

An Bord Pleanála

Planning Appeal Check List

AN BORD PLEANÁLA

LDG- 024887-20

ABP- _____

28 FEB 2020

Fee: € 220 Type: cheque

Time: — By: Exp. Post

(Please read notes overleaf before completing)

1. The appeal must be in writing (e.g. not made by electronic means).

2. State the

name of the appellant
(not care of agent)

Frances Hopkinson

address of the appellant
(not care of agent)

Tinnacourse House, Skeogh, Borris, County
Kilkenny

3. If an agent is involved, state the

name of the agent

Peter Thomson Planning Solutions

address of the agent

4 Priory Grove,
Kells,
County Kilkenny

4. State the Subject Matter of the Appeal* - Referral

Brief description of the development

Widening and surfacing with hard-core stone of the existing private laneway; Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition; Restoration and re use of the derelict house as a habitable dwelling house; and the use of the widened and resurfaced private laneway as the access to the house

Location of the development

Ballina Upper, Blackwater, County Wexford

Name of planning authority

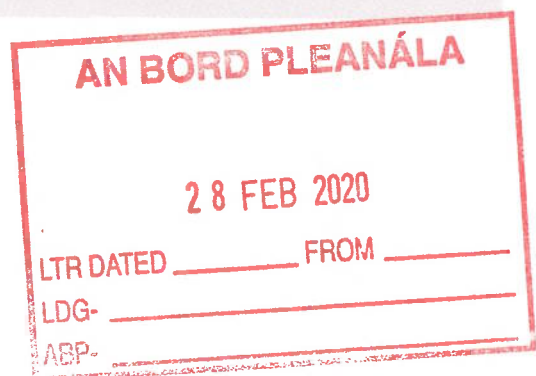
Wexford County Council

Planning authority register reference number

EXD00793

* Alternatively, enclose a copy of the decision of the planning authority as the statement of the Subject Matter of the Appeal.

5. Attach, in full, the grounds of appeal and the reasons, considerations and arguments on which they are based.
6. Attach the acknowledgement by the planning authority of receipt of your submission or observations to that authority in respect of the planning application, the subject of this appeal. (Not applicable where the appellant is the applicant).
7. Enclose / Pay the correct fee for the appeal and, if requesting an oral hearing of same, the fee for that request see "[Guide to Fees Payable](#)" under heading of Making an Appeal on Home Page of this website for current fees.
8. Ensure that the appeal is received by the Board in the **correct manner and in time**.





The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

27 February 2020

Re: Referral of Declaration made by Wexford County Council under the provisions of Section 5 of the Planning and Development Act 2000 to 2019.

The Declaration under Section 5 of the Planning and Development Act 2000-2019 was in respect of:

- 1. Whether the widening and surfacing with hard-core stone of the existing private laneway;**
- 2. Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition;**
- 3. Restoration and reuse of the derelict house as a habitable dwelling house; and**
- 4. The use of the widened and resurfaced private laneway as the access to the house referred to in 3 above;**

at Ballina Upper, Blackwater, County Wexford, is or is not development or is or is not exempted development within the meaning of the Act.

Wexford County Council Declaration ref: EXD00793

Dear Sir/ Madam,

I act on behalf of Frances Hopkinson, Tinnacourse House, Skeogh, Borris, County Kilkenny who owns the habitable dwelling house adjacent to and in front of the land where the developments which are the subject of this Referral, were and may be carried out. Part of the laneway which is the subject of the Referral is in her ownership. The works to the laneway were carried out without her consent or knowledge.

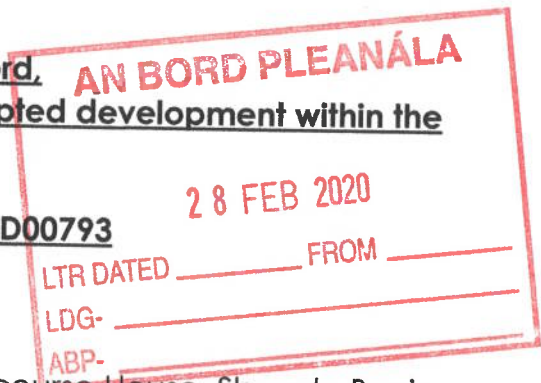
The following are enclosed with this Referral:

An Appeal/ Referral Checklist

A copy of the Application for a Declaration

A letter dated 14th January 2020 detailing the case for the developments not being exempted and the various attachments

A copy of the Declaration ref EXD00793



A copy of the planner's report dated 10 February 2020.
Additional correspondence from Frances Hopkinson (sworn statement and Letter from Irish Water)
Location map
The Referral fee of €220

Planning Authority Declaration

The planning authority determined as follows:

1. *That the widening of existing private access, infilling of marl-hole and restoration and reuse of existing derelict house as a habitable house is Exempted Development.*

The reasons for declaring the development to be exempted development are not given at the end of the schedule,

Planner's Report

The planner's report provides an understanding of the reason for the Declaration.

Derelict Dwelling House

Firstly, and crucially, under the heading "Site Location and Description" the planner refers to "a two-storey dwellinghouse last habited c.1990's set c.100m back from the public roadway" and "a derelict dwellinghouse (last habited c.1950's) set c.250m back from the public roadway with a paddock containing a newly formed pond and recently infilled marl-hole in-between both houses".

The planner misunderstood the situation concerning the status of the two houses which led to the Declaration which issued, which is considered incorrect.

Firstly, the two-storey building set c.100m back from the public roadway is an unoccupied former dwelling house which was last occupied in the 1960s and is derelict [N.B. In a misunderstanding in discussions with my client it was inadvertently stated in the Section 5 application that the building was last occupied in the 1950's. She has since confirmed to me the original owner of her house advised her he had never known anyone living in the house since he acquired the site he built his house on in the 1960's]. It is that building which the application for a Declaration sought confirmation of its reuse as a habitable dwelling house being development that is not exempted development. The building was only provided with a modern electrical supply in the last few years and it has no public water supply.

I enclose a sworn statement from my client confirming when the building was understood to have last been used as a habitable dwelling and her understanding of the existing electricity supply.

Regarding the water supply to the building, the pipework in the laneway was understood to be an unauthorised connection taken from my client's

public supply. However, the planner in his report considers it may only be pipework for a future public water connection which may be correct. Notwithstanding, it was laid at the time of widening and upgrading of the laneway which this Referral maintains was not exempted development. Moreover, the planner in his report considers this pipework to be exempted under Section 4(1) of the Act but does not specify which sub-section of 4(1) refers. If he is referring to Section 4(1)(g), this gives exemption to a local authority or statutory undertaker to carry out pipeworks, not private individuals. A letter is attached from Irish Water confirming it has not carried out or sanctioned any such work. Section 4(1)(g) therefore cannot apply.

The passage of time of non-occupation and upkeep of the building last occupied in the 1960s until the very recent works referred to in the application for a Declaration cannot confer "habitable house" status on the building. It is also considered relevant that period of over 50 years between the last occupation of the building as a habitable house and the recent works, there has been no improvements or upgrading works carried out, services installed, access upgrade etc to suggest the possibility of reuse. There is also no record of any planning permission activity since the first planning act came into force in 1964 or apparent sale of the property until the most recent sale which brought the property into the ownership of the current owner. The Board will note that sale documentation referred to the sale of a "derelict" house.

There is considerable case law on the issue of "abandonment of use". Garrett Simons in *Planning and Development Law and Practice – Second Edition* (Thomson- Round Hall, 2007, at 2.72 – 2.78) writes; *"The mere suspension of development will not, generally, amount to abandonment. It has been held, however, that where a previous development has not merely been suspended for a temporary and determined period but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, it is a question of fact whether or not the former use has been abandoned.¹ It seems that the issue of an intention to resume the development is an important factor in determining whether or not there has been abandonment"*.

