

24 Green Street
Waterford

06 January 2020

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Dear Sir or Madam,

Appeal of decision on Section 5 application of the Planning and Development Act 2000: Exemption status of locked gate on Cockle Lane in Lisselan, Co. Waterford

I write in relation to Waterford City and County Council's (WCC) decision on a gate that has been locked to permanently enclose access to the shore of the Tramore Backstrand without planning permission that was subject to a Section 5 application (Ref. D5 2019/20). I believe WCC's decision on this matter is incorrect and does not reflect the requirements of the *Planning and Development Act 2000 (P&D Act)* and the *Planning and Development Regulation 2001 (P&D Regulation)*.

This appeal requests that An Bord Pleanála (ABP) review WCC's decision on whether the acts described under the original Section 5 application constitute development and exempted development. This appeal is supported with the following additional information:

- ATTACHMENT 1: ABP's appeal form;
- ATTACHMENT 2: A copy of the supplementary information;
- ATTACHMENT 3: A copy of Section 5 application to WCC; and
- ATTACHMENT 4: A copy of WCC's final decision on my Section 5 application.

The prescribed fee of €220.00 has been paid upon lodgement of this application.

As further described in the Supplementary Information (ATTACHMENT 2), this application outlines why I believe the WCC decision was incorrect and inconsistent with ABP's interpretation of the exemption laws as described in the P&D Act and P&D Regulation.

Whereas the application is in my name I represent a group that was formed to ensure this traditional access route is not lost.

If you have any questions in relation to the above please contact [redacted] at the above address or [redacted]

Yours sincerely

John Deveraux
John Deveraux

AN BORD PLEANÁLA	
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08 JAN 2020	
Fee: € 220	Type: cheque
Time: -	By: <i>dog. Joe</i>

ATTACHMENT 1: AN BORD PLEANALA PLANNING APPEAL FORM

AN BORD PLEANALA

LDG- _____

ABP- _____

08 JAN 2020

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Time: _____ By: _____

Your details

1. Appellant's details (person making the appeal)
Your full details:

(a) Name

John Deveraux

Agent's details

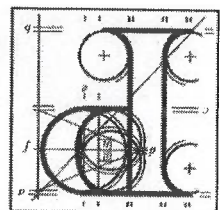
(a) Agent's name

Click or tap here to enter text.

(b) Agent's address

Click or tap here to enter text.

NALA



Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the

address in Part 1

The agent at the address in

Part 2

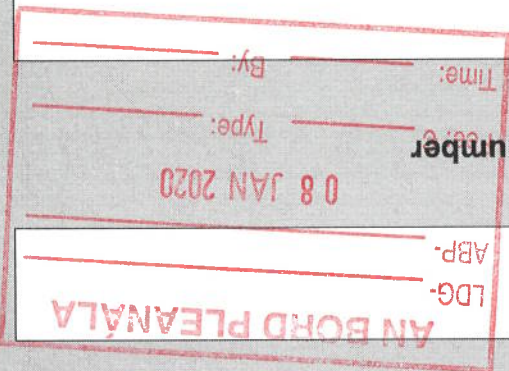
Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Waterford City and County Council



(b) Planning authority register reference number

(for example: 18/0123)

Reference No. D5 2019/20

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Lisselan, Tramore, Co. Waterford X91 E892

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

See supplementary information.

AN BORD PLEANÁLA	
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By:	_____
08 JAN 2020	

Supporting material

6. If you wish you can include supporting materials with your appeal. Supporting materials include:
- photographs,
 - plans,
 - surveys,
 - drawings,
 - digital videos or DVDs,
 - technical guidance, or
 - other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

AN BORD PLEANÁLA

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08 JAN 2020

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Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the "yes, I wish to request an oral hearing" box below.

Please note you will have to pay an **additional non-refundable fee of €50**. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the "No, I do not wish to request an oral hearing" box.

Yes, I wish to request an oral hearing

No, I do not wish to request an oral hearing

AN BORD PLEANÁLA

LDG- _____

ASP- _____

08 JAN 2020

Fee: € _____

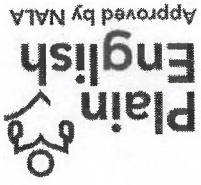
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Time: _____

NALA has awarded this document its Plain English Mark

Last updated: April 2019.



ATTACHMENT 2: SUPPLEMENTARY INFORMATION

1 Purpose

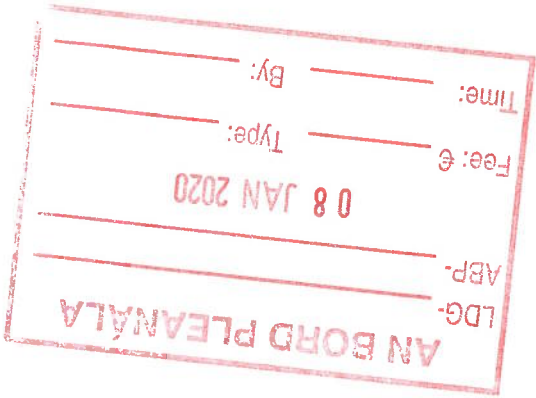
The purpose of this appeal is to appeal the outcome of a Section 5 application submitted to Waterford City and County Council (WCC) regarding the locking of a gate on a lane used by the public to access the foreshore of the Tramore Backstrand at Lisselan, Tramore, Co. Waterford (Planning Reference D5 2019/20).

I seek a declaration from the Board that the physical locking of a gate that was previously opened to the public to access a laneway, known as Cockle Lane, that allowed public access to the Tramore Backstrand foreshore is development and is not exempted development.

I fundamentally disagree with the Planning Authority's decision that the locking of this gate is not development.

The Board's attention is drawn to PL05E.RL3816 wherein the laying of concrete blocks to obstruct the use of a pedestrian trestle constituted works and therefore constituted development in accordance with the provisions of the P&D Act. The act of locking a gate that was previously used by the public as a public thoroughfare bears significant similarities to PL05R.RL3816 in terms of the change of use of the access road and alteration of the structure in question.

There is a long history of habitual access and use of this laneway for recreational purposes which is detailed in our original Section 5 application to WCC (see **Attachment 3**).



