



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

REGISTERED POST
The Secretary
An Bord Pleanála
64 Marlborough St
Dublin 1
D01 V902

AN BORD PLEANÁLA
LDG- 028200-25
ABP- _____
17 JUL 2020
Fee: € 110 Type: PMW
Time: _____ By: Reg. Post

16TH July 2020

Our Reference: R20-25
Your Reference: PL03.RL.3611

Section 5 referral Reference R20-25 in the name of Pat Quinn

Whether (a) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards development; and

(b) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards exempted development at Knockanoura, Tulla Road, Ennis, Co. Clare, is or is not development and is or is not exempted development.

A Chara,

I refer to the above which was determined by An Bord Pleanála on the 15th January 2019 and subsequently quashed by High Court, Order No. 114 JR on the 11th February 2020.

Having received a further referral on this matter, in accordance with Section 5(4) of the Planning & Development Act 2000, as amended, Clare County Council (Planning Authority) now submits the following question to An Bord Pleanála:

Whether the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and raising of ground levels at Knockanoura, Tulla Road, Ennis, County Clare from 2013 onwards is or is not development and is or is not exempted development.

I attach relevant details in relation to same along with fee of €110.00 for the referral.

Mise, le meas

Angela O'Sullivan
Staff Officer
Planning Department
Economic Development Directorate

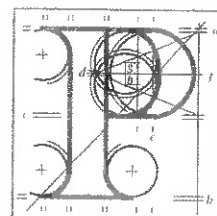
An Roinn Pleanála
An Stiúthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



Our Case Number: ABP-307519-20

Planning Authority Reference Number: 20-25



An
Bord
Pleanála

Clare County Council
Planning Department
New Road
Ennis
Co. Clare



Date: 10 July 2020

Re: Whether the groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards is or is not development and/or is or is not exempted development.
Knockanoura, Tulla Road, Ennis, Co. Clare

Dear Sir / Madam,

An Bord Pleanála has received your letter in which you intended to make a referral under the Planning and Development Act, 2000, (as amended).

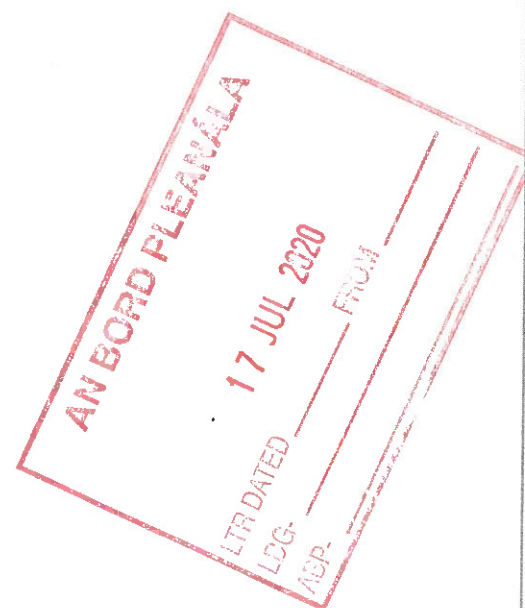
Section 127(1)(f) of the 2000 Act, (as amended), provides that a referral shall be accompanied by a fee. Your letter was not accompanied by a fee of €110 as stipulated in the Board's order of 14th February, 2011 and as provided for under section 144 of the 2000 Act, (as amended), and it is regretted that it must, therefore, be regarded as an invalid referral in accordance with section 127(2)(a) of the Act. To lodge a valid referral you must comply with ALL of the requirements of section 127.

The documents lodged by you are enclosed.

Yours faithfully,

Mark Kieley
Executive Officer
Direct Line: 01-8737154

BPRL15



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COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

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

2nd July 2020

Our Reference: R20-25
Your Reference: PL03.RL.3611

AN BORD PLEANÁLA

LDG- _____
ABP- _____

03 JUL 2020

Fee: € _____ Type: _____
Time: _____ By: *Reg. Post*

Section 5 referral Reference R20-25 in the name of Pat Quinn

Whether (a) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards development; and

(b) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards exempted development at Knockanoura, Tulla Road, Ennis, Co. Clare, is or is not development and is or is not exempted development.