In a recent An Bord Pleanála appeal decision in County Waterford in 2019 concerning a replacement dwelling where the applicant claimed the existing dwelling to be replaced was habitable, the Board considered otherwise. It deemed the building, which was last occupied in the 1950s, to be derelict notwithstanding planning permission having been granted in 1994, 1998 and 2005 for the resurrection of the residential use thereby demonstrating evidenced intention of resuming the last use. Evidence also

¹ Dublin County Council v Tallaght Block Company Ltd. [1882] I.L.R.M.535 at 540; unreported, Supreme Court, May 17, 1983 (applying the test in *Hartley v Minister for Housing and Local Government* [1970] 1 Q.B.413); *Cork County Council v Ardfert Quarry Product Ltd.*, unreported, High Court, Murphy J., December 7, 1982; and *Westmeath County Council v Quirke and Sons*, unreported, High Court, Budd J., May 23, 1996.

existed demonstrating structural repairs had also been carried out to that building in recent times (ABP Ref: ABP-304752-19).

In the present case, the building has been unoccupied for a similar period of time, there is no evidence of any intention to reuse the building and it could not be reoccupied without significant upgrading, including connecting it to electrical and water mains, installing a wastewater treatment system, replacing all windows and doors etc. It is abundantly clear that the previous use was not suspended for a temporary and determined period but that the use ceased in the 1960s with no evidenced intention of resuming it at any time. Therefore, the former use has to be considered abandoned.

Due to the planner incorrectly considering the house immediately to the rear of my client's house to have been last occupied in the 1990s and not derelict, the planner in his report did not address the issue of the re-use of the building as a habitable dwelling. For the reasons outlined in the application and with the clarification above, the Board is requested to confirm that the re-use of the building as a habitable dwelling house is development which is not exempted development.

For clarification purposes, the dwelling 250m back from the public road, which was not the subject of the application for a Declaration, was last occupied in the 1990s, notwithstanding its current derelict appearance which may have confused the planner.

Finally on this issue, as the derelict house behind my client's house has not been occupied since it was built in the early 1970s (site acquired in 1969, possibly built in 1970/1971), neither my client nor the previous occupants who built the house have had any experience of traffic associated with the building travelling up and down the laneway and have not suffered any loss of privacy or other nuisance due to the building being unoccupied. These are all typical symptoms of "backland development" which, from a planning perspective, are generally deemed unacceptable. Evidence confirming this from the previous owners of the house, the late Bernard McGuire, was enclosed with the application and is enclosed herewith. The only activity my client witnessed on the laneway was the occasional coming and going to Molly Sinnott's house, 250m back from the public road, which was occupied until the early 1990's. My client recalls Molly Sinnott being a recluse who did not drive and rarely left her house. She does not recall cars ever driving up and down the laneway to Molly Sinnott's house. Ms Maire Hodge from Clonard Great, Clonard, County Wexford who lived in Ballina Upper from 1979 to 1995 visited Molly Sinnott on a few occasions and only ever recalls her nephew visiting her from time to time. A letter confirming this was also attached to the application and is also attached herewith.

Access Road

The planner in his report fails to acknowledge the details provided with the application which show that the original private laneway, aside from section immediately abutting the public road, was only 2.2m wide and was

widened to over 3m in width. At around 20m back from the public road it is 4m wide and at 30m back it is 3.4m wide. To achieve this width it was necessary to remove trees and shrubs and cut back into my client's ditch embankment. This is demonstrated on the drawing which accompanied the application.

The width of exemption of a private way referred to in Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2019 is up to and not exceeding 3m.

The planner refers to the section of laneway which was the subject of the application as, "the front part of the laneway". He states, "*while the front part of the laneway may exceed 3m in width, the excess is not considerably over 3m and this part represents only a small portion of the laneway...*". He continues to state no photographs of the laneway before works were submitted with the application. This is incorrect. A Google Earth image and a photograph in the property sales schedule were submitted which clearly show the original width of the laneway. The planner's report also showed a Google Street View c 2009 which clearly demonstrated the narrow width of the laneway.

It is respectfully submitted the planning authority cannot on the one hand state the widened section of the laneway is "not considerably over 3 meters" in width and on the other determine that it does not exceed 3 meters, which is the upper width limit for exemption. The lane was widened by up to 1.8 meters over the exempted limit which is significantly outside the scope of exemption.

Sightlines

The planner appears to have misunderstood the purpose of referring to the sightlines at the entrance in the application.

The sightlines at the entrance are severely restricted. Article 9 (1) (a) (iii) de-exempts otherwise exempted development under the Regulations where the works would endanger public safety by reason of traffic hazard or obstruction of road users.

All of the works to the laneway and the infilling of the marl hole required manoeuvring vehicles in and out of the property along the private laneway. Each vehicle movement in and out represented a traffic hazard. Therefore, the works to the laneway and the infilling of the marl hole were de exempted works.

Concerning the comment under the heading "Right of Way" in the planner's report where he states the planning authority has no control over what size of vehicles may access the site using the private laneway, clearly the existing permitted width of the road controlled what size of vehicles could use it. 2.2m width would have been sufficient width for a horse and cart, small tractor or a car. These would most likely have been the type of

vehicles which would have assessed the property in the past. The recent increased width of the laneway was to allow larger vehicles onto the site to carry out the unauthorised works which were recently undertaken. Had the planning authority been dealing with a planning application for proposed works for widening the laneway, as it should have been had the perpetrator(s) of the works sought planning permission, it would have been in control of what type of vehicles could use the laneway and safeguard public safety.

Infilling of Marl Hole

The planner in his report refers to Class 11 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 to 2019 and deems the infilling of the marl hole to be exempted on the basis it involved a wetland of an area not exceeding 0.1ha.

Class 11 clearly envisages the works to involve bringing the land back to its former condition. The material that would have been extracted would have been inert clay. Class 11 could have permitted the depositing of inert material and topsoil from the landholding to bring the land back to its previous condition.

Evidence was submitted with the application which confirmed the landowner had allowed a neighbour to fill the former marl hole and Google Earth ariel photographs and development works on the adjoining site strongly suggested the marl hole had been filled with waste from the neighbouring property.

The filling of a marl hole with imported waste is not covered by Class 11 exemption.

As stated in the application, the infilling of the marl hole could not be exempted under Class 8C of the Regulations as it involved the reclamation of a wetland and the use of waste material.

Notwithstanding, Article 9 (1) (a) (iii) of the Regulations de-exempts otherwise exempted development under the Regulations where the works would endanger public safety by reason of traffic hazard or obstruction of road users. The landowner's solicitor confirmed the laneway was used for the purposes of filling the marl hole. The use of the laneway to carry out the works had to have created a traffic hazard, therefore, the infilling could never have been exempted development.

Conclusion

The planning authority misunderstood the length of time since the building which was the subject of the application was last occupied as a habitable dwelling. Had it realised it had not been occupied since the 1960's it is presumed it would have declared it derelict and the residential use

abandoned, as it appears to have done in respect of the building to the rear which was last occupied in the 1990s.

Despite the misunderstanding, the Declaration which issued stated the "reuse of the existing derelict house as a habitable house" is exempt development. The Declaration has to be incorrect in that respect as the interpretation of a habitable house in the Planning and Development Act 2000 (as amended) does not include a dwelling that is derelict.

