

File With _____

SECTION 131 FORM

Appeal NO: PL 305880-19

Defer Re O/H

TO:SEO

Having considered the contents of the submission dated received 10/12/19
from

Killiney Estates Ltd I recommend that section 131 of the Planning and Development Act, 2000
be not be invoked at this stage for the following reason(s): new issues raised

E.O.: Soncha Skelly

Date: 3/1/20

To EO: _____

Section 131 not to be invoked at this stage.

Section 131 to be invoked – allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

Mr. Cannon

Please prepare BP RL70 - Section 131 notice enclosing a copy of the attached submission

to: All Parties

Allow 2 3/4 weeks – BP Tsk-152630-20

EO: Soncha Skelly

Date: 3/1/20

AA: John

Date: 6/1/20

File With _____

CORRESPONDENCE FORM

Appeal No: PL 305880-19

M. Cannon

Please treat correspondence received on 10/12/19 as follows:

1. Update database with new agent for Applicant/Appellant <u>Agent Updated</u> 2. Acknowledge with BP <u>BPRL20</u> 3. Keep copy of Board's Letter <input type="checkbox"/>	1. RETURN TO SENDER with BP _____ 2. Keep Envelope: <input type="checkbox"/> 3. Keep Copy of Board's letter <input type="checkbox"/>
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Amendments/Comments
<u>Owner/owner response to referral</u>

4. Attach to file (a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/> (b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/> (c) Processing <input type="checkbox"/>	RETURN TO EO <input type="checkbox"/>
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	Plans Date Stamped <input type="checkbox"/> Date Stamped Filled in <input type="checkbox"/>
EO: <u>Donna Skelly</u>	AA: <u>[Signature]</u>
Date: <u>12/12/19</u>	Date: <u>13/12/19</u>

An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01V902.

AN BORD PLEANÁLA	
LDG- _____	
ABP- _____	
10 DEC 2019 <i>dot</i>	
Fee: € _____	Type: _____
Time: <u>16:30</u>	By: <u>hand</u>

10th December 2019

Dear Sir / Madam,

RE: RESPONSE TO DLRCC REFERRAL IN RESPECT TO THE ERECTION OF A FENCE AT ELMFIELD / CASTLE COURT, BALLYOGAN ROAD, DUBLIN 18

ABP REF.: 305880-19

DLRCC REF.: 93/19

1.0 Introduction

On behalf of our client, Killiney Estates Limited, The Herbert Building, The Park, Carrickmines, Dublin 18, we hereby wish to respond to the Section 5 Referral made by Dun Laoghaire Rathdown County Council to An Bord Pleanála in respect to the erection of a 1.2 metre high fence at Elmfield, Ballyogan Road, Dublin 18.

We enclose a copy of your letter dated the 14th November 2019, as Appendix 1 of this correspondence, inviting a response to the above referenced referral within a period of 4 weeks.

Killiney Estates Limited are a company within the Park Developments group. Viscount Securities, a separate company within the Park Developments group own the Clay Farm lands to the east of the subject lands, where a substantial residential development, including a significant portion of the 'Clay Farm Loop Road' is currently being delivered.

The Planning Authority have issued a referral to the Board asking whether the erection of a fence across an existing / planned roadway within the planning authority's area is or is not development and is or is not exempted development'.

Before addressing the issue of whether the 1.2 metre high fence erected on private lands at Elmfield is or is not exempted development, it is considered necessary to provide some background information of relevance to the matter, as set out below.

Managing Director: John P. Spain BBS MRUP MRICS ASCS MRTPI MIP

Executive Directors: Paul Turley BA MRUP Dip Environmental & Planning Law MIP Rory Kunz BA (MOD) MSCFRM MAT&CP Dip EIA Mgmt MIP
Stephen Blair BA (Mod) MRUP MIP MRTPI Mary Mac Mahon MSc TCP Pg Dip MSP Pg Dip Env Eng Dip Env Plg Low Dip Mgmt Dip EIA & SEA B Soc Sc MIP

Senior Associate Director: Stephanie Byrne BA MRUP MIP

Associate Director: Blaine Cregan B Eng BSc MSc

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

Associate Offices:

London

Manchester

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2.0 Background

In addressing the issue raised in the Planning Authority's referral, it is considered necessary to provide the Board with details of the planning / ownership position of adjacent lands of relevance to the matter in question, specifically Clay Farm Loop Road and future access to the Castle Court / Elmfield section of the Clay Farm Loop Road to the west of Phase 1C of the Clay Farm development. The letter attached as Appendix 1, prepared by Matheson Solicitors to accompany the Phase 1C SHD application (ABP Ref.: ABP-304288-19), provides a useful overview of land ownership in this immediate area.