A Chara,

I refer to the above which was determined by An Bord Pleanála on the 15th January 2019 and subsequently quashed by High Court, Order No. 114 JR on the 11th February 2020.

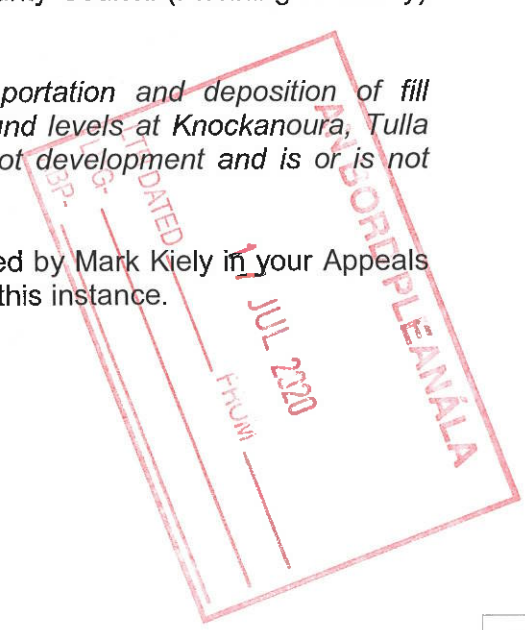
Having received a further referral on this matter, in accordance with Section 5(4) of the Planning & Development Act 2000, as amended, Clare County Council (Planning Authority) now submits the following question to An Bord Pleanála:

Whether the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and raising of ground levels at Knockanoura, Tulla Road, Ennis, County Clare from 2013 onwards is or is not development and is or is not exempted development.

I attach relevant details in relation to same and as confirmed by Mark Kiely in your Appeals Section by phone on the 2nd July 2020, no fee is payable in this instance.

Mise, le meas

Angela O'Sullivan
Staff Officer
Planning Department
Economic Development Directorate



An Roinn Pleanála

An Stiúrthóireacht Forbairt Gheilleagrach

Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department

Economic Development Directorate

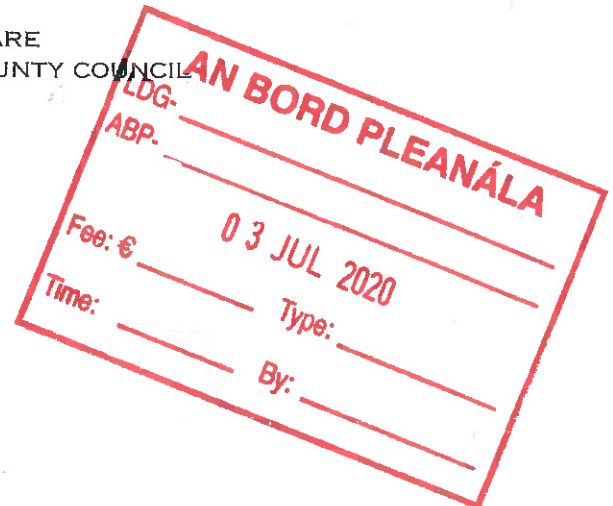
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Pat Quinn
C/o P Coleman & Associates
Bank Place
Ennis
Co Clare



8th June 2020

Section 5 referral Reference R20-25 in the name of Pat Quinn
Whether (a) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards development; and
(b) Is or is not groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards exempted development at Knockanoura, Tulla Road, Ennis, Co. Clare, is or is not development and is or is not exempted development.

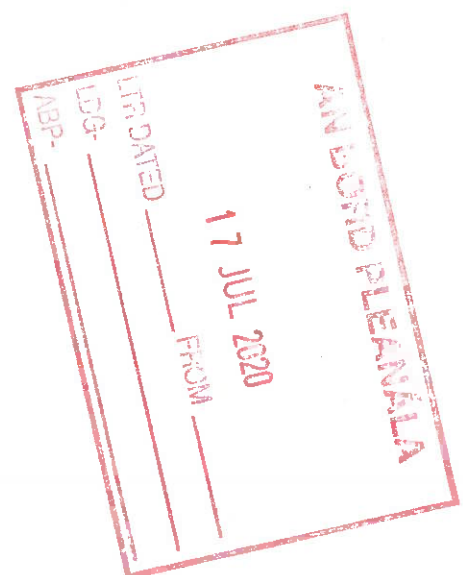
A Chara,

I refer to your application received on 8th June 2020 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Valerie O'Brien
Clerical Officer
Planning Department
Economic Development Directorate