The widening of the section of laneway adjacent to my client's house, which is partly in her ownership, exceeds 3 meters in width and therefore was not exempted development. The planning authority has no discretion to deviate from the specifics of the exemption.

Regarding the filling of the former marl-hole, the planning authority did not ascertain the nature of the fill. Evidence was provided in the application which demonstrated the fill was brought onto the site by a neighbour who was carrying out works at his property, including demolition works.

In considering all of the works on site the planning authority failed to have regard to Article 9 (1) (a) (iii) of the Regulations. All of the works carried out involved using the laneway which has seriously substandard visibility at the junction with the public road and is a traffic hazard.

The Board is requested to confirm as follows:

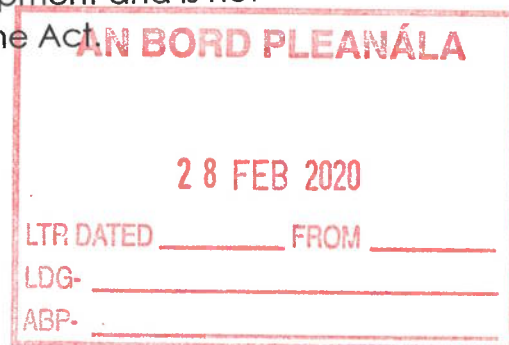
1. That the widening and surfacing with hard-core stone of the existing private laneway;
2. Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition;
3. Restoration and reuse of the derelict house as a habitable dwelling house; and
4. The use of the widened and resurfaced private laneway as the access to the house referred to in 3 above;

at Ballina, Blackwater, County Wexford, is development and is not exempted development within the meaning of the Act.

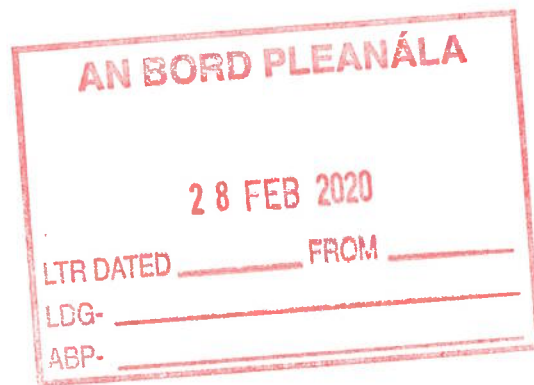
Yours faithfully,



Peter Thomson, MSc, MIPI



Application for Declaration and Letter of 14 January 2020 plus attachments



B&D00993

**APPLICATION FOR DECLARATION OF EXEMPTED DEVELOPMENT
SECTION 5 – PLANNING & DEVELOPMENT ACT 2000 (as amended)**

Name and address of applicant(s)

Frances Hopkinson, Tinnacourse House, Skeogh, Borris, County Kilkenny

WEXFORD COUNTY
RECEIVED BY P107
14 JAN 2020
PLANNING OFFICER

Eircode: R95 NY51

If applicant is a company – n/a

Names of Company Directors _____

Registered address of company _____

Companies office registration number _____

AN BORD PLEANÁLA
28 FEB 2020
LTD DATED _____ FROM _____
LDG- _____
ABP- _____

Name and address of person acting on behalf of applicant

Peter Thomson, Peter Thomson Planning Solutions, 4 Priory Grove, Kells, County Kilkenny

Eircode: R95VY05

Location townland and postal address of land or structure concerned

Ballina, Blackwater, County Wexford, Y21367

(Please attach site location map)

Nature and extent of development: Widening of existing private access, infilling of marl-hole and restoration and re use of existing derelict house as a habitable house – see attached letter

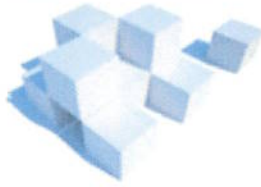
(Please attach drawings in detail to support application)

Section of Exempted Development Regulations under which exemption is claimed

It is being claimed the development is not exempted under the Planning and Development Acts and Regulations – see attached letter

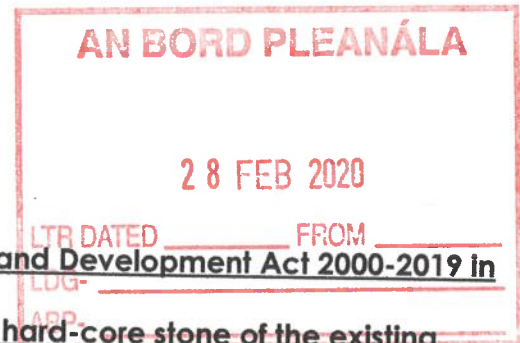
SIGNED Peter Thomson

DATE 14/1/2020



Director of Services (Planning),
Wexford County Council,
Council Offices,
Carriglawn,
Wexford.

14 January 2020



Re: Application under Section 5 of the Planning and Development Act 2000-2019 in respect of a Declaration in respect of:

- 1. Whether the widening and surfacing with hard-core stone of the existing private laneway;**
- 2. Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition;**
- 3. Restoration and re use of the derelict house as a habitable dwelling house; and**
- 4. The use of the widened and resurfaced private laneway as the access to the house referred to in 3 above;**

at Ballina, Blackwater, County Wexford.

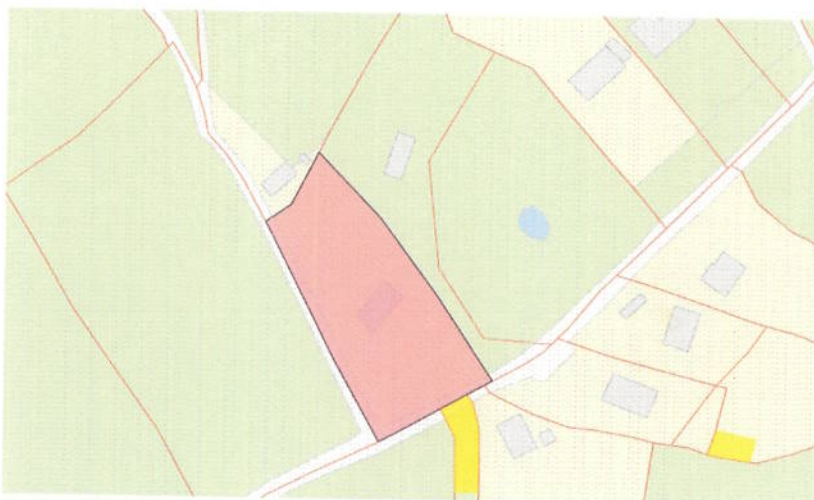
is or is not development or is or is not exempted development within the meaning of the Act.

Dear Sir/ Madam,

Background

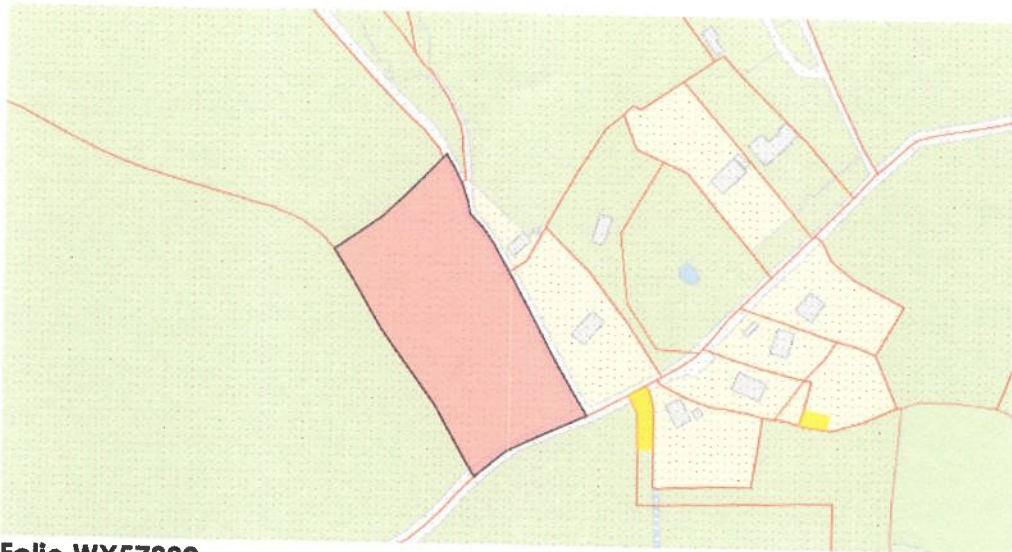
My client owns a cottage on 0,28ha of land at Ballina, Blackwater, County Wexford.