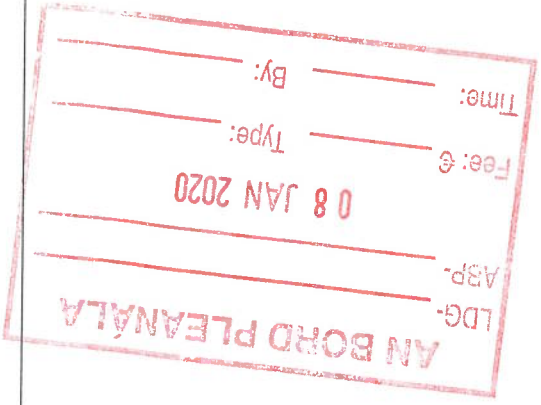
2 Response to WCCC's decision


Section 5(1) of the P&D Act states:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

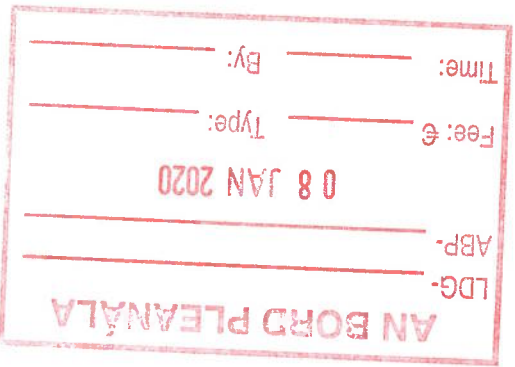
Table 1 assesses the decision made by WCCC in the context of the meaning of the P&D Act and previous An Bord Pleanála decisions.

Table 1: Interpretation of Planning and Development Act 2000

WCCC Statement	Comments
<p>"(a) The locking of the gate does not constitute works within the meaning attributed in Section 2(1) of the Planning and Development Act, 2000,</p> 	<p>I disagree with WCCC's assertion that the locking of this gate does not constitute works under the P&D Act. WCCC have not supplied any details as to how their interpretation was arrived at so I would like to draw the Board's attention to the following passage from a previous An Bord Pleanála Decision PL05E.RL3816:</p> <p><i>8.1.4 In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The insertion of an object or objects - such as the concrete blocks in question- within a turnstile which prevents the mechanism of the turnstile from operating - i.e. preventing a person entering and turning the apparatus - is an act of alteration. The fundamental nature of the turnstile - from an object that turns to an object that cannot turn - has been altered beyond recognition and use.</i></p> <p>This situation at Cockle Lane shares many similarities to the above scenario in that the "insertion of an object", i.e. the attachment of a lock, prevents the opening of the gate by the public, similar to "prevents the mechanism of the turnstile from operating", and as such this should be correctly recognized by WCCC as an act of alteration.</p> <p>The fundamental nature of the gate - from an object that opens to any member of the public to one that can only be opened by the key holder - has been altered beyond recognition and use.</p> <p>We ask the Board to recognize that the effect that the application of a padlock to the gate that was previously unlocked is an act of alteration and therefore constitutes works in accordance with section 2 of the Planning and Development Act 2000- 2016.</p>

	<p>In addition, section 8.1.5 of the Inspector's report in PL05E.RL3816 states:</p> <p><i>The placing of the concrete blocks and the accompanying notices advising of private lands could also be viewed as an "alteration" of the use of the lands as a pathway to the Great Arch. Access to the lands is no longer (legally) possible and therefore the path has been altered. It is my opinion that it could also be argued, as was the case in RL3153, that the placing of the large concrete blocks was an act of construction and therefore constituted works.</i></p> <p>The act of locking the publicly used gate on Cockle Lane has fundamentally altered the use of the lands as a pathway to the Tramore Backstrand foreshore. My original Section 5 application was accompanied by numerous statements from members of the public who used this laneway over the years for recreational purposes.</p> <p>We ask the Board to recognize that that the placement of a lock on the previously open gate could be viewed as an "alteration" of the use of the lands as a pathway, i.e. Cockle Lane, to the foreshore of Tramore Backstrand. Access to the lands is no longer (legally) possible and therefore the path has been altered.</p>
<p>(b) the locking of the gate does not constitute development which comes within the scope of Section 3(1) of the Planning and Development Act, 2000"</p>	<p>Section 8.1.6 of the Inspector's report in PL05E.RL3816 states:</p> <p><i>As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. The gate pier is considered a structure, also under section 2 of the Act, it being a "thing constructed or made on, in or under any land". I am satisfied that the alteration of the turnstile is works, and that such works were carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.</i></p> <p>We seek a statement that the gate is considered a structure under section 2 of the Act, it being a "thing constructed or made on, in or under land" and that the alteration of the gate is works and that such works are carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.</p>
<p>(c) The restrictions on exemption, set out in the Planning and Development Regulations, 2004, as amended, are not relevant to this determination.</p>	<p>Again, WCCC does not expand on why the restrictions on exemption do not apply in this scenario. Given that numerous states were supplied with the original Section 5 application as evidence of the habitual use of Cockle Lane to access the Tramore Backstrand foreshore, I must assume that the restriction on exemption did not apply as the exemption itself did not apply in this scenario.</p>

<p>Therefore the Planning Authority hereby decides that the placing of a lock on a gate at Lisselan, Tramore, Co. Waterford does not constitute development.</p>	<p>If the act of locking a publicly used gate is considered an act of development and no exemption applies to this act of development, then planning permission must be sought by the developer.</p> <p>WCCC has failed to adequately explain how they arrived at this decision in their response to my Section 5 application. It appears they failed to consider the precedent set out in previous An Bord Pleanála decisions which are relevant to the locked gate on Cockle Lane and have erred in their final decision as a result.</p> <p>I request that An Bord Pleanála overturn WCCC's decision under appeal and determine that the act of locking the gate at Cockle Lane is an act of development and represents a material alteration of the use of the gate and the use of Cockle Lane.</p>
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3 Precedent in relevant cases

This section is found in my original Section 5 application where I have highlighted similar cases that were decided in recent years. I have reproduced these cases here as I believe they are relevant to the issue that is subject of this appeal.

3.1 PL05E.RL3816 Pollaid Great Arch, Fanad, Co. Donegal

In May 2019, ABP decided that: "The means of closure of the entrance to the start of the pathway leading to Pollaid Great Arch at Fanad, County Donegal is development and is not exempted development."