An Roinn Pleanála
An Stiúirtheacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



ENGINEERS & PLANNERS

PATRICK J. COLEMAN, B.E. M.Eng.Sc. C.Eng. FIEI Eur. Ing. A.C.E.I.
 Jackson M. Coleman, BSc. Eng., Dip. Eng. C.Eng. Eur. Ing. MI
 John P. Morrissey, B.E., M.Eng. Sc., C.Eng..
 Mandy Coleman, BA, MA (Econ), MA (Spatial Planning), AdvDip (Plan & Env Law), MIPI

P. COLEMAN & ASSOCIATES**CONSULTING ENGINEERS & PLANNERS****BANK PLACE, ENNIS, CO. CLARE, IRELAND, V95 HW27**

Planning Section,
 Clare Co. Council,
 New Road,
 Ennis,
 Co. Clare.

OUR REFERENCE
 MC/6113

YOUR REFERENCE

RE: Request for a Declaration under Section 5 of the Planning Act 2000 (as amended) regarding works undertaken on Tulla Road, Ennis.

Dear Sir or Madam,

We act on behalf of Mr. Pat Quinn of Knockanoura, Tulla Road, Ennis. We enclose Declaration from Clare County Council pursuant to Section 5(4) of the Act, 2000 (as amended) (the Act) in relation to two questions outlined below. We enclose payment for the sum of €80.00 being the applicable fee for this application.

1.0 INTRODUCTION & REQUEST

This application follows the decision of the High Court on 11th. February, 2020 to quash a decision issued by An Bord Pleanala on 15th. January, 2019 in relation to case Ref: 03.RL3611. The An Bord Pleanala case related to a request by Clare County Council under Section 5(4) of the Act to issue a declaration as regards the following question:-

'Whether the carrying out of ground works, including the importation and deposition of fill material, the creation of a hard standing area, and the raising of land levels constitutes development and development which is or is not exempted development'.

The application related to lands at Knockanoura, Tulla Road, Ennis.

A Declaration was issued by An Bord Pleanala on 15th. January, 2019 confirming that the above works were development and were exempted development.

Clare County Council
 Aras Contae an Chlair
 New Road
 Ennis
 Co Clare

08/06/2020 12:10:11

Receipt No. : L1CASH/0/302796
 ***** REPRINT *****

PAT QUINN
 C/O P COLEMAN & ASSOCIATES
 CONSULTING ENGINEERS & PLANNERS
 BANK PLACE
 ENNIS
 CO CLARE V95 HW27
 P20-25

SECTION 5 REFERENCES 80.00
 GOODS 80.00
 VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
 CHEQUES 80.00

Change : 0.00

Issued By : L1CASH - Ann Carey
 From : MAIN CASH OFFICE LODGEMENT AREA
 Vat reg No.0033043E



R20-25

ENGINEERS & PLANNERS

PATRICK J. COLEMAN, B.E. M.Eng.Sc. C.Eng. FIEI Eur. Ing, A.C.E.I.
Jackson M. Coleman, BSc. Eng., Dip. Eng, C.Eng. Eur. Ing, MI
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P. COLEMAN & ASSOCIATES

CONSULTING ENGINEERS & PLANNERS

BANK PLACE, ENNIS, CO. CLARE, IRELAND, V95 HW27

Planning Section,
Clare Co. Council,
New Road,
Ennis,
Co. Clare.



OUR REFERENCE
MC/6113

YOUR REFERENCE

DATE
8th. June, 2020

RE: Request for a Declaration under Section 5 of the Planning & Development Act, 2000 (as amended) regarding works undertaken on lands at Knockanoura, Tulla Road, Ennis.