The property comprises the cottage and its curtilage, which is the associated garden, and approximately half of an existing length of laneway to the west of the cottage (Folio WX22498).



Folio WX22498

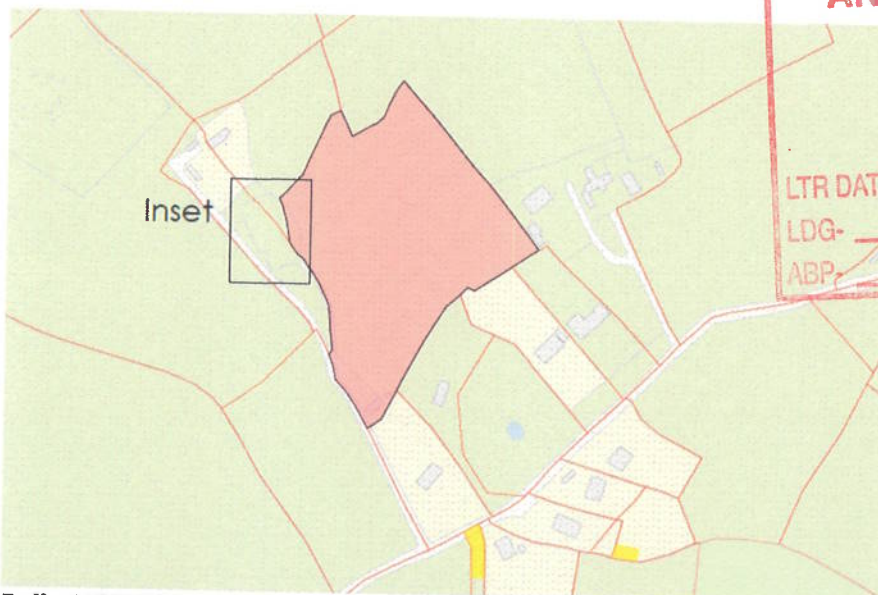
The other half of the existing length of the laneway is owned by Mr Hugh Cash (Folio WX57832F).



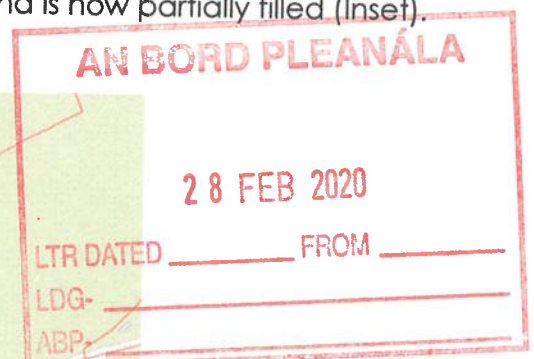
Folio WX57832

To the rear of my client's property (north) is a parcel of land owned by Patrick Cashe which extends to 1.39ha (Folio WX3729). There is a derelict house at the southern end of this landholding which has not been occupied since the mid 1950's.

The parcel of lands comprises the derelict cottage and a field. At the western end of the field was part of a former sand and gravel pit/marl hole. The former sand and gravel pit/marl hole extended to 0.1ha or thereby and is now partially filled (Inset). (See aerial photographs attachment PT1)



Folio WX3729

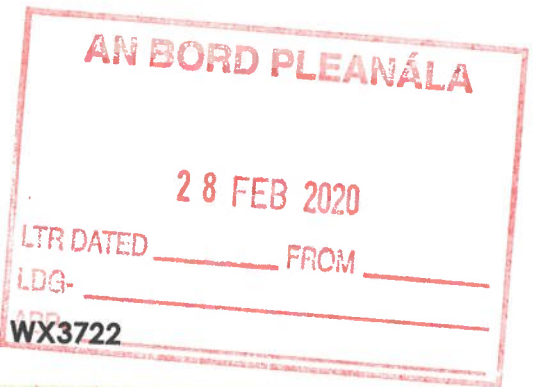


Inset

To the northwest of Folio WX3729 are two further folios; Folio WX3722 and WX3732 which were both previously owned by Ms Molly Sinnott and are now in the ownership of Joseph Shinkins. They contain another derelict house, derelict outbuildings and agricultural land. Ms Sinnott, who was the last occupant of the house, died in the early 1990's.



Folio WX3722



Folio WX3732

The owners of the three parcels of land to the north of my client's property (Folio's WX3729, WX3722 and WX3732) do not own the laneway adjacent (west) of my client's property.

Works

The Laneway - In late 2018, my client arrived at her house following a period of absence to find the laneway she partly owns to the west of her property in the process of being developed.

Up to the point of this development the lane was no more than a grass track (see attachment PT2). The two derelict houses on the land to the rear had not been occupied since my client purchased her house in 1989 and she has evidence that the derelict house on the land now belonging to Patrick Cashe had not been occupied since the mid 1950's. Please refer to the attached letters from Moira Hodge and the late Bernard McGuire confirming this (see attachment PT3).

Further evidence of this house being derelict is found in the sales document prepared at the time Patrick Cashe acquired the property (see attachment PT4).

The works to the laneway continued on and off without my client's knowledge into early 2019.

The totality of the works undertaken to the laneway comprised the following:

- Removing trees and hedges along part of its length;

- Levelling and excavating the laneway surface and excavating part of the ditches along the sides of the laneway to widen it. N.B. The eastern ditch which was excavated was the boundary of my client's house curtilage and part of her garden boundary;
- Excavating the ground in the laneway and making a connection to the existing watermain located on my client's property; and
- Resurfacing the widened laneway with hard-core stone.

Photographs and plans of these works are attached (attachment PT5)

Despite all of these works being on my client's property and the half of the laneway belonging to Hugh Cash, my client was never approached about them or consented to the works.

My client instructed a report on the works in January 2019 from Byrne and McCabe engineers a copy of which is attached (attachment PT6).

The former sand and gravel pit/ marl hole – On making a complaint through her solicitor to Patrick Cashe who was carrying out works on his property and around the derelict house immediately to the rear of my client's property, her solicitor received a response from the solicitor for Patrick Cash. The response letter noted their client was not responsible for the works to the laneway. It was advised that Patrick Cashe had allowed a neighbour to fill in the former sand and gravel pit/ marl hole on his land and suggested that that neighbour had carried out the works to the laneway in the context of the works to fill in the former sand and gravel pit/ marl hole on his land (see attachment PT7).

Photographic evidence attached confirms most of the former sand and gravel pit/ marl hole was filled between around 2017 and 2019 and that it was filled from Patrick Cashe's side of the ownership (see before and after aerial photos – attachments PT8 and PT9).