We note that recent permissions (Phase 1, Phase 2 and amended Phase 1C) from the Planning Authority / An Bord Pleanála permitted access to Phase 1C of the Clay Farm development via the Ballyogan Road junction on the eastern section of the Clay Farm Loop Road and a temporary access road from Phase 1A/B to Phase 1C until such time as the Planning Authority can facilitate the access to the west onto the Clay Farm Loop Road at Castle Court / Elmfield.

Park Developments have delivered the eastern section of the Clay Farm Loop Road up to the Eco Park as part of the Clay Farm Phase 1A and 1B development. As part of the Clay Farm Phase 2 development they have recently completed the construction of the bridge section of the Loop Road across the Eco Park and are constructing on a phased basis the remaining section of the Loop Road on lands within their control (see overview of Phase 1 and 2 lands below).

Thus, the applicant is delivering significant local road infrastructure, a local park and over 1,300 residential units as part of the Phase 1 and Phase 2 developments at Clay Farm.

Figure 1: Phasing Proposals for Park Developments Lands at Clay Farm



The Board in granting permission for the Phase 1 and Phase 2 Clay Farm developments in their entirety have accepted that it is appropriate for these units to be accessed via the eastern access of the Loop Road onto Ballyogan Road in advance of the full Loop Road being delivered in full or access being available to the Castle Court / Elmfield section to the west, both of which are beyond the applicant's control.

As the Board will be aware from recent applications in the area, the Planning Authority have secured LIHAF funding to deliver the other sections of the Loop Road outside of Park Developments control. However, a Part 8 application for the remaining sections of the Loop Road has not been brought forward to date by the Planning Authority or otherwise to deliver on this LIHAF funding.

The Phase 1C element of the Clay Farm Phase 1 development, will continue to utilise the access from Ballyogan Road until such time as the permanent access to the Castle Court / Elmfield section of the Loop Road to the west is facilitated by the Planning Authority, which will require all ownership issues relating to the delivery of the full extent of the Loop Road to be addressed.

It is not within Park Development's control to provide the connection from Phase 1C to the Castle Court / Elmfield section of the Clay Farm Loop Road due to a third party ownership issue, i.e. as illustrated in Figure 2 below the immediate lands to the west are in separate ownership (i.e. Deane Homes land).

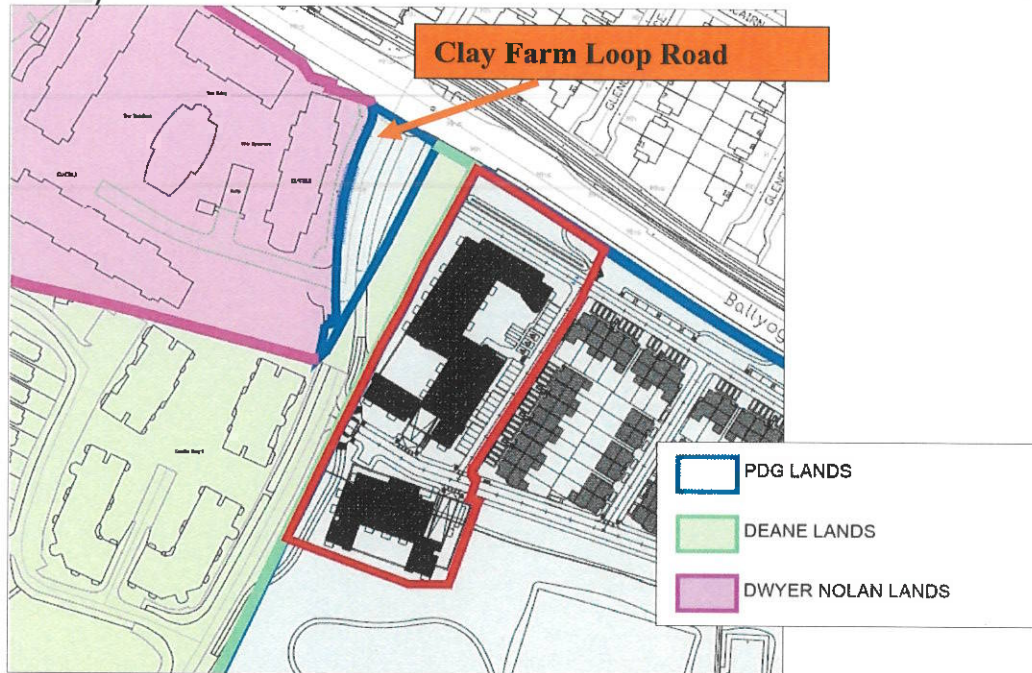
We acknowledge that the Planning Authority has engaged with the relevant landowners in seeking to facilitate this access and to take in charge the western section of the Loop Road, a process that Park Developments have readily engaged in. However, a solution has not been forthcoming, and we understand this is due to the other landowner not engaging meaningfully in the process.