Dear Sir or Madam,

We act on behalf of Mr. Pat Quinn of Knockanoura, Tulla Road, Ennis and are requesting a Declaration from Clare County Council pursuant to Section 5 of the Planning & Development Act, 2000 (as amended) (the Act) in relation to two questions outlined below. We enclose payment for the sum of €80.00 being the applicable fee for this application.

1.0 INTRODUCTION & REQUEST

This application follows the decision of the High Court on 11th. February, 2020 to quash a decision issued by An Bord Pleanala on 15th. January, 2019 in relation to case Ref: 03.RL3611. The An Bord Pleanala case related to a request by Clare County Council under Section 5(4) of the Act to issue a declaration as regards the following question:-

'Whether the carrying out of ground works, including the importation and deposition of fill material, the creation of a hard standing area, and the raising of land levels constitutes development and development which is or is not exempted development'.

The application related to lands at Knockanoura, Tulla Road, Ennis.

A Declaration was issued by An Bord Pleanala on 15th. January, 2019 confirming that the above works were development and were exempted development.

Our Client was perplexed by the declaration issued by An Bord Pleanala in this case and welcomed the decision of the High Court on the basis that in his opinion the determination of An Bord Pleanala was based on inaccurate and incomplete information and that An Bord Pleanala had failed to requisition all relevant and necessary information for the purposes of undertaking a true, valid and transparent exercise pursuant to the provisions of Section 5 of the Act as amended.

Our Client seeks a Declaration in relation to the following two questions on the above referred to lands.

Section 5 Questions

- (i) Is or is not groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road, Ennis, Co. Clare from 2013 onwards development?
- (ii) Is or is not groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road, Ennis, Co. Clare from 2013 onwards exempted development?

This submission document provides detailed information which we have gathered in relation to infilling works undertaken on the subject lands over a number of years and outlines our opinion on the above two questions posed based on the information provided. This submission is also accompanied by our Client's own detailed submission which is provided to assist Clare County Council in determining this application.

2.0 SUBJECT SITE

The subject site, as shown in Figure 1 below, is located approximately 1.5km from the centre of Ennis, on the southern side of the R352 Ennis to Tulla Road in the townland of Knockanoura.



Figure 1: Subject land outlined in red. Client's property ★

Source: Clare County Council GIS eplan

The subject land measures approximately 1.8 hectares. The land is currently undeveloped and is filled with imported materials and topped off with hardcore material.

The north eastern boundary fronts onto the Tulla Road with the land extending back from the road to occupy an area to the rear of the existing supermarket/petrol station and a number of commercial units which front onto the Tulla Road. There is a large area of open space along the south eastern boundary which separates the subject land from the Castlerock housing estate. The subject land is bound to the west and south west by the River Fergus which forms part of the Lower Shannon Special Area of Conservation (SAC).

There is an existing entrance/exit to the subject site from the R352 on the eastern side of the northern boundary. This entrance/exit in its various stages is shown on the four street view images provided in Figures 18-21 of this submission.

Our Client's dwelling immediately adjoins the subject site to the east (identified as ★ in Figure 1 above).

3.0 PLANNING CONTEXT

3.1 Local Planning Context

The operative development plan for the subject land is the Clare County Development Plan 2017-2023. The subject land forms part of the town settlement of Ennis which is included in the Ennis Municipal District Plan as Volume 3a of the Clare County Development Plan 2017-2023.

3.1.1 Zoning

The subject land has two zoning objectives as shown on Figure 2 below.