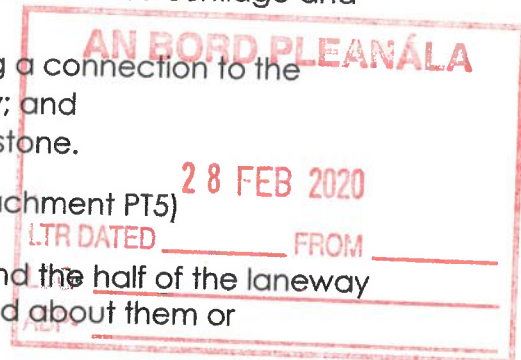
The neighbours concerned are John and Eimear Gray who received planning permission under planning application ref: 2016/0058 to demolish an existing fully habitable dwelling house, construct of a new dwelling house, to remove the roof of an existing shed and reroofing and to demolish and replace another shed.

Vehicle tracks shown on the aerial photograph from 2017 in PT9 clearly show track marks leading from the neighbouring application site to the former sand and gravel pit/ marl hole. This appears to confirm that waste and surplus material from the redevelopment of the neighbouring site was deposited into the former sand and gravel pit/ marl hole.

In this letter from the solicitor for Patrick Cashe it is stated the former sand and gravel pit/ marl hole bounds the property of Patrick Cashe. This is incorrect. It is partly on his land as evidenced on the folio map extracts above.

The derelict house – The derelict house has not been occupied as a habitable house since the mid 1950's.

Photographs taken from the laneway in March 2019 demonstrate that recent ground works around the house have been undertaken.



Access to the derelict house to carry out these works was taken via the widened and resurfaced laneway.

Proposed works

My client is seeking to have the unauthorised works along the length of laneway adjacent to her house undone, the unauthorised water service connection removed and her ditch reinstated following the laneway widening.

It would be her intention to have those who carried out the works without permission to do the reinstatement works. However, for the purposes of this Section 5 application, who carries out the reinstatement works is considered irrelevant.

Whether the work is or is not development or is or is not exempted development within the meaning of the Act.

The private laneway - Class 13 of the Planning and Development Regulations 2001 – 2019 permits the repair and improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way.

It is conditional on the works not resulting in the width of the private footpath or paving exceeding 3 meters.

In this case the excavation of the ditch to widen the existing laneway was outside the boundary of the original laneway. It also resulted in the laneway width increasing from around 2.2m to over 3m (refer to attachment PT5).

On this basis the works could not have been exempted.

In addition, and notwithstanding, all exemptions under the classes of exemption provided for in the Regulations are subject to the restrictions under Article 9 of the Regulations.

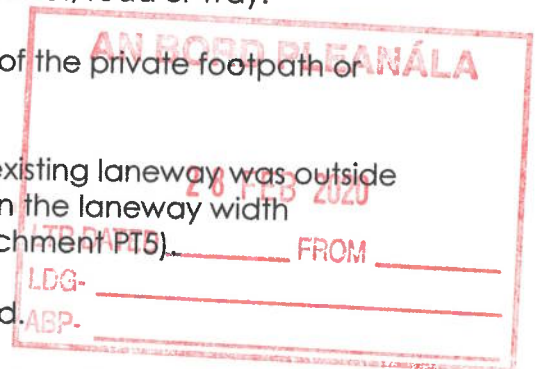
Article 9 (1) (a) (iii) de-exempts otherwise exempted development under the Regulations where the works would endanger public safety by reason of traffic hazard or obstruction of road users.

In this case there is severely restricted visibility for vehicles exiting the laneway onto the public road and the widened laneway, which can accommodate larger vehicles that hitherto, represents a traffic hazard.

The former sand and gravel pit/ marl hole - The infilling of land is development as defined by the definitions in Sections 2 and 3 of the Planning and Development Act.

Acts of development require planning permission unless they are exempted.

Article 8C of the Planning and Development Regulations, 2001 - 2019 provides an exemption for land reclamation works, other than reclamation of wetlands, including recontouring and infilling of soil, but not waste material, within a farm holding.



Firstly, the former sand and gravel pit/ marl hole was a wetland, therefore infilling was not exempted. In this regard I would refer to a previous Referral considered by An Bord Pleanála involving the in-filing of a former marl hole in Crosstown, Co Wexford where the Board determined a wetland had been infilled and the infilling was not exempted (Ref: ABP-303109-18).

Also, in this case like the Crosstown case, it is not known exactly what material was used to fill the former sand and gravel pit/ marl hole. It appears to be waste material, possibly including demolishings, from the adjoining development site. On that basis also the infilling was not exempted.

Finally, as the machinery and vehicles used for the infilling accessed and egressed the property from the laneway and the use of the lane represents a traffic hazard for reasons outlined earlier, even if the fill was inert fill from within Patrick Cashe's landholding, exemption could not be claimed due to the traffic hazard.

The infilling of part of the former sand and gravel pit/ marl hole was therefore development which was not exempted development.

The derelict house – The derelict house has not been occupied as a habitable house since the mid 1950's.

Under Section 2 of the Planning and Development Act a "house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied,

Also under Section 2, a "habitable house" means a house which –

- (a) Is used as a dwelling,
- (b) Is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
- (c) Was provided for use as a dwelling but has not been occupied¹.

Where a use of a property has been abandoned it is left with "nil use". The existing house on the property is derelict and was abandoned in the 1950's.

As the existing derelict house has not been occupied since the 1950's it has no ("nil") permitted use. To re- use it as a dwelling house for habitable occupation therefore requires planning permission.

[N.B. While it may be possible to carry out improvements etc to the structure as exempted development under Section 4(1)(h) of the Planning and Development Act, this exemption can only exempt "works" not "use"].

An application to reuse the house for habitable purposes would require the applicant to demonstrate, *inter alia*, that a modern waste water treatment system could be installed to current EPA standards to serve the house and that safe access can be obtained into and out of the site. It would also need to demonstrate it would not adversely impact on neighbouring property, such as my client's house.

¹ My emphasis

It is possible a modern waste water treatment system to current EPA standards could be designed and installed.

To provide safe access into the property to serve the house would require the existing laneway to be upgraded to a standard suitable to serve a dwelling house. Such upgrading would require the benefit of planning permission. To obtain such a planning permission would require the written consent of the two existing owners of the existing laneway to make the planning application (my client and Hugh Cash).

In addition, it would be necessary to demonstrate that sightlines in accordance with the Wexford County Development Plan could be achieved at the junction of the laneway and the public road. These sightlines would be unrestricted visibility east and west from a point 2.0m back from the road edge for a distance of 65m.

The visibility at the entrance is presently 7m to the west and 7 m to the east. To achieve the minimum sightlines required to it would be necessary to remove the entire front boundary of my client's garden to the east and a portion of Hugh Cash's ditch to the west. Again, the written consent of my client and Hugh Cash would be required for these works.

Finally, given the proximity of the existing derelict house to my client's house, adverse impacts on my client's amenity would likely arise if the derelict house was reoccupied.

Declaration sought

Having regard to all of the above the planning authority is requested to declare on the following 4-part question:

1. *Whether the widening and surfacing with hard-core stone of the existing private laneway;*
2. *Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition;*
3. *Restoration and re use of the derelict house as a habitable dwelling house; and*
4. *The use of the widened and resurfaced private laneway as the access to the house referred to in 3 above;*

at Ballina, Blackwater, County Wexford,

is or is not development or is or is not exempted development within the meaning of the Act.