Of importance in this decision is the statement from the inspector that:

"The insertion of an object or objects - such as the concrete blocks in question - within a turnstile which prevents the mechanisms of the turnstile from operating - i.e. preventing a person entering and turning the apparatus - is an act of alteration. The fundamental nature of the turnstile - from an object that turns to an object that cannot turn - has been altered beyond recognition and use."

And

"The placing of the concrete blocks and the accompanying notices advising of private lands could also be viewed as an "alteration" of the use of the lands as a pathway to the Great Arch. Access to the lands is no longer (legally) possible and therefore the path has been altered."

3.2 PL16.RL3562 Brackloon Woods, Co. Mayo

In April 2018, ABP decided that the permanent enclosure of land at the entrance to Brackloon Woods in Co. Mayo was not exempt development:

"The development has closed access to Brackloon Wood at this location and therefore consists of the fencing or enclosure of land that has been used by the public during the preceding 10 years as a means of access to a place of natural beauty and recreational utility, and so the restriction on exemption set out in article 9(1)(a)(x) of the regulations applies."

3.3 RL08.RL3219 Fenit Island, County Kerry

In May 2015, ABP decided that the permanent enclosure of land at Fenit Island, County Kerry is development and is not exempt development. Evidence was provided that there was habitual public access to parts of the coast within the previous 10 years that were made inaccessible by the erection of the fencing.

The inspector's report concluded that "The said erection of fencing around the coastline of Fenit Island comes within the scope of the restrictions on exemption under article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended".

3.4 RL16.RL3154 Lousiburg, County Mayo

In January 2014, ABP decided that the erection of a standard wooden post and wire sheep fencing at Cooragan, Thallabawn, Louisburg, County Mayo is development and is not exempt development. The inspector's report states: "It can be reasonably argued in my view that the lands which have been recently enclosed were lands which were habitually open to and used for recreational purposes as a means of access to any seashore or lakeshore."

The inspector's report concluded that "the fencing in question would contravene the restriction on exemptions set out in Article 9 namely Article 9(1)(a)(x)."

4 Conclusion

This appeal has demonstrated that WCC's decision on my original Section 5 application is inconsistent with An Bord Pleanála's interpretation of these acts of development when considered in the context of previous decisions by The Board.

This appeal seeks a declaration from An Bord Pleanála that the act of locking a gate used by the public to access the Tramore Backstrand foreshore via Cockle Lane constitutes an act of development and is not exempted development.

This interpretation will maintain consistency with previous ABP decisions PL05E.RL3816, PL3562, RL08.RL3219 and RL16.RL3154 on similar developments where public access has been obstructed without the necessary planning permission being sought by the developer.



AN BORD PLEANÁLA

LDG- _____

ABP- _____

08 JAN 2020

Type: _____

Fee: € _____

By: _____

Time: _____

ATTACHMENT 3: COPY OF SECTION 5 APPLICATION TO WCCC

24 Green Street
Waterford

26 July 2019

Planning Department
Waterford City and County Council
Menapia Building
The Mall
Co Waterford

Dear Sir or Madam,

Application under Section 5 of the Planning and Development Act 2000: Exemption status of locked gate on Cockle Lane in Lisselan, Co. Waterford

I write in relation to a gate that has been locked to permanently enclose access to the shore of the Tramore Backstrand without planning permission from Waterford City and County Council (WCCC).

I request a declaration from WCCC regarding whether this development is considered exempt development or not under the *Planning and Development Act 2000 (P&D Act)* and the provisions of Section 6 and Section 9 of the Planning and Development Regulation 2001 (P&D Regulation).

This request for a declaration on development and exempted development is made in accordance with Section 5 of the P&D Act. Pursuant to Section 5 of the P&D Act and WCCC requirements, this application is supported with the following additional information:

- **ATTACHMENT 1:** WCCC Section 5 application form;
- **ATTACHMENT 2:** A copy of the supplementary information; and
- **ATTACHMENT 3:** A copy of the site location map.

The prescribed fee of €80.00 has been paid upon lodgement of this application.

As further described in the Supplementary Information packages (**ATTACHMENT 2**), this application outlines why I believe the erection of the gate constitutes development and why, once this gate was permanently locked to exclude the public, this development is restricted from exemption under Article 9 of the P&D Regulation. This application should be assessed by WCCC accordingly.

Whereas the application is in my name I represent a group that was formed to have this traditional right of way re-opened. I am sure that you will agree that it would be a sad day for Waterford if this access is not restored.

If you have any questions in relation to the above a

Yours sincerely

John Deveraux
John Deveraux

Enc.

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ATTACHMENT 1: WATERFORD CITY AND COUNTY COUNCIL SECTION 5 APPLICATION FORM

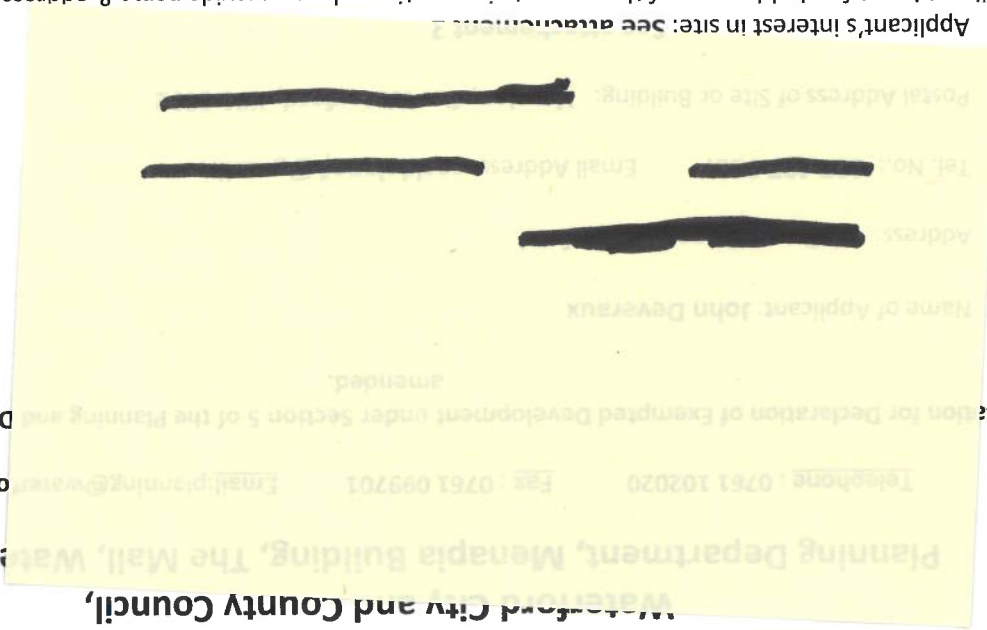
Section 5 application for locked gate in Lisselan, Co. Waterford

AN BORD PLEANAITA	
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App-	_____
08 JAN 2020	
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Time:	By: _____

Waterford City and County Council,
 Planning Department, Menapia Building, The Mall, Waterford.

