

AN BORD PLEANÁLA
 Applicant: Gerard Madden
 LDG- 025147-20 Greengate House
 A2P- Carr Street
 Limerick
11 MAR 2020
 Fee: € 220 Type: cheque Date: 09.03.20
 By: post

To: An Bord Planeala, 64 Marlborough Street, Dublin 1

Planning Authority: Clare County Council

RE: **R20-4** whether the erection of fence no.1 and fence no.2 at Riverdale, Westbury, Co. Clare is or is not development and is or is not exempted development.

Dear Sir/Madam,

I am writing to you to make an APPEAL against Clare County Council's on the above decision.

The land in question was sold by public auction in Sep'17 by a receiver for Greenband Investments Ltd. This was land what was leftover from the original agricultural farm of about 12 acres. An acre of this land was transferred to Clare County Council to comply with Open Space requirements as previously agreed (Clare County Council drawing no. 12-1106-07, see enclosed).

The receiver was appointed in Feb 2011. Some of this land had been used as an enabling site for the construction housing estate. The rest had been overgrown with bushes and scrub. Between 2011 and 2016 there had been many representations made to Clare County Council about the state of the land's dangerous condition of the enabling site, which was cleaned up around 2016. There was also a wooden fence constructed by Clare Council between the agreed open space and the agricultural land.

The receiver sold the land by public auction in Sep'17.
 The conveyancing was concluded in Dec'18.

On the 29th May 2019 we attempted to complete the fencing off of our land. After we started the work we were approached by Ann Colleran of Clare County Council. She requested us to cease the work. She said there was a question of the land been open and amenity space for the last 10 years. She said she had to go back and look at the correspondence to see when the land had stopped been an enabling area. She has never come back to us to clarify this. She also told us this land was covered by Clare county Council public Liability Insurance that she also failed to confirm in writing. We sent her an email on May 30, 2019 which she has still failed to answer (Please see enclosed email "A" that we wrote to her). In the intervening period we also asked the Council the following questions and they failed to answer them.

16 Oct 2019

Dear Sir/Madam,

Thank you for letter dated 9/9/19 with regard to us constructing a 1.5m fence internally on this land.

Could you please clarify the permitted area of public Open Space on the map of our land attached. I also attach the Athlunkard Settlement Plan for reference which shows the top part (OS3) as open space.

16 Oct 2019

Dear Sir/Madam,

We wish to make a further query regarding our land as shown the attached map. I requested to view of the original planning P02/2035 from planning. I could not see where the land in question (our land) was mentioned in condition 5 of this planning.

The land in question is clearly outside Red line on map outlining area in which planning was applied for (please see attached copies site layout and site location from P02-2035). Neither is the land in question to the south of blue hatched area. In other words I can not see where our land is marked as Open Space as specified in condition 5. Our land is not marked as open space on any plans in this planning application. Could you please clarify this?

The only planning permission that makes reference to our land is 072318 (planning for 103 houses on the land in question). From my understanding this planning was withdrawn because of issues with the flood plane.

18 Oct 2019

Dear Sir/Madam,

Could you please confirm that you served notice to the previous landowners of this land (outlined in red on the attached map) that you designated as open space the top of the land (OS3) as per the Athlunkard Settlement Plan (see attached). Please refer to the act below.

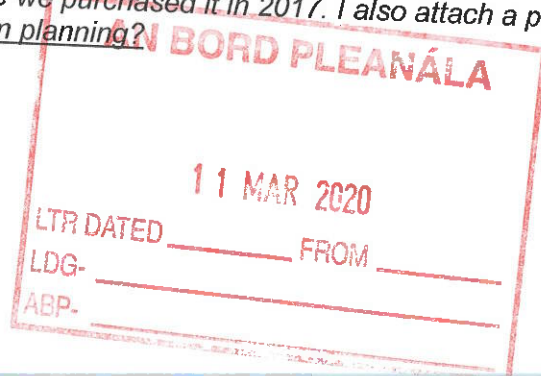
"Planning and Development Act, 2000

14.—(1) Where a planning authority proposes to include, for the first time, a provision in a development plan relating to the preservation of a specific public right of way, it shall serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists."