Park Developments have confirmed in previous discussions with the Planning Authority that they will offer the section of the Loop Road at Elmfield / Castle Court within their control for taking in charge once the Planning Authority can facilitate the delivery of the western section of the Clay Farm Loop Road, including access from Phase 1C.

It is submitted that the Planning Authority could resolve the ransom strip issue, i.e. the section of land held by Deane Homes which restricts access from Phase 1C to the Castle Court / Elmfield section of the Loop Road, and the connection of the Loop Road to the residential zoned lands to the south, through a compulsory purchase order or potentially through their taking in charge powers.

Due to the ransom strip of land which is held and relied upon by a third party and which is restricting access from Phase 1C to the Elmfield section of the Loop Road, Park Developments intend to leave the 1.2m high fence in place on their lands until such time as access is facilitated by the adjacent landowner to the south, or alternatively the Planning Authority resolve the issue through their CPO powers and thereby facilitate the full extent of the Loop Road for the benefit of all landowners.

Figure 2: Land Ownership Context (Phase 1C Apartment Scheme outlined in Red)



The applicant has already confirmed to the Planning Authority and reiterates in this response to this referral that they will consent to the Planning Authority taking in charge that part of the Clay Farm Loop Road within their ownership to the north west, when the Planning Authority resolve the ownership issues restricting the delivery of the western section of the Loop Road, including access from Phase 1C to the adjacent section of the Loop Road.

Park Developments stand ready to deliver the connection from Clay Farm Phase 1C to the Castle Court / Elmfield section of the Clay Farm Loop Road subject to the Planning Authority facilitating or granting the necessary legal rights to facilitate the delivery of the connection.

In summary, there is no present legal mechanism to allow Park Developments to connect the Clay Farm Phase 1C lands to the Clay Farm Loop Road / Elmfield to the west due to the fact that a strip of land located along the western boundary of Clay Farm 1C is owned by a third party (as demonstrated above in Figure 2). The third party which own the lands referred to have not granted any legal rights over such lands to our client and our client applicant cannot legally compel a third party to grant legal rights over their lands.

3.0 Previous Warning Letters

The Planning Authority has issued warning letters in the past in respect to the erection of a fence / barriers on the subject section of lands within Park Developments control, i.e. the lands the subject of this referral.

At that time Park Developments outlined the ongoing discussions that were being undertaken with various sections of the Planning Authority to address the ownership issues restricting access from the Castle Court / Elmfield section of the Loop Road by third party landowners.

The warning letters were not pursued as enforcement matters by DLRCC and our client was of the understanding that this was due to the Planning Authority making a decision that enforcement proceedings were not warranted and appreciating the concerns which Park Developments have regarding the opening of the Property to provide unrestricted access to third parties.

At this time, DLRCC agreed to investigate the "*Section 11 acquisition process*" (Roads Act relating to CPO of lands) further, for the purposes of the compulsory acquisition of lands by DLRCC to facilitate the delivery of the full extent of the Loop Road and the subsequent ability of DLRCC to then grant rights to Park Developments (or its nominee(s)) over the compulsorily acquired Deane lands to assist in the development of the "Clay Farm" lands.

The recent referral which we are now responding to came as a surprise to our client as there had been no recent discussions in respect to resolving the access issues to Phase 1C from the Castle Court / Elmfield section of the Loop Road or delivering the remaining western section of the Loop Road as provided for under the LIHAF funding.