Telephone : 0761 102020 Fax : 0761 093701 Email: planning@waterfordcouncil.ie

Application for Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000, as amended.



4. Applicant's interest in site: See attachment 2
 (If applicant is not freehold owner of the property in question, please provide name & address of owner)

5. Full Description of the proposed Development See attachment 2

6. If the proposed development is an extension to a dwellinghouse, please include the following floor areas:

(i)	Proposed Extension	Sq. metres	N/A
(ii)	Existing Structure	Sq. metres	N/A
(iii)	Rear private open space	Sq. metres	

7. If the proposed development is for the erection of Garage/Shed/Store etc., Please include the following:

(i)	Proposed Garage/Shed/Store etc.	Sq. metres	N/A
(ii)	Existing Structure	Sq. metres	N/A
(iii)	Rear private open space	Sq. metres	

8. For any building(s) to be retained on site, or for a change of use of the property

(a)	Please indicate the existing use	N/A
(b)	Please indicate the proposed use	N/A

9. Documents to be included with this application form to be submitted to the Planning Department):
 Site Location Map
 Scale 1:1000 or 1:2500
 Floor Plans & Elevations

AN BORD PLEANÁLA

L.D.G.

Site Layout Map - Scale 1:200 or 1:500
 Fee (€80.00)
 08 JAN 2020
 Type: _____
 Fee: € _____
 By: _____
 Time: _____

AN BORD PLEANÁLA	LDG-	ABP-	08 JAN 2020	Fee: €	Type:	By:	Time:
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Signature of applicant/agent: John Doreen Date: 26-7-2019

I hereby declare that the information given on this form is correct.

10. Site History: Planning reference number(s): See attachment 2

ATTACHMENT 2: SUPPLEMENTARY INFORMATION

1 Purpose

The purpose of this application is to seek a declaration from Waterford City and County Council (WCCC) on whether the existing locked gate located on Cockle Lane in Lisselan, Tramore (Figure 1) is considered development under the meaning given in the *Planning and Development Act 2000 (P&D Act)* and whether this development is restricted from exemption under the restrictions listed in article 9 of the *Planning and Development Regulation 2001 (P&D Regulation)*.

2 Background

Cockle Lane is located in the townland of Lisselan. The lane is approximately 1.2km in length and is a traditional access lane for members of the public from the R685 to the Tramore Backstrand.

From time immemorial Cockle Lane has been used as a public access route to the foreshore of the Tramore Backstrand. The road is identified in historical Ordnance Survey (OS) maps as a road that links the Tramore Backstrand shore with the main Tramore to Dunmore East road (R685). As the name suggests, cockle collectors have traditionally used this lane when picking cockles on the Backstrand. As demonstrated in the Historic 25 inch and 6 inch Cassini OS maps, the lane has served as an access to the Backstrand foreshore for over one hundred years and is a significant cultural heritage asset in the local area. A copy of the historical ordinance survey maps is included as **Appendix A** of this document.

The ruins of several houses are located just off the end of the lane. The width of the lane also supports that it was a public lane giving access not only to the back strand and foreshore but also to the above-mentioned dwellings.

The landowner has erected a gate at the point indicated in **Figure 1** at some point in the past which could be opened and closed by the public using the lane to access the backstrand for various recreational activities. However, in recent years this gate has been locked by the landowner, materially altering the use of the lane from a public route to a private one and enclosing land that was previously used by the public to access the foreshore.

Photographs of the gate when it was open to public use and, more recently locked to exclude the public, are shown in **Figure 2**.

I have attached a number of statements from members of the public (**Appendix B**) confirming they have used this road to access the foreshore of the Tramore Backstrand in the ten years prior to this gate being locked. Appendix B also includes a photograph of cockle pickers on a day where they used Cockle Lane to access the Tramore Backstrand.

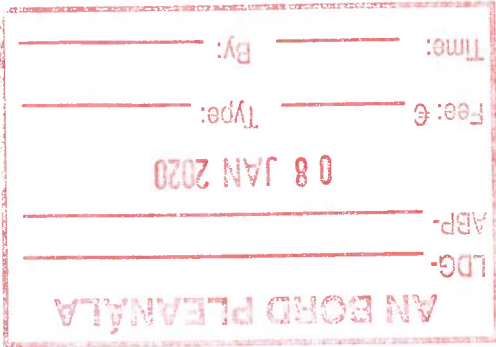


Figure 1: Location of Cockle Lane

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Location of gate

Cockle Lane

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08 JAN 2000
By: _____
Time: _____
Fee: € _____

Figure 2: Photographs of gate

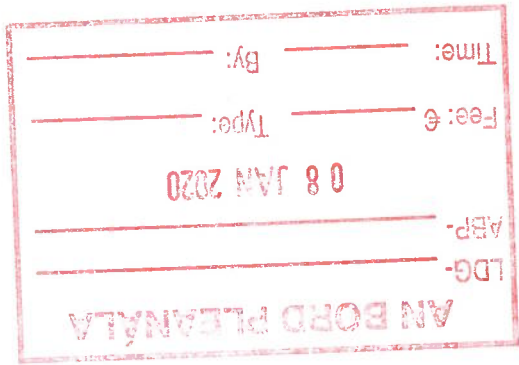




Image showing Cockle Lane with gate open to public (March 2009)



Image showing Cockle Lane with gate closed and lane user's vehicles parked at entrance (Sept 2009)



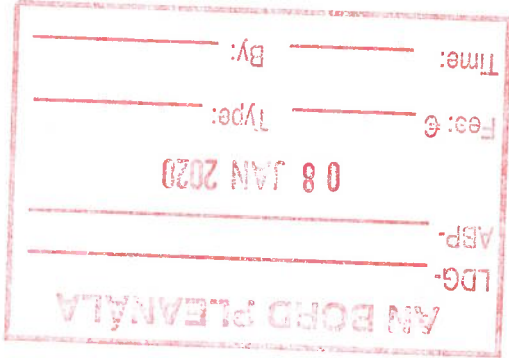
Image showing Cockle Lane as it currently is with insert photograph of lock.
(July 2019)

3 Application Form Requirements

Table 1 below addresses the requirements of the WCCC Section 5 Application Form.