5 Nov 2019

Dear Sir/Madam,


We are trying to find a planning application for the construction of the raised bank/mound and fence on top of this mound in the position marked blue on the mapped attached. The fence/mound is between our land (marked A on map) and the public space adjacent to BruachIn road. This raised bank and fence was there before we purchased it in 2017. I also attach a photo of it. Was this fence and mound exempt from planning?

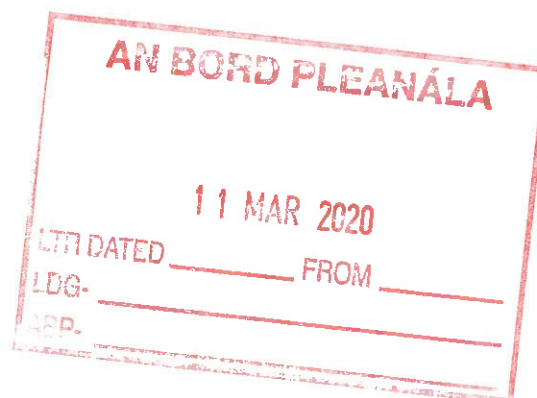


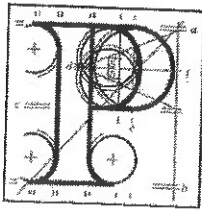
We wish to address the points one by one as set out in the Council's letter to refuse the exemption.

- (ii) With regard to section 4(1)(h) of the Planning Act 2000 the appearance of the Fence would not be inconsistent with the neighbouring housing estate as the fence would only be a continuation of the existing Council fence which already blends in and is acceptable by the neighbouring housing estate. If the existing Council's fence complies with section 4(1)(h), why would a continuation of the fence not comply? The fence will only be 1.2m high (below eye level) and will consist of green timber post and sheep wire, thus reducing the visual impact so far as possible. The wire will be well tensioned giving a nice neat appearance.
- (iii) Neither the Council nor ourselves are aware of any letters served by the Council to the previous landowners of this land that this land was designated as Open Space according to section 14-(1) of the Planning and development act, 2000, which states,
- "14.—(1) Where a planning authority proposes to include, for the first time, a provision in a development plan relating to the preservation of a specific public right of way, it shall serve notice (which shall include particulars of the provision and a map indicating the right of way) of its intention to do so on any owner and occupier of the land over which the right of way exists."*
- In the case where the Council has not served a notice as above to the previous owners then would NOT make the land in question designated open space. In condition 5 of planning P02-2035 the area marked in blue to the south is outside of our land so it does not apply.**
- (iv) The previous owner went into receivership on Feb 2011. Up to that date the land was been used as enabling area for the development for the housing estate. In 2011 the land went under the protection of the high court due the receivership process so you can't establish a right of way under such land. In conclusion the land was not habitually open or used by the public during the 10 years preceding this proposed fence.

Signed:


Gerard Madden
IM Properties Ltd





An
Bord
Pleanála

Planning Appeal Form

Your details

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

Your full details:

(a) Name

Gerard Madden

(b) Address

Greengate House
Carr Street
Limerick

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

(b) Agent's address

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED FROM

LDG-

ED-

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)

Clare County Council

(b) Planning authority register reference number

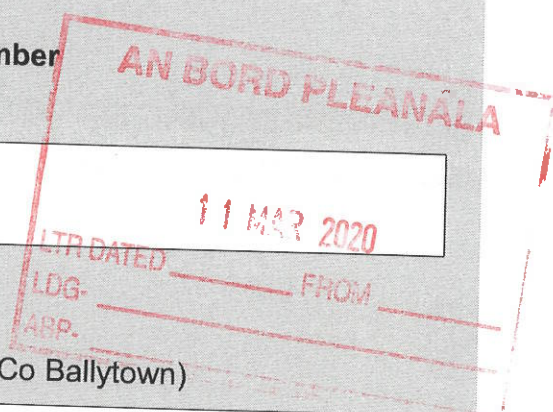
(for example: 18/0123)

R20-4

(c) Location of proposed development

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

Riverdale, Westbury
Co. Clare



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.

