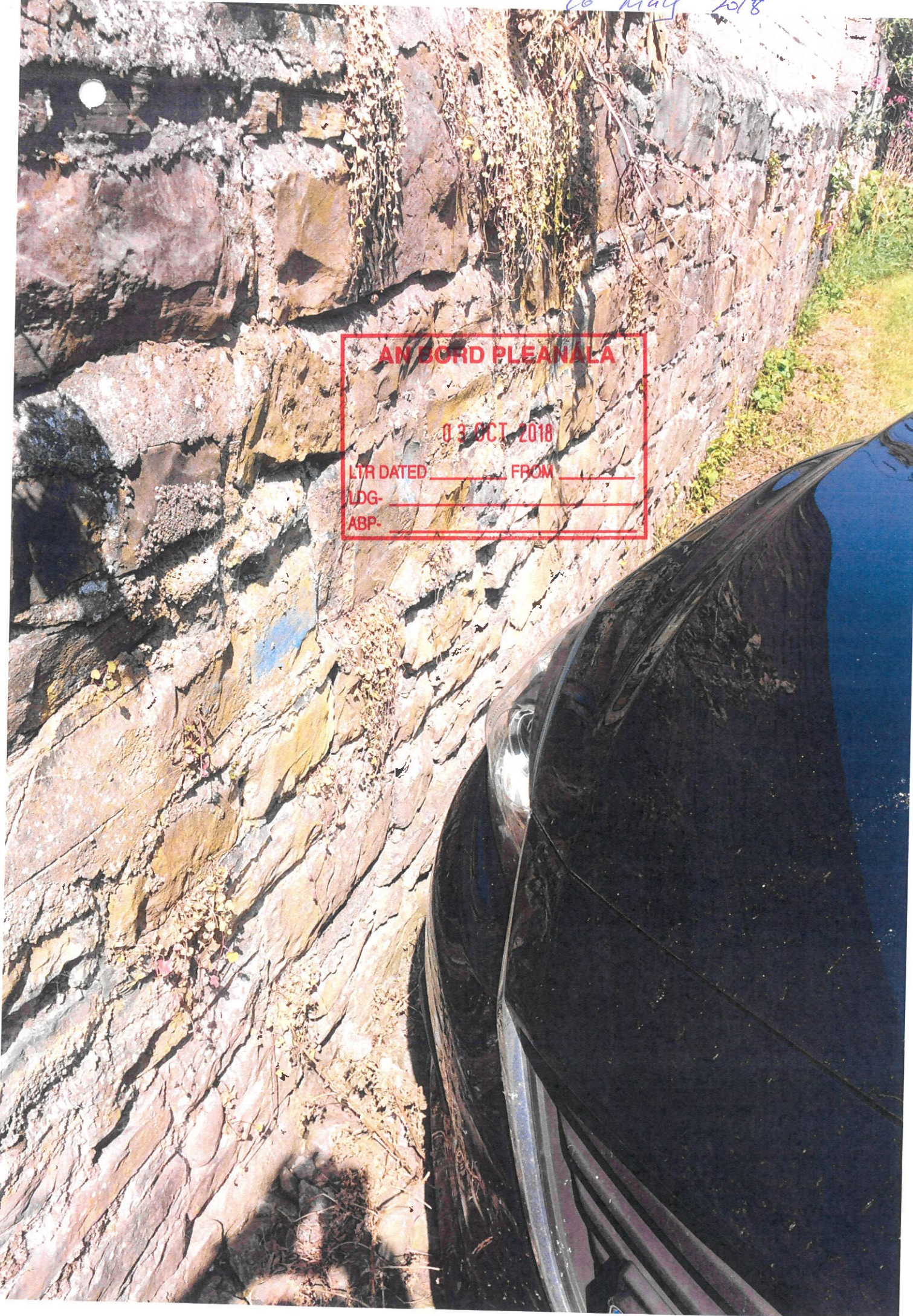
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3 April 2018

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23 September 2018

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26 May 2018



AN BORD PLEANÁLA

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