Table 1: Requirements of the WCCC Section 5 Application Form

<p>4 Please state applicant's interest in this site.</p>	<p>(1) Public interest: This access to the Tramore Backstrand foreshore is of significant value to the people of Waterford as demonstrated in the statements of individuals in Appendix B.</p> <p>The owner of the property is unknown as the property is not registered at the Land Registry and as such a title search could not be carried out.</p>
<p>5 Full Description of the proposed development</p>	<p>As I am not responsible for the development, engineering drawing and infrastructure specifications are not available. From personal observation the gate consists of:</p> <ul style="list-style-type: none"> • A locked gate supported by two pillars; • Signs related to trespassing, CCTV and private property. <p>A photograph of the gate is included as Figure 2 of this application.</p>
<p>9 Documents submitted with this application.</p>	<p>This application is supported by:</p> <ul style="list-style-type: none"> • Maps showing Cockle Lane location; • A photograph of the locked gate; • Historic OS maps; and • Signed statements from members of the public.
<p>10 Site History</p>	<p>I am not aware of any existing planning applications for this site.</p>



4 Interpretation of Legislation

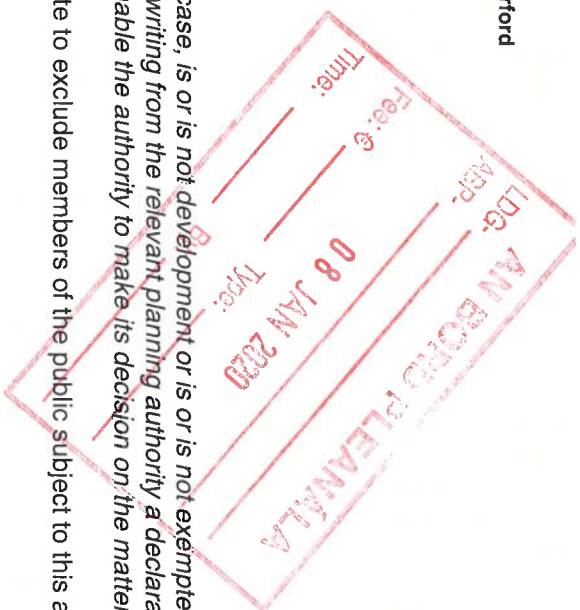
Section 5(1) of the P&D Act states:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

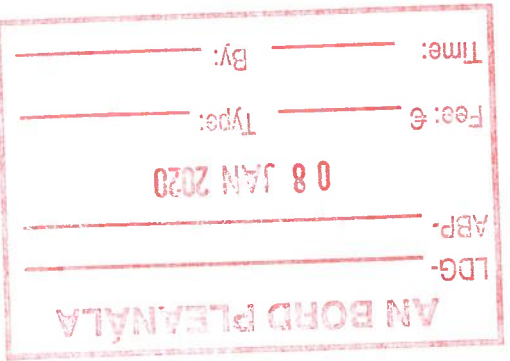
Table 2 assesses the permanent locking of this gate to exclude members of the public subject to this application against the definitions and clauses of the P&D Act and P&D Regulation.

Table 2: Interpretation of Planning and Development Act 2000

Legislation	Comments
<p>Planning and Development Act 2000</p> <p>Section 2 – Interpretation</p> <p>Works “includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”</p> <p>Structure “means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—</p> <p>(a) where the context so admits, includes the land on, in or under which the structure is situate, and</p> <p>(b) in relation to a protected structure or proposed protected structure, includes—</p> <p>(i) the interior of the structure,</p> <p>(ii) the land lying within the curtilage of the structure,</p> <p>(iii) any other structures lying within that curtilage and their interiors, and</p>	<p>The permanent locking of the gate from members of the public in this instance constitutes “works” as defined by the P&D Act.</p> <p>The locking of the gate on Cockle Lane constitutes an act of alteration as it materially alters the use of the gate by members of the public when using Cockle Lane. Thus limiting this use to a few private individuals with access to the key for this gate. The fundamental nature of a gate that was used publicly up to this point has been altered and is, in itself, an act of alteration.</p> <p>The exclusion of the public from Cockle Lane could also be viewed as an “alteration” of the use of the lands as a pathway to the Tramore Backstrand. Access to the lands is no longer possible and therefore the path has been altered. This has parallels to An Bord Pleanála (ABP) decision on the restriction of access to Pollaid Great Arch (RL05E:PL3816) which is mentioned below.</p> <p>The gate constitutes a structure as defined by the P&D Act.</p>



<p>(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii)</p>	
<p>Section 3 – Development</p> <p>“In this Act “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change of use of the structures or the land”.</p>	<p>The erection of the gate constituted development when it was erected but the locking of a gate used by the public also constitutes development as it involved the making of a material change to the use of the gate from a public use to that of a private use which excludes members of the public.</p>
<p>Section 4 – Exempted Development</p> <p>Subsection 2(a) states that:</p> <p>2(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—</p> <p>(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or</p> <p>(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).</p> <p>(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.</p> <p>(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.</p>	<p>Part 2 Article 6 of the P&D Regulation provides a list of the class of development that are considered exempt development under Section 4(2) of the P&D Act.</p> <p>Exempt development listed in the P&D Regulation that are relevant to this section 5 application are discussed below.</p>