4.0 Erection of Fence- Exempted Development

The Planning Authority allege that the erection of the 1.2 metre high fence on Killiney Estates Limited (Park Developments) lands is not exempted development due to previous planning permissions relating to access roads permitted in this location.

The permissions referred to are Reg. Ref: D00A/1256 / ABP Ref.: PL06D.125017 (Castle Court) and Reg. Ref.: D03A/0411 (Elmfield). Castle Court was developed by Deane Homes and Elmfield was developed by Dywer Nolan. As outlined above, Deane Homes have retained ownership of a strip of land which prevents access from Phase 1C to the planned Loop Road.

We note that both permissions referred to in the Planning Authority's referral have expired and therefore those unimplemented elements of the permission fall away. If the Planning Authority had ensured compliance with the conditions referred to in the Referral before the permissions expired the issue now at question would not have arisen.

Park Developments (Killiney Estates Limited) purchased the section of road and associated lands, highlighted in Figure 2 above, in June 2009, i.e. following the expiry of the above referenced permissions, which our client was not involved in implementing. This purchase was made in order to protect their property rights in terms of access to the Clay Farm lands from Phase 1C.

Following purchase of the lands a barrier was erected and subsequently replaced with a 1.2m fence on the southern section of the Killiney Estate Limited lands.

It is respectfully submitted that as the 1.2m high fence is on a section of land which is in private ownership that Park Developments (Killiney Estates Limited) have the right to

erect such a fence under the Class 11 exemptions as set out in the table below, in order to secure their lands from adjoining land.

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 11 The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –</p> <p>(a) any fence (not being a hoarding or sheet metal fence), or</p> <p>(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p>1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.</p> <p>2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.</p>

If the Planning Authority wish to open this road to the public and to surrounding lands, for the benefit of all landowners, they need to investigate further how this can be facilitated under the Section 11 / CPO process, as previously discussed with Park Developments. Park Developments are happy to work with the Council in delivering the full extent of the Clay Farm Loop Road provided it is for the benefit of all landowners.

It is submitted that the road constructed on the subject property, which provides access to Elmfield, is a private road owned by Park Developments (Killiney Estates Limited). Without the erection of the 1.2m fence, third party vehicular and pedestrian traffic would be able to (1) trespass on the property giving rise to unacceptable health and safety and associated insurance concerns and (2) may allow for the accrual of property rights by third parties over part or all of the property, all to the detriment to Park Developments.

The measures that Park Developments have taken are to best protect their property and all rights which they hold therein and in the interest of health and safety, having regard to the public. No third party is prejudiced; as no right of way or easement has been legally granted in favour of a third party over that part of the property upon which the temporary concrete barriers have been placed.

We note that the permissions the Planning Authority refer to in the Section 5 referral, relating to the Castle Court (Dwyer Nolan) and Elmfield (Deane Homes) developments, date from the early 2000's and have now expired, and therefore the conditions referred to are not of relevance to the exemptions associated with the erection of a 1.2m high fence. As noted above, the Planning Authority should have ensured compliance with any conditions pertaining to the permissions at the time of implementation.

We also note that a barrier, mound or fence has been in place on this section of the Elmfield access road for a period in excess of seven years, it is considered that Section 157 (4) of the Planning & Development Act 2000, as amended, is applicable, which states that no enforcement proceedings may be taken *'in respect of a development*

where no permission has been granted, after seven years from the date of commencement of the development'.

As set out in section 2 above, it is respectfully submitted that Park Developments are not seeking to stymie the delivery of Clay Farm Loop Road, but rather seeking to protect their property rights through the erection of a 1.2m fence on lands within their control. It is apparent from section 2 above, that Park Developments are actively delivering a substantial portion of the Loop Road and have advised the Planning Authority on a number of occasions of their willingness to have the adjacent section of Elmfield taken in charge once access the third party ownership issues restricting the full delivery of the entire Loop Road, including access to Phase 1C, are addressed. Once the western section of the Loop Road, i.e. adjacent to Elmfield and Castle Court and connecting to the residential zoned lands to the south, is taken in charge the fence would be removed as the road would become public.

5.0 Conclusions

This report provides a response to the Section 5 referral submitted by Dun Laoghaire Rathdown County Council to An Bord Pleanala seeking a declaration as to whether the erection of a 1.2 metre fence on lands within Park Developments (Killiney Estates Limited) ownership is development and is or is not exempted development.