Please see grounds on
enclosed letter



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.

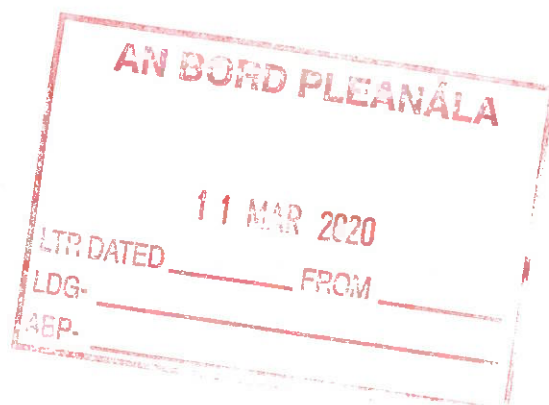
Please note you will have to pay an **additional non-refundable fee** of €50. You can find information **on** how to make this request on our website **or** by contacting us.

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

☒

NALA has awarded this document its Plain English Mark
Last updated: April 2019.





Gmail

EmailA

Gerard Madden <maddeng@gmail.com>

Planning Clare County Council

2 messages

Gerard Madden <maddeng@gmail.com>

To: acolleran@clarecoco.ie

Thu, May 30, 2019 at 12:47 AM

Attn Ann Colleran , Barry Brekery

Further to our meeting today I would like to confirm that tomorrow weather permitting that my Crew will be working on the internal Fence between the area designated Agricultural and the area designated open Space.

This will give some time to clarify the position about public liability insurance that you claimed covered the site. As I explained yesterday this area has been subjected to fly dumping and It is one of the reasons we want our land We removed a broken TV set yesterday that a child could have walked into.

So you might confirm by return that the council has public liability to cover this land.

Also get the insurance company to confirm that they are agreeing to public liability insurance on this land even though the council does not own the land and have no rights to enter and maintain this so called public park..

For a considerable period of the 10 years before the area was designated as Open Space the site was an enabling area for the constructions of the estate. Are you saying that this was a public green space for that time?

It was not designated as an open green area in the original planning permission. There is more than recommended level of amenity area for this estate existing already .In fact the way the access roads are finished attests to this not being a public green area. Are you said that it was a condition of the original planning that this was to be a public open park ?

When we were acquiring this site from the liquidator , on our requisitions on title there was no mention of granting extra rights of way over this land. Do you have a written agreement with the Liquidators to this effect ?

You also stated to me that the council has not take the rest of the Green spaces in the estate into public ownership and that it does not pay for their maintenance. Can you confirm this again ?

This area is designated to be a public green park in the area according you. But there is a difference in being designated to be something and being something. The council made no attempt to take this into their ownership as they did with the part of the site they did take.

We have seen in Mayo in the few years where a Council on the whims of councilors tried to eradicate private property rights ended up costing the State millions in legal fees. If the council wants extra Open Green Space in this area I am quiet willing to sit down and discuss a sale. It would cost a lot less that the legal fees in the trying to prove rights of ways that do not exist.

Regards
Gerard Madden

Ann Colleran <acolleran@clarecoco.ie>

To: Gerard Madden <maddeng@gmail.com>

Cc: Barry Breheny <bbreheny@clarecoco.ie>

Thu, May 30, 2019 at 3:12 PM

Dear Mr. Madden,

I acknowledge receipt of your email the contents of which are noted.