Planning and Development Regulation 2001	
<p>Part 2 – Exempted Development</p> <p>Article 6 – Exempted development</p> <p>Article 6(1) states: <i>Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.</i></p> <p>Article 6(3) states: <i>Subject to Article 9, in areas other than a City or a town or an area specified in Section 19(1)(b) of the Act or the excluded areas as defined in Section 9 of the Local government (Reorganisation) Act 1985 (no. 7 of 1985) development of class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 3 opposite the mention of that class in the said Column 1.</i></p> <p>Article 9 – Restriction on exemption</p> <p>Article 9 sets out a number of restrictions on exemptions under Article 6. The relevant restrictions to this development are set out below.</p> <p>9(1)(a)(x) “<i>consist of the fencing or enclosure of any land habitually open to or used by the public during the previous 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lake shore, riverbank or other place of natural beauty or recreation; activity.”</i></p> <p>9(1)(a)(xi) “<i>obstruct any public right of way”</i></p>	<p>The placement of a lock on the Cockle Lane gate can be considered exempt development provided it meets the criteria set out under Part 1 of Schedule 2.</p> <p>The restrictions on exemption relevant to this section 5 application are discussed under Article 9 below.</p> <p>The locking of the gate on Cockle Lane can be regarded as enclosure of land habitually open to and used by the public for access to the foreshore of Tramore Backstrand during the 10 years prior to its erection.</p> <p>Appendix B contains a collection of statements from members of the public who have used Cockle Lane to access the foreshore of Tramore Backstrand in the 10 years prior to the locking of the gate across their route. These statements demonstrate that this land was habitually open to and used by the public as a means of access to the foreshore of Tramore Backstrand during the 10 years preceding the locking of this gate.</p> <p>Based on this evidence, the land in question has been open to and used by the public within the 10 years prior to the permanent locking of this gate as a means of accessing the foreshore of Tramore Backstrand and therefore cannot be considered exempted development under the provisions of Section 4(2)(a).</p> <p>As discussed in section 2, Cockle Lane has been used by members of the public to access to the shore of Tramore Backstrand since time immemorial.</p>

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Due to the documented public use of this lane, the permanent locking of the gate and exclusion of the public from using this lane to access the Tramore Backstrand cannot be considered exempted development under the wider provisions of Section 4 of the P&D Act.



5 Precedent in relevant cases

In this section I have highlighted similar cases that were decided in recent years. In these cases a section 5 application was made to the relevant local authority.

5.1 PL05E.RL3816 Pollaid Great Arch, Fanad, Co. Donegal

In May 2019, ABP decided that:
"The means of closure of the entrance to the start of the pathway leading to Pollaid Great Arch at Fanad, County Donegal is development and is not exempted development."

Of importance in this decision is the statement from the inspector that:
"The insertion of an object or objects - such as the concrete blocks in question - within a turnstile which prevents the mechanism of the turnstile from operating - i.e. preventing a person entering and turning the apparatus - is an act of alteration. The fundamental nature of the turnstile - from an object that turns to an object that cannot turn - has been altered beyond recognition and use."

And

"The placing of the concrete blocks and the accompanying notices advising of private lands could also be viewed as an "alteration" of the use of the lands as a pathway to the Great Arch. Access to the lands is no longer (legally) possible and therefore the path has been altered."

5.2 PL16.RL3562 Brackloon Woods, Co. Mayo

In April 2018, ABP decided that the permanent enclosure of land at the entrance to Brackloon Woods in Co. Mayo was not exempt development:

"The development has closed access to Brackloon Wood at this location and therefore consists of the fencing or enclosure of land that has been used by the public during the preceding 10 years as a means of access to a place of natural beauty and recreational utility, and so the restriction on exemption set out in article 9(1)(a)(x) of the regulations applies."

5.3 RL08.RL3219 Fenit Island, County Kerry

In May 2015, ABP decided that the permanent enclosure of land at Fenit Island, County Kerry is development and is not exempt development. Evidence was provided that there was habitual public access to parts of the coast within the previous 10 years that were made inaccessible by the erection of the fencing.

The inspector's report concluded that "The said erection of fencing around the coastline of Fenit Island comes within the scope of the restrictions on exemption under article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended".

5.4 RL16.RL3154 Lousiburg, County Mayo

In January 2014, ABP decided that the erection of a standard wooden post and wire sheep fencing at Cooraun, Thallabawn, County Mayo is development and is not exempt development. The inspector's report states: "It can be reasonably argued in my view that the lands which have been recently enclosed were lands which were habitually open to and used for recreational purposes as a means of access to any seashore or lakeshore."

The inspector's report concluded that "the fencing in question would contravene the restriction on exemptions set out in Article 9 namely Article 9(1)(a)(x)."

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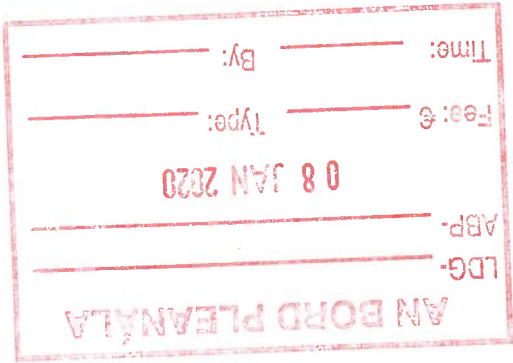
6 Conclusion

This application has demonstrated that by permanently locking the gate erected on Cockle Lane, the landowner has permanently enclosed land habitually open to and used by the public as a means of access to the Tramore Backstrand foreshore during the 10 years prior to this act and that this permanently locked gate now obstructs this public access.

This application seeks a declaration from WCCC that:

- This permanent enclosure of land on Cockle Lane is not exempt from planning permission due to the restrictions on exemption set out in Article 9 of the P&D Regulation, namely Articles 9(1)(a)(x).