The response above provides the relevant background information to the subject lands and the context to the erection of the 1.2 metre fence. It is submitted that as the 1.2 metre fence is on private lands and that the relevant permissions referred to had expired by the time the current landowner purchased the lands and erected the fence that the conditions referred to under previous permissions do not de-exempt the subject development.

As discussed previously with the Planning Authority, Park Developments already confirmed to the Planning Authority, and reiterates in this response to this referral, that they will consent to the Planning Authority taking in charge that part of the Clay Farm Loop Road within their ownership to the north west, when the Planning Authority resolve the ownership issues restricting the delivery of the western section of the Loop Road, including access from Phase 1C to the adjacent section of the Loop Road.

We would be happy to clarify any aspect of this submission if this would be of assistance

Yours faithfully,

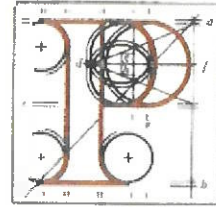


John Spain
Managing Director

APPENDIX 1- ABP CORRESPONDENCE

Our Case Number: ABP-305880-19

Planning Authority Reference Number: 93/19



An
Bord
Pleanála

Killiney Estates Limited
The Herbert Building,
The Park,
Carrickmines,
Dublin 18

Received 15/11/19
CC - suw/PMC /GM/MC
- Paul Tierley.

Date: 14 November 2019

Re: Whether the erection of a fence across a planned roadway within the planning authority's area is or is not development and is or is not exempted development.
Elmfield, Ballyogan/Castle Court Lands (Clay Farm Loop Road)

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please quote the above referral number in any further correspondence.

Yours faithfully,

John Cannon
Administrative Assistant
Direct Line: 01-8737183

BPRL05

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APPENDIX 2- MATHESON LETTER RE: CLAY FARM LOOP ROAD AND LAND OWNERSHIP

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Matheson

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Your Ref

17 April 2019

Our Ref
BDO 1881/548

Dear Sirs

Our Client: Viscount Securities Unlimited Company (a member of the Park Developments Group of companies) ("Viscount")
Re: Lands at Clayfarm, Leopardstown, Dublin 18 the subject matter of Planning Permission Register Reference Number D15A/0247 (PL06D246601) (the "Clay Farm Phase 1C Lands") and the adjoining The Ballyogan Loop Road (the "Loop Road")

We act on behalf of Viscount.

We have been instructed to write to you to confirm that neither Viscount nor any other company within the Park Developments Group of companies, can in any way legally connect from the lands owned by Viscount at Clay Farm, Ballyogan Road, Dublin 18 ("Clay Farm") to the Loop Road located beyond the boundary of the Clay Farm Phase 1C Lands and in particular due to the fact that a strip of land located immediately beyond the boundary of Clay Farm is owned by a third party.

We refer you to the colour plan enclosed with this letter (the "Plan"). The lands hatched in red on the Plan are owned by Viscount. The lands hatched in yellow on the Plan are owned by a third party landowner unconnected to Viscount or the Park Developments Group of companies.

Less there be any ambiguity, the third party which owns such lands beyond the boundary of Clay Farm Phase 1C Lands has not granted any legal rights over such lands in favour of Viscount or in favour of any other company in the Park Developments Group of companies.

Accordingly, neither Viscount nor any other company in the Park Developments Group can enter upon the third party owned lands located beyond the western boundary of Clay Farm Phase 1C Lands, as to do so would constitute a trespass on the third party owned lands.

In order for Viscount or any other company in the Park Developments Group to enter upon such third party owned lands, it would be necessary that either (1) Dun Laoghaire Rathdown County Council (the "Council") take such lands in charge and then grant the necessary rights to Viscount or such other company in the Park Developments Group or (2) the Council acquire such third party owned lands by way of compulsory purchase order and then in turn grant the requisite rights to Viscount or such other company in the Park Developments Group.