Conclusion

Having regard to all of the above it is requested the planning authority will confirm as follows:

1. That the widening and surfacing with hard-core stone of the existing private laneway;
2. Infilling of part of the former sand/ gravel pit/marl hole with material of unknown composition;

AN BORD PLEANÁLA

28 FEB 2020

LTP DATED _____ FROM _____

IFS _____ is requested to declare on _____

ABP- _____

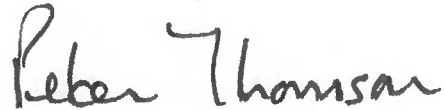
3. Restoration and re use of the derelict house as a habitable dwelling house;
and
4. The use of the widened and resurfaced private laneway as the access to the house referred to in 3 above;

at Ballina, Blackwater, County Wexford,

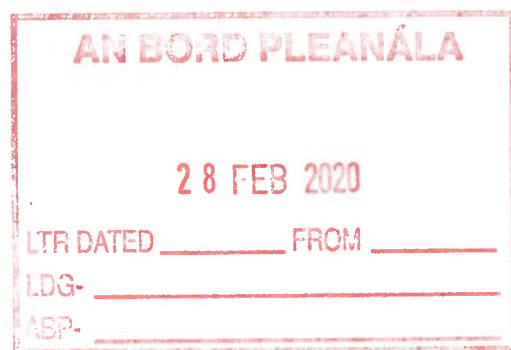
is development and is not exempted development within the meaning of the Act.

I look forward to hearing from you.

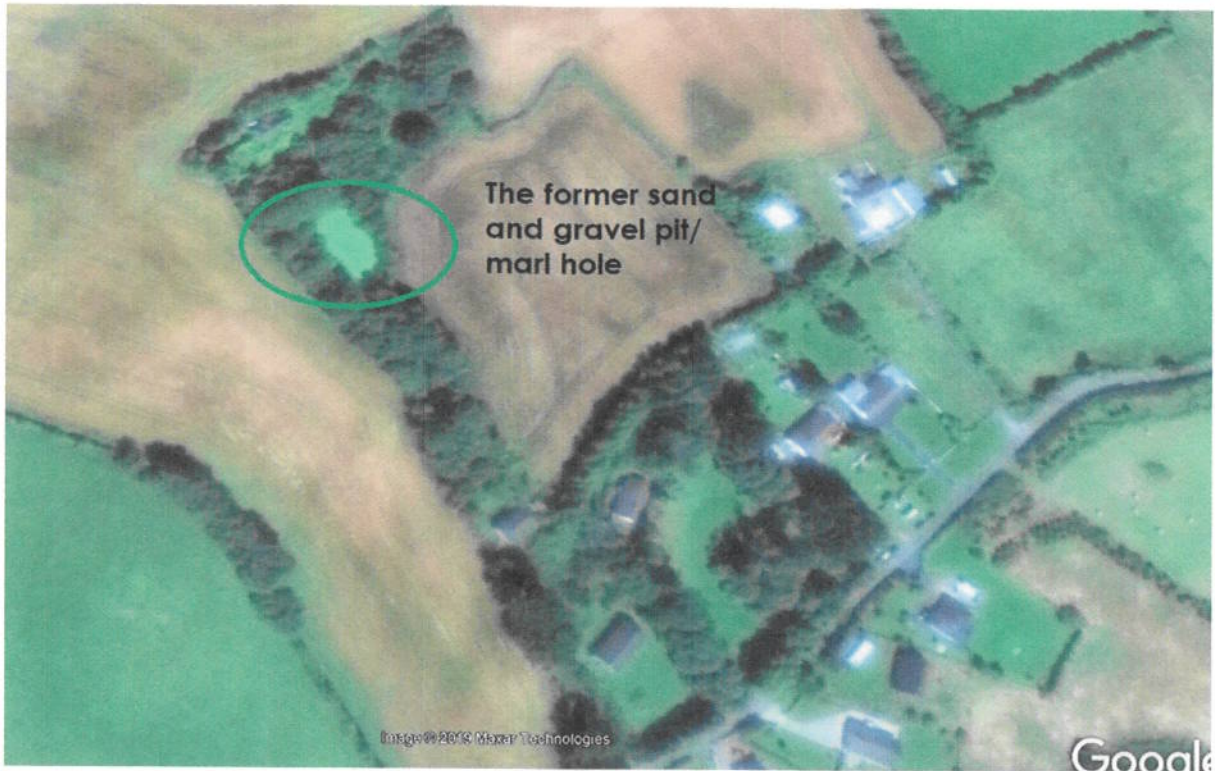
Yours sincerely,



Peter Thomson, MSc, MIPI



Attachment PT1



AN BORD PLEANÁLA

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Attachment PT2



Laneway entrance of the public road

28 FEB 2020
DATE DATED FROM



The worn grass surfaced laneway

Clonard Great,
Clonard,
Wexford.
3/10/12

I lived in Ballina Upper,
Blackwater from 1979 to 1998

I was not aware of anyone
visiting Molly Sinnott, only
her nephew who visited her
on his tractor. I did visit her
a few times.

Moira Hodge.

AN BORD ILEANAŁA

28 FEB 2020

LTR DATED _____ FROM _____

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ABP- _____

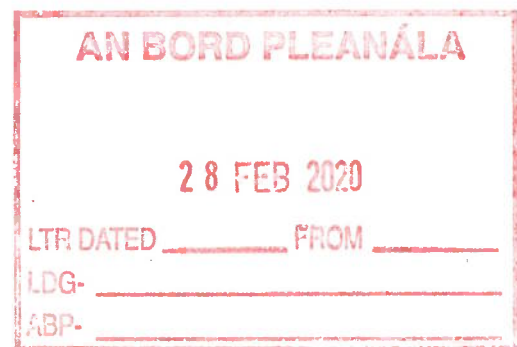
RE: BALLINA UPPER, BLACKWATER, CO. WEXFORD

TO WHOM IT MAY CONCERN

I confirm that in 1969 my parents purchased a site from the late Mr Pat Carbury and built a bungalow on that site. A laneway ran parallel to the site, which was used solely by the occupiers of two properties, one of which was the late Mollie Sinnott. Having occupied that property until 1989, we only ever observed it being used solely by the aforementioned or by people visiting them.

Signed Bernard Maguire

Bernard Maguire



Date: 17th September 2018



Ballina Upper, Blackwater, Enniscorthy, Co Wexford

€100,000 - Asking Price Sale Agreed 88 sqm approx

Description

Excellent 3.4 acre holding with derelict two storied residence.

Potential to either renovate/extend or erect new residence subject to necessary planning.

Situated up a short laneway off a quiet secondary road and just off the Blackwater – Curracloe coast road.

Lands lie in an elevated position with views looking out towards the South-East coastline and sea.

Laid out in one undulating field, under slight gradient.

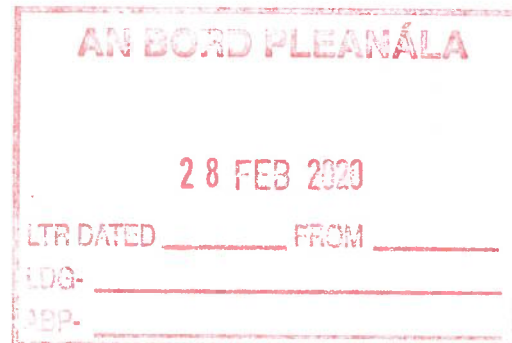
Little over five minutes' drive from either Blackwater or Curracloe and close proximity of beautiful sandy beaches.