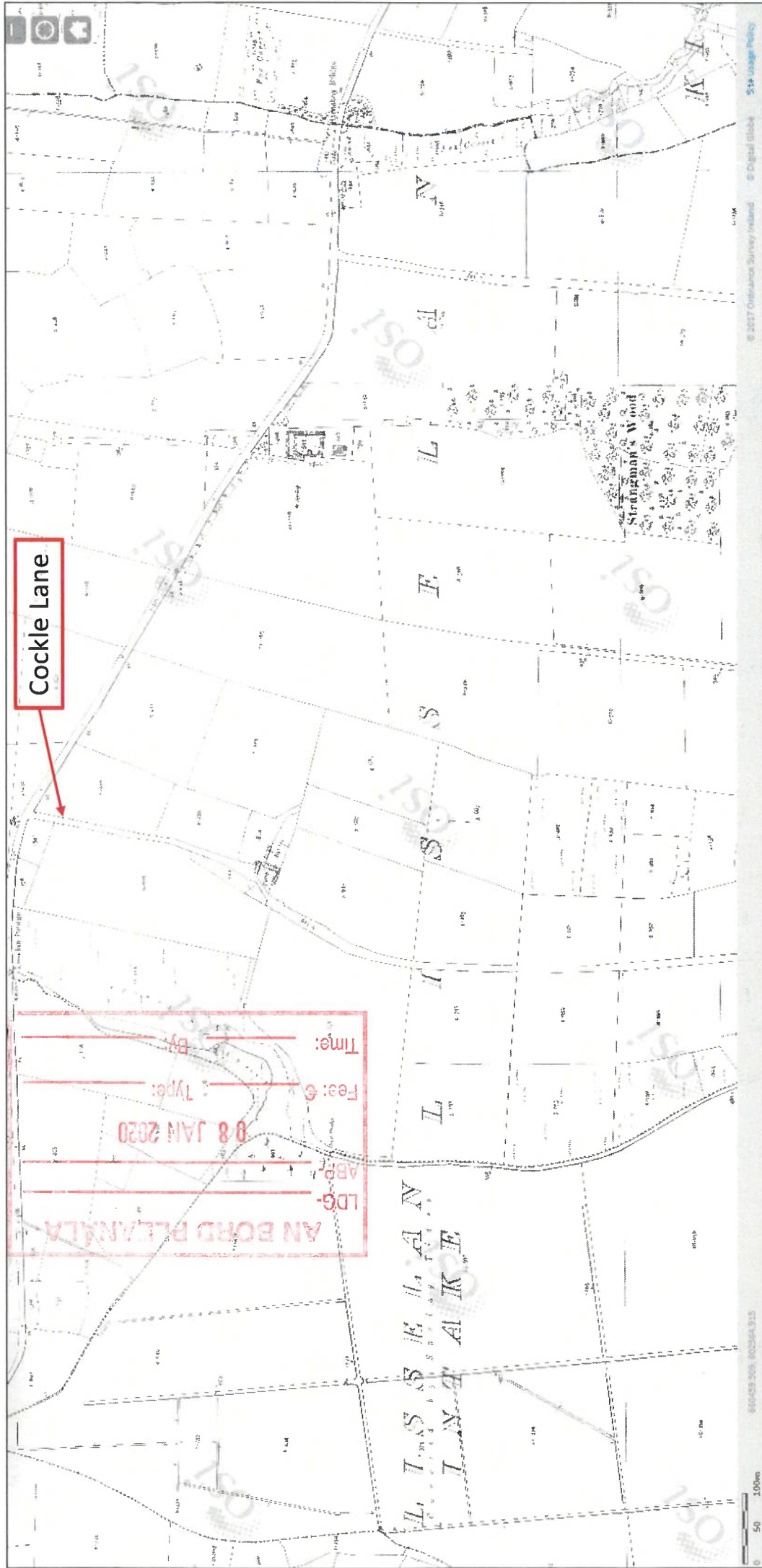
This interpretation will maintain consistency with previous ABP decisions PL05E.RL3816,PL3562, RL08.RL3219 and RL16.RL3154 on similar developments where public access has been obstructed without the necessary planning permission being sought by the developer.



APPENDIX A: HISTORICAL ORDINANCE SURVEY MAPS

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Historic 25 inch OS Map Series(1888-1913)



APPENDIX B: PUBLIC STATEMENTS REGARDING USE OF COCKLE LANE TO ACCESS THE
TRAMORE BACKSTRAND

Section 5 application for locked gate in Lisselan, Co. Waterford

AN BORD PLEANAITA

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APP- _____

08 JAN 2020

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ATTACHMENT 3: SITE LOCATION MAP

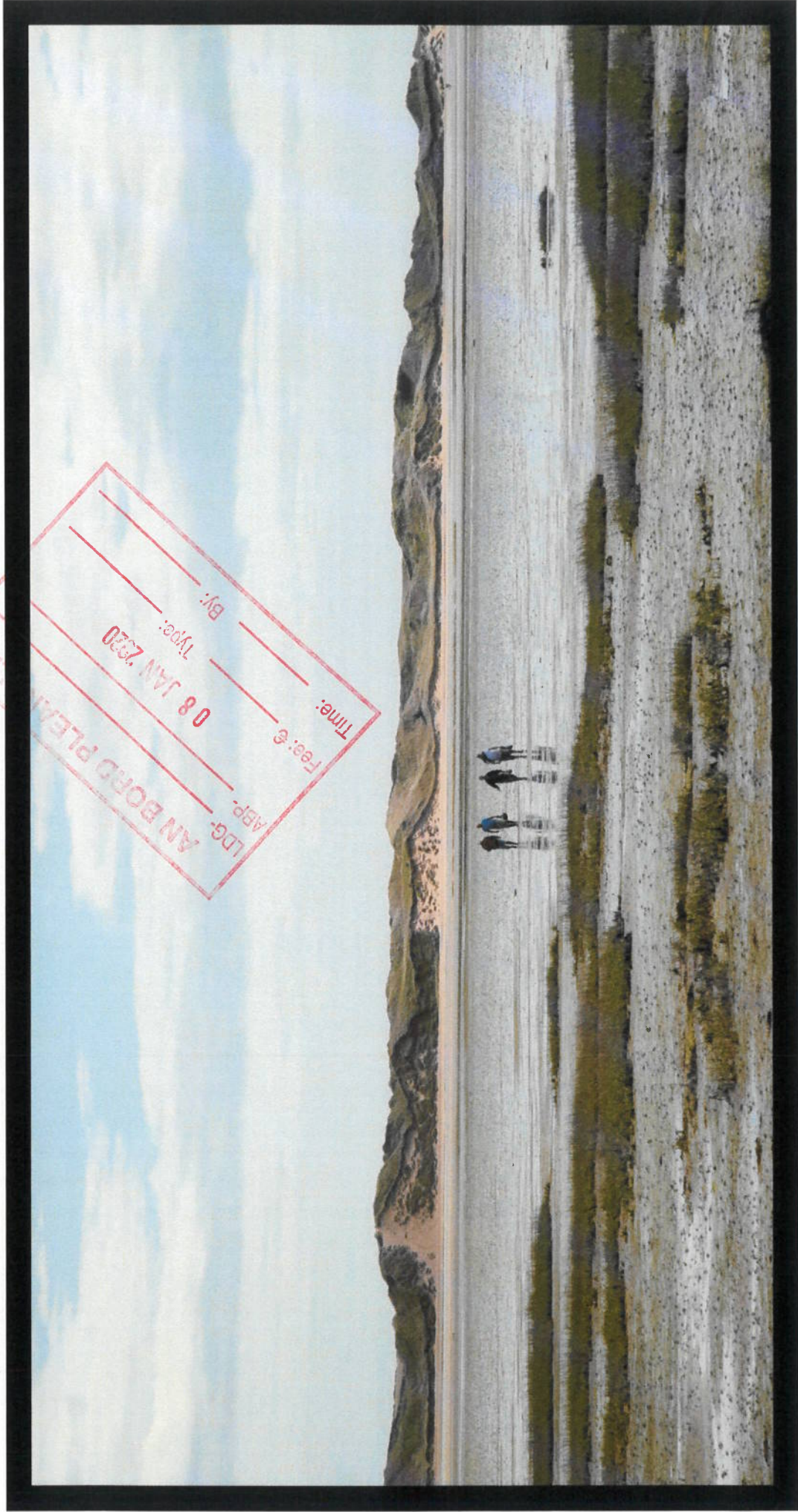
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Location of gate