Managing Partner: Michael Jackson - Chairman: Tim Scanlon - Partners: Brian Buggy, Helen Kelly, Sharon Daly, Ruth Hunter, Tony O'Grady, Paraic Madigan, Tara Doyle, Anne-Marie Bohan, Patrick Spicer, Turlough Galvin, Patrick Molloy, George Brady, Robert O'Shea, Joseph Beasheal, Deirdre-Ann Barr, Dualta Counihan, Deirdre Dunne, Fergus Bolster, Christian Donagh, Bryan Dunne, Shane Hogan, Peter O'Brien, Thomas Hayes, Nicola Dunleavy, Julie Murphy-O'Connor, Mark O'Sullivan, Brian Doran, John Gill, Joe Duffy, Pat English, Shay Lydon, Aidan Feby, Niamh Counihan, Gerry Thornton, Liam Collins, Darren Maher, Michael Byrne, Philip Lovegrove, Rebecca Ryan, Catherine O'Meara, Elizabeth Grease, Deirdre Cummins, Alan Keating, Peter McKeeever, Alma Campion, Brendan Colgan, Garret Farrelly, Michael Finn, Rhona Henry, April McClements, Gráinne Dever, Oisín McClenaghan, Rory McPhillips, Niall Peby, Michelle Ridge, Sally-Anne Stone, Matthew Broadstock, Emma Doherty, Leonie Dunne, Stuart Kennedy, Brian McCloskey, Madeline McDonnell, Claire McLoughlin, Barry O'Connor, Daniel O'Donovan, Karen Reynolds, Kevin Smith, Ciaran Healy, Chris Bollard, Deirdre Kilroy, Michael Hastings, Maria Kennedy, Barry McGettrick, Kate McKenna, Donal O'Byrne, David O'Mahony, Russell Rochford, Liam Flynn, Gráinne Callanan, Geraldine Carr, Brian Doherty, Richard Kelly, Niamh Maher, Yvonne McWeeney, Mairéad Ní Ghabháin, Padraic Roche, Vahan Tcharakian, Kieran Trant.
- Tax Principals: Greg Lockhart, John Kelly, Catherine Galvin, Anne Harvey. - Tax Department Chair: John Ryan. - Of Counsel: Chris Quinn, Liam Quirk.

Dublin Cork London New York Palo Alto San Francisco

www.matheson.com

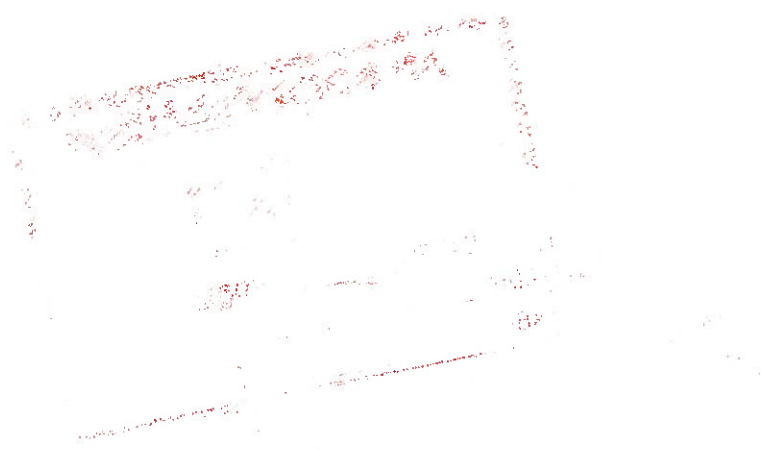
The Park Developments Group cannot legally compel an independent third party to grant legal rights over its lands. As a result, neither Viscount nor any other company in the Park Developments Group can currently deliver a connective route from Clay Farm Phase 1C Lands onto the Loop Road referable to the third party lands which immediately adjoin the western boundary of Clay Farm.

Our client is prepared to enter into an undertaking with the Council to deliver a connection road from Clay Farm Phase 1C Lands onto the Loop Road, subject to the Council procuring or granting the necessary legal rights to facilitate the legal delivery of such connective route. Furthermore our client is prepared to undertake to deliver the connection road up to the boundary of the Clay Farm lands at an early stage of the implementation of the Phase 1C element of the planning permission for Clay Farm, if this can be agreed with the Council.

We trust that this letter clarifies the legal position.