BER Information

Rating: BER G

Number: 111345831

Energy Performance Indicator: 1138.12kWh/m2/yr



About the Area

Blackwater (Irish: an Abhainn Dubh) is an enchanting rural village in County Wexford. The traditional nature of the village and commitment to the natural surroundings, impart a unique charm. The village, which is in close proximity to the sea, has four pubs, a number of supermarkets and several leisure facilities. Blackwater lies mostly within the townland of Ballynaglogh on the R742 regional road 16 km (9.9 mi) north of Wexford. Bus Éireann route 379 serves the village, linking it to Wexford, Gorey and intermediate locations. Lately the village has increased its population, and has seen the building of hundreds of houses in the village itself and in outlying areas.

Google

This page can't load Google Maps correctly.



[Do you own this website?](#)

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Google

Map daReport a map error

myhome.ie

Sale Agreed Ballina Upper, Blackwater, Enniscorthy, Co Wexford

🏠 2 beds

Detached House

📏 88 m²

BER **G**

AN BORD PLEANÁLA

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



Description Transport Schools Amenities

< Description

Viewing image 1 of 7

>



Excellent 3.4 acre holding with derelict two storied residence.
 Potential to either renovate/extend or erect new residence subject to necessary planning.
 Situated up a short laneway off a quiet secondary road and just off the Blackwater - Curracloe coast road.
 Lands lie in an elevated position with views looking out towards the South-East coastline and sea.
 Laid out in one undulating field, under slight gradient.
 Little over five minutes' drive from either Blackwater or Curracloe and close proximity of beautiful sandy beaches.

BER Details

BER: G
 BER No: 111345831
 Performance Indicator: 1138.12kWh/m2/yr

[



SHARE

REPORT AD

ANBC
 www.myhome.ie/4152578

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Affordability

Stamp Duty: €1,000.00
 Total Amount: €101,000.00



Viewing image 2 of 7

Excellent 3.4 acre holding with derelict two storied residence.

Potential to either renovate/extend or erect new residence subject to necessary planning.

Situated up a short laneway off a quiet secondary road and just off the Blackwater - Curracloe coast road.

Lands lie in an elevated position with views looking out towards the South-East coastline and sea.

Laid out in one undulating field, under slight gradient.

Little over five minutes' drive from either Blackwater or Curracloe and close proximity of beautiful sandy beaches.

BER Details

BER: G

BER No: 111345831

Performance Indicator: 1138.12kWh/m2/yr



Affordability

Stamp Duty: €1,000.00

Total Amount: €101,000.00

28 FEB 2020
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ABP- _____

Viewing image 3 of 7



www.myhome.ie/4152578

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28 FEB 2020

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Viewing image 4 of 7



AN BORD PLEANÁLA

28 FEB 2020

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AN BORD PLEANÁLA

28 FEB 2020

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REPORT

Date: 30th January 2019

JOB NO: 19-012

BOUNDARY SURVEY

CLIENT:

Frances Hopkinson
Blackwater
Co. Wexford
Y21 A367



CONTENTS

1.0. Introduction

2.0. Brief

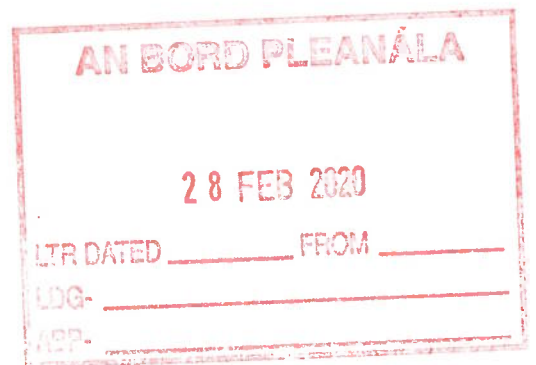
3.0. Land Registry Map

4.0. Site Visit

5.0. Conclusion

Appendix 1
Land Registry Map

Appendix 2
Photo



1.0 Introduction

We were engaged by Frances Hopkinson, Blackwater, Co. Wexford on the 14th of January 2019.

2.0 Brief

To arrange site visit. We had a copy of the land registry documents Folio 22498 (see appendix 1). Our brief was to examine the documents and compare the maps to works on site to comment on any works that were carried out on our client's property. The alleged works took place on the lane to the West without our client's approval or knowledge.

3.0 Land Registry Map

We secured copy of the land registry map for our clients site. The site is located at Ballina Upper Wexford. From the map we can confirm our client owns the land to the centre of the laneway to the West Boundary. This is where the alleged work has taken place. Our client also owns to centre line of the public road to the South.

4.0 Site Visit

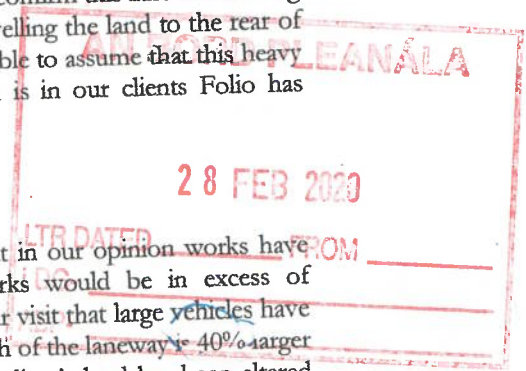
We carried out a site visit on Monday 28th January at 3pm and met with client on site. It was evident that extensive works have taken place on the laneway. There is evidence of heavy plant using the laneway to access the land to the rear. There is hardcore at entrance and it is evident that the entrance lane has been widened for the heavy plant. From photos (see appendix 2) you can see the cut along our client's boundary ditch. Our client's property has been shaved/excavated to make entrance wider. We can confirm that on average approximately 300mm to 600mm has been removed. Also from the photos our client has given us prior to the works the road build up was grass centre with two tracks for vehicles using the lane.

Please find before and after works photos attached (see appendix 2). You can also see that the use of some form of excavator was used to remove the centre grass margin and a sand base was installed. From the tracks on the lane we can confirm this lane is still being used by heavy traffic. During our visit a large dozer was levelling the land to the rear of the existing lane. This is only access to this land so its plausible to assume that this heavy vehicle access the site through the lane. The pier which is in our clients Folio has evidence of being clipped at the base and stone dislodged.

5.0 Conclusion

Form taken all the information above we can confirm that in our opinion works have been carried out on our client's property. These works would be in excess of maintenance and up keep of the lane. It is evident from our visit that large vehicles have used this laneway. As you can see from the photos the width of the laneway is 40% larger than it was prior to the works. We can confirm that our client's land has been altered extensively without permission from our client or knowledge. This shows a disregard of our clients rights.

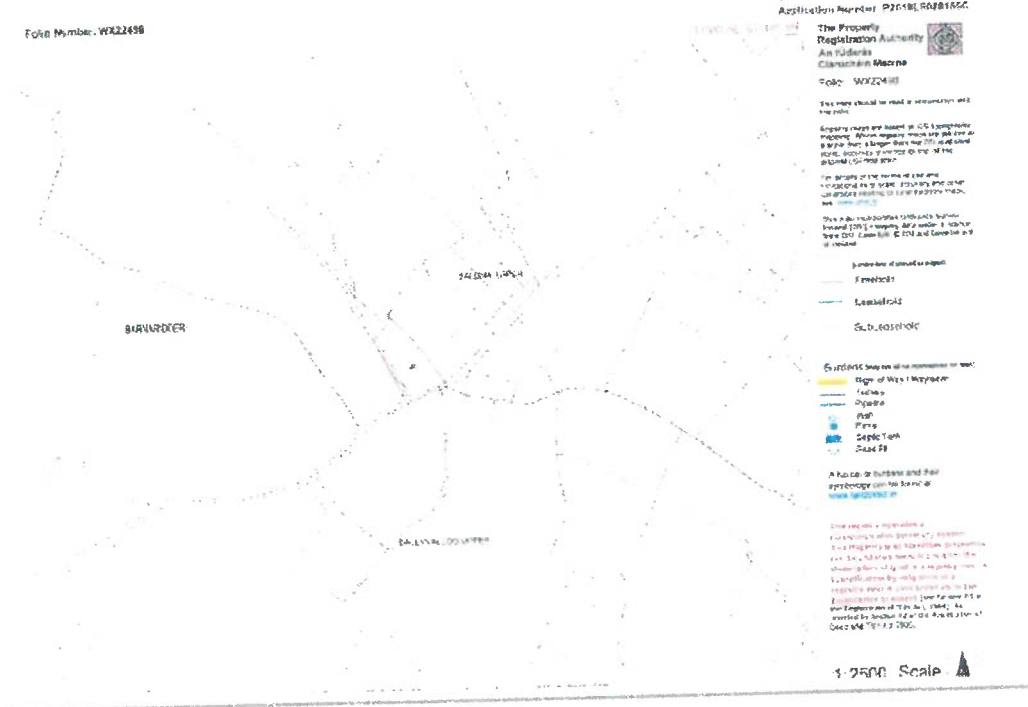
Philip Byrne NCEA Diploma Civil/Structural Engineering. MIEI