Picture of Cockle Pickers who used Cockle Lane to access the Tramore Backstrand



STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details:

Name:

Address:

Telephone:

Email address:

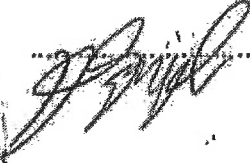
Your statement:

I've been going to the back strand with my father since I've been a toddler. I'm now going with my children, keeping the tradition going.

AN ECONOMICALLY

LDG-
APP-
08 JAN 2020
Time: _____
By: _____

Signed:



Date:

29/04/19

1875

1876

1877

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details

Name: [REDACTED]

Address: [REDACTED]

Telephone: [REDACTED]

Email address: [REDACTED]

IN BOARD PLANNING

LDG- [REDACTED]

ABP- [REDACTED]

08 JAN 2020

Fee: £ [REDACTED]

Type: [REDACTED]

Time: [REDACTED]

By: [REDACTED]

Your statement:

I am now 70 years of age and have been going to backstrand picking cockles from when I was very young. My Grandmother and Mother also picked cockles there over their lives. It was always a right of way for us from what has always known as Cowes Lane. Cockle picking was always a lovely tradition for me my family and lots of other people also. Previous owners had no issue with us using the lane down to strand. We always knew the way a right of way, but this is now disputed by new owners of property who are being very aggressive towards the cockle pickers.

Signed: [REDACTED]

PROPERTY OF [REDACTED]

Date: 9/1/2019

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details

Name:

~~Mr. [Redacted]~~

Address:

~~10 [Redacted] [Redacted]~~

Telephone:

~~[Redacted]~~

Email address:

ALLFORD PLUMBING

LDG- [Redacted]

Age: [Redacted]

08 JAN 2020

Type: [Redacted]

[Redacted]

Your statement:

I am now 56 years of age and have been picking cockles from the back strand. I went with my father from the age of 14. We used the night of day which was known as Poppers Lane. We used to not up with a number of people old and young. We never had any problems using the lane until the new owners took over. Picking for lots of people order a day number of years I have been picking it for 42 years and want to

Signed: ~~Mr. [Redacted]~~

Date: 21-6-19

continued

IDG-
 PPF-
 Date: 29-08-2019
 Type:
 By:

Signed: *[Signature]*

I HAVE USED THE LAKE
 FOR 40 YEARS MY FATHER WOULD
 BRING ME AND MY CHILDREN DOWN
 WHEN YOU COULD HAVE DOWN LAKE
 I SPENT MANY A SUMMER
 CAMPING WITH MY CHILDREN
 IN THE BACK STRAND

Your statement:

Email address:

Telephone:

Address:

Name:

Your details

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details

Name: ~~XXXXXXXXXX~~

Address: ~~XXXXXXXXXX~~

Telephone: ~~XXXXXXXXXX~~

Email address: ~~XXXXXXXXXX~~

Your statement:

I have been enjoying the lane to
get access to the back strand for the
past 45 years to pick cockles and
fish and never had any trouble with
the farmer until this new crowd put
a lock on the gate.

Signed *Mr. Brown*

Date: 17.5.2019
Time: _____
By: _____
Type: _____
Ref: 08 JAN 2020
ASP: _____
IDG: _____

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details

Name: ~~Mr J. J. J.~~

Address: ~~123 Main St~~

Telephone: ~~01234 56789~~

Email address: ~~john.doe@example.com~~

Your statement:

I have now have been using cockle lane for the past 50 years for the purpose of fishing and nature watching

LDG-APP-08 JAN 2010

Time: _____
By: _____
Type: _____
Fee: £ _____

Signed: Tony Hall

Date: 5-5-19

STATEMENT ON ACCESS TO TRAMORE BACK STRAND VIA COCKLE LANE

Your details

Name:

~~XXXXXXXXXX~~

Address:

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

Telephone:

Email address:

Your statement:

I Eoghan Rowe has been using cockle lane for fishing walking and digging bait for the park 40 years


LDG-	ABP-	08 JAN 2020	Fee: €	Type:	By:	Time:
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Date: 20-6-19

Signed Eoghan Rowe

at : Lisselan, Tramore, Co. Waterford.

THEFORE the Planning Authority hereby decides that the placing of a lock on a gate at Lisselan, Tramore, Co. Waterford does not constitute development.


For: Billy Duggan,

A/Director of Services,

Economic Development & Planning Services.

Dated this the 5th December 2019

In accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended), any person issued with this declaration may, on payment of the prescribed fee, refer this declaration for review by An Bord Pleanála, 64, Marlborough Street, Dublin 1, within 4 weeks of date of issuing of the declaration.

AN BORD PLEANÁLA

LDC-	_____
ASP-	_____
08 JAN 2020	
Type:	_____
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By:	_____
Time:	_____