Regards,

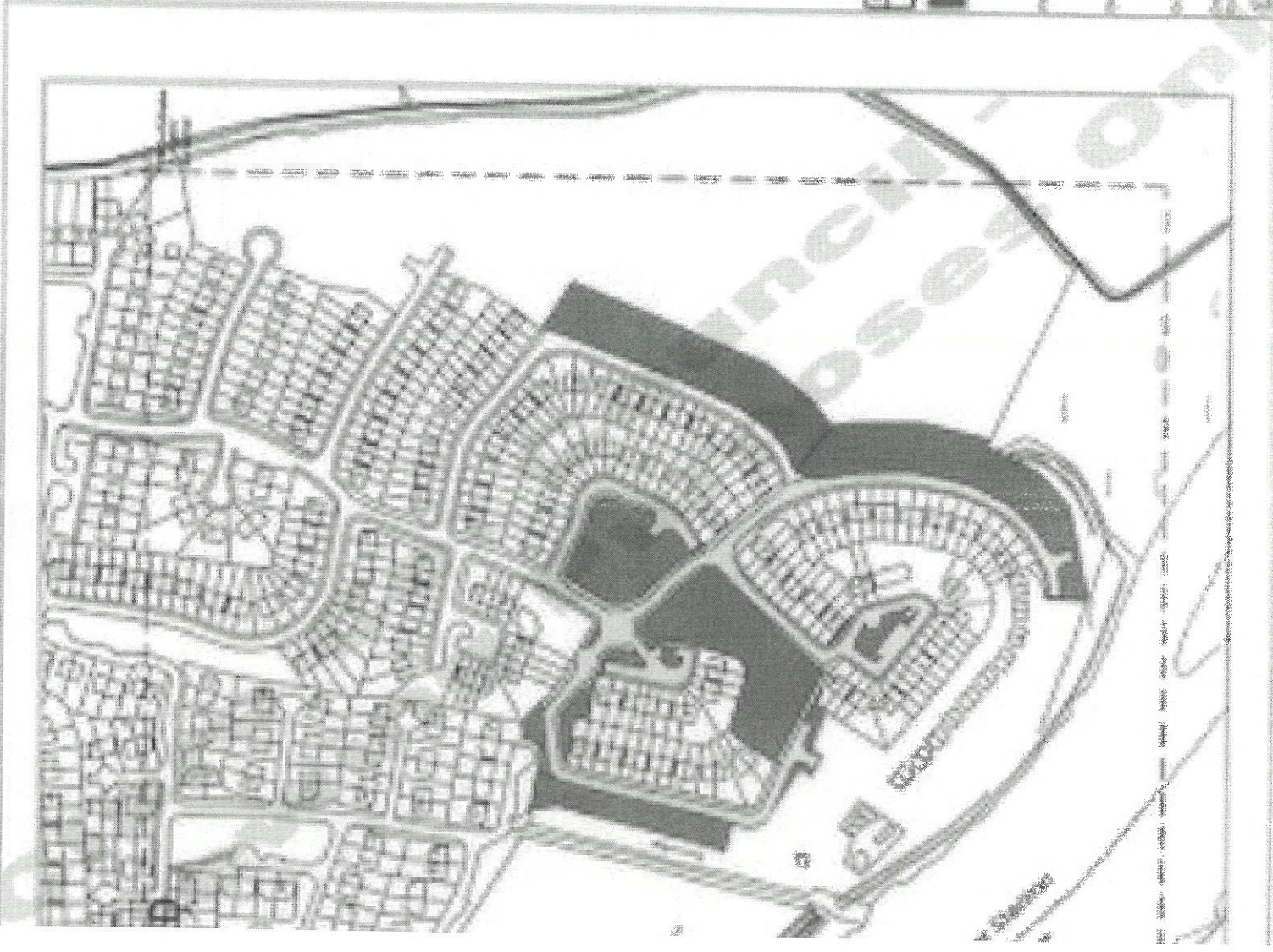


Drawing No: 12-1106-07

AN BORD PLEANALA
LTP DATED 11 MAR 2020
LDG- FROM
ASP-

CLARE COUNTY COUNCIL	
Planning and Development Committee	
Meeting on 11th March 2020	
Item 10 - Planning Applications	
Planning Application No. 12-1106-07	
Subject: Planning Application for the construction of a new house at [Address]	
Applicant: [Name]	
Agent: [Name]	
Date of Submission: [Date]	
Date of Decision: [Date]	
Decision: [Decision]	

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An Bord Planeala

4 Marlborough Street

Dublin 1

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Type: _____

11 MAR 2003

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