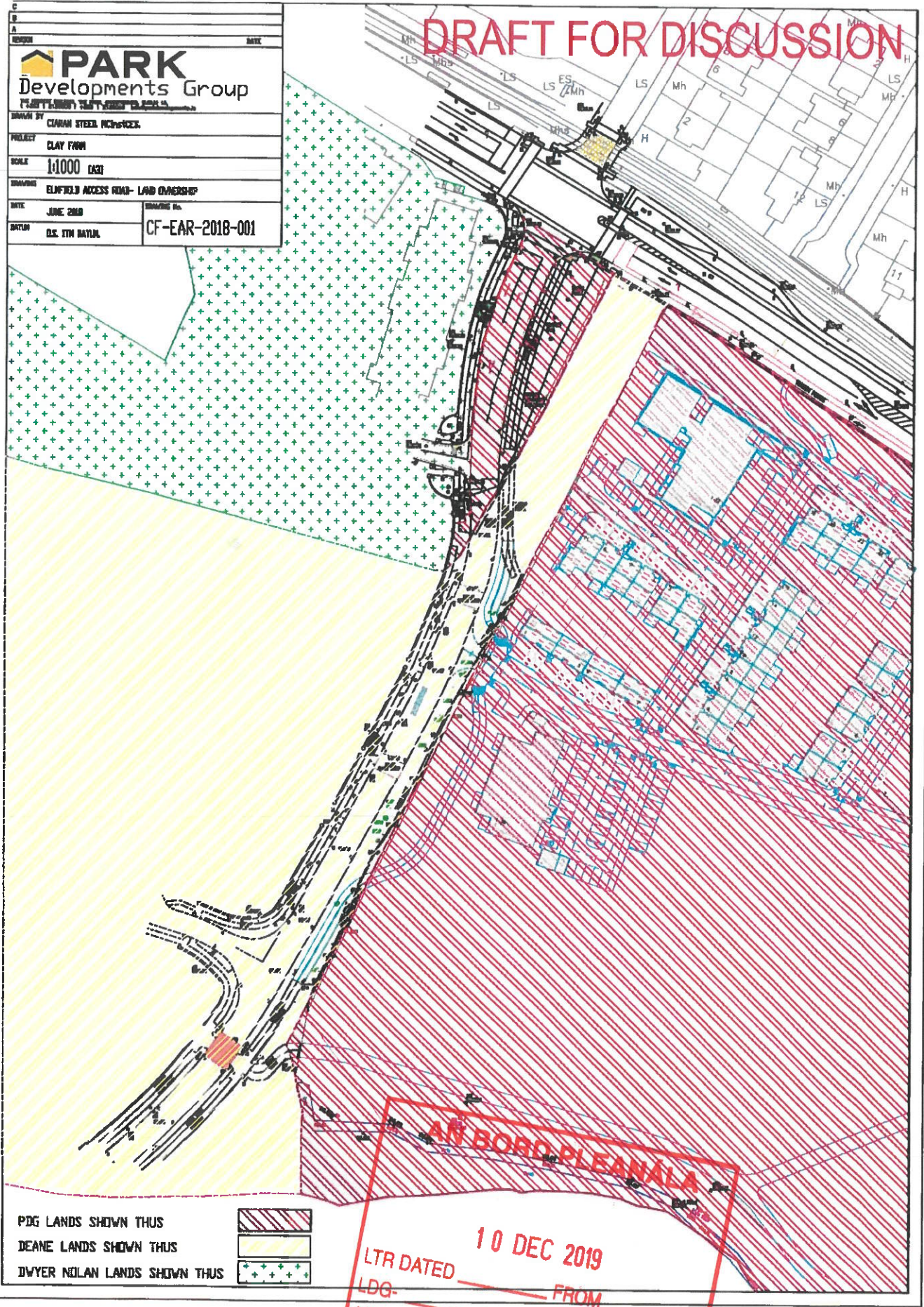
Yours faithfully




MATHESON
44995889.5



DRAFT FOR DISCUSSION

C	
A	
REGION	DATE
 PARK Developments Group	
DRAWN BY CIARAN STEEL MCNEICES	
PROJECT CLAY FARM	
SCALE 1:1000 (A3)	
DRAWING ELPHIELD ACCESS ROAD- LAND OWNERSHIP	
DATE JUNE 2018	DRAWING No. CF-EAR-2018-001
DRAWN D.S. ITH BAYLA	



PDG LANDS SHOWN THUS 
DEANE LANDS SHOWN THUS 
DWYER NOLAN LANDS SHOWN THUS 

AN BORD PLEANÁLA
LTR DATED 10 DEC 2019
LDG- FROM
ABP-