Appendix 1

Land Registry Map

Folio Number: WX22498



Folio WX22498

AN BORD PLEANÁLA

28 FEB 2020

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2020.

Appendix 2

Photos



AN BORD PLEANÁLA

28 FEB 2020

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PT7

KIRWAN & KIRWAN
SOLICITORS
TIMOTHY CUMMINGS, B.A.
ELEANOR O'FARRELL

LEGAL EXECUTIVE
LISA CLONEY

Our Ref: LC/CR/CAS0490001
Your Ref: RE/ND/HOF/L

Offices at
4 - 5 Cornmarket,
Wexford.

TELEPHONE : (053) 9143020
TELEFAX : (053) 9145995

D.E. DX 142 001 Wexford 2
E-MAIL: info@kirwanandkirwan.com

Dublin Address
1 Essex Gate, Parliament Street, Dublin 8.

Messrs. Dobbyn & McCoy,
Solicitors,
4/5 Colbeck Street,
Waterford.

29th October, 2019

RE: Patrick Cashe -v- Frances Hopkinson
Wexford Circuit Court Record Number: 51/2019

Dear Sirs,

Further to your letter of the 2nd inst. we confirm that we have taken further instructions.

Our client instructs that some time back a neighbouring landowner was having extensive clearing works carried out to his land.

There is a marl hole that is primarily on the neighbouring landowners land but approximately five percent of it is bordered by our client's land.

In the context of these works the Contractor engaged by the neighbouring landowner contacted our client and asked permission to access the marl hole from his lands in an effort to level off an embankment and in order to make the marl hole safer for both landowners.

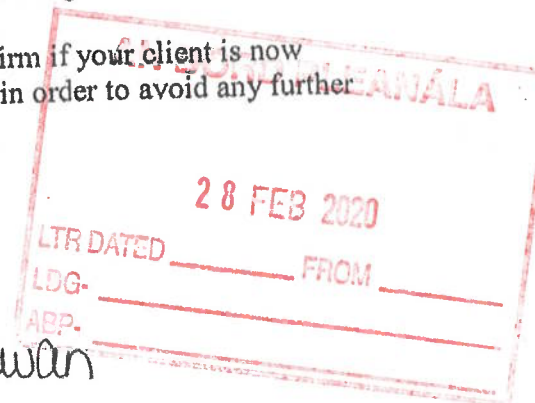
Our client agreed to this. With regards to any suggestion of works having been carried out to the laneway or alleged trespassing our client instructs that no works were carried out to the laneway by him or on his behalf and any such works to the best of his knowledge were carried out in the context of the works being done by the neighbouring landowner.

We trust this clarifies matters and you might kindly confirm if your client is now satisfied to sign the Grant of Right of Way as already requested in order to avoid any further costs to our respective clients.

We await hearing from you.

Yours faithfully,

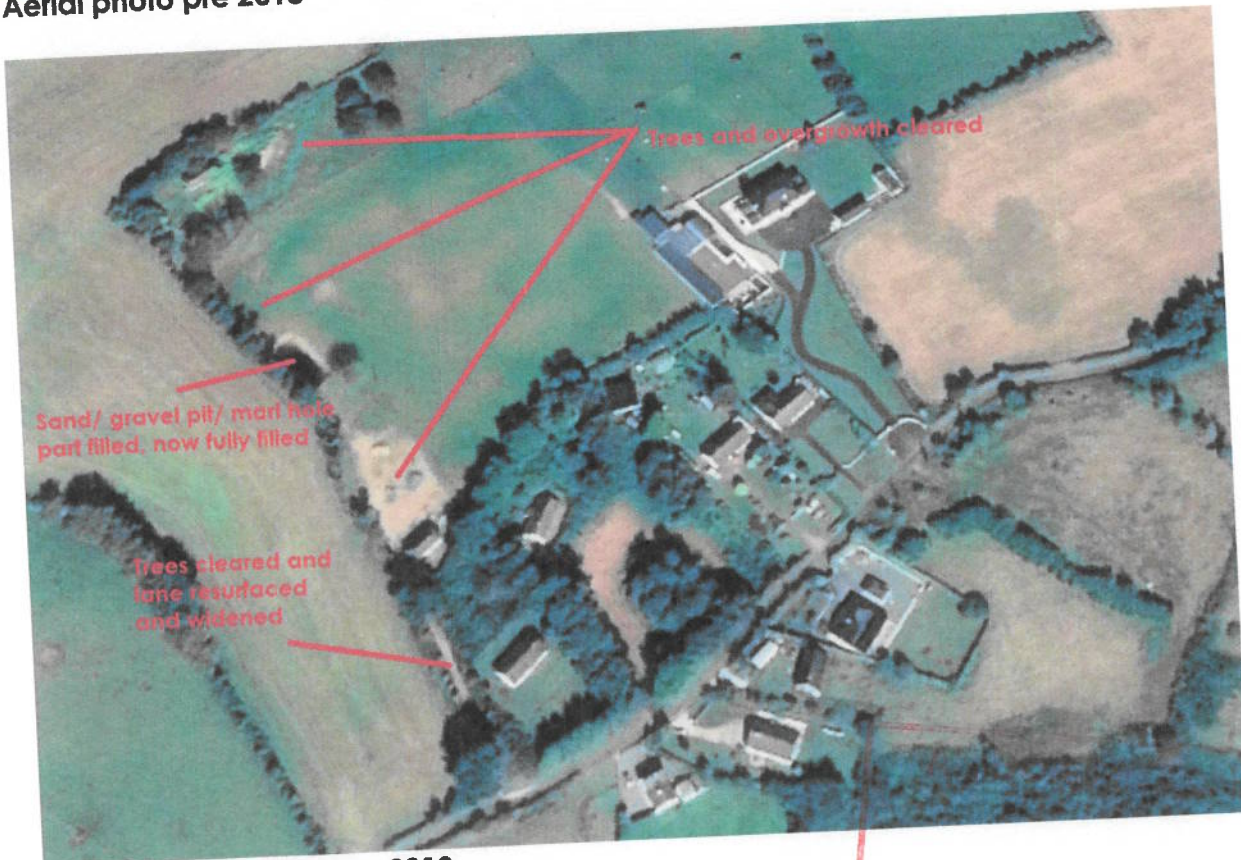
Kirwan + Kirwan



Attachment PT 8



Aerial photo pre 2018



Aerial photo September 2019

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