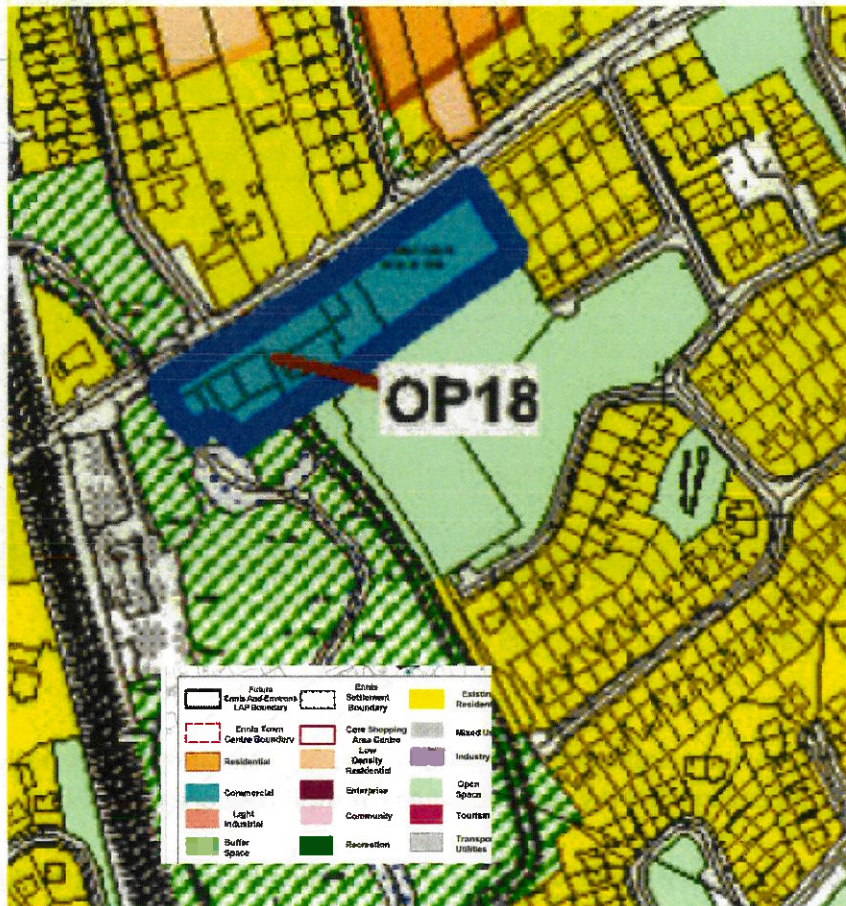


Figure 2: Land use Zoning Map – Ennis Settlement Plan

Source: Volume 3 of the Clare County Development Plan 2017-2023.

The section of the land fronting onto the Tulla Road is currently zoned as 'Commercial' where the zoning objective is stated as follows:-

'The use of land zoned for commercial purposes shall be taken to include the use of the lands for commercial and business uses including office, service industry, warehousing and the facilitation of enterprise/retail park/office type use as appropriate. Retailing is open for consideration on this zoning, provided that the sequential test is carried out and the lands are demonstrably the optimum location for the nature and quantum of retail development proposed'.

This part of the land forms part of a block of land/buildings which is designated as an 'Opportunity Site OP18'.

The OP18 objective states as follows:-

'The site has the capacity to be redeveloped for high quality, mixed/commercial development of a limited scale, providing a landmark building on the site. As the site is partially located within an area identified as being at risk of flooding, the site is not considered appropriate for more vulnerable uses. A Traffic Management Plan will be required to accompany any future planning application and must address issues such as management of site access and egress for pedestrians, vehicles and cyclists. Adequate analysis for fuel delivery vehicles should be incorporated into the plan.

The Fergus Minor River marks the western boundary of the site and, as such, there is an opportunity to provide pedestrian access from the Tulla Road to the River Fergus to accommodate access to possible future riverside walkways. All development proposals must be progressed in full compliance with the requirements of the Habitat Directive. Future development proposals must demonstrate, through a light spill modelling study, that there will be no negative impacts on the habitats of protected species.

A Flood Risk Assessment must also accompany any development proposals for the site, having regard to the location of the site on Flood Zones A and B. The Flood Risk assessment must be prepared having regard to the Strategic Flood Risk Assessment in Volume 10(c) of this plan. Due to the proximity of the site to the Fergus Minor River, a Construction Method Statement will be required detailing how surface water run-off will be controlled during construction, especially in relation to the release of silt to the adjoining river, which is connected to the Lower River Shannon SAC. Drainage plans must also be submitted in relation to the surface water run-off during operation, ensuring that run-off is treated via appropriate SuDS (Petrol interceptor, silt traps, etc.) prior to discharge to any surface water features.

A contaminated land/study/assessment will also be required to ensure that future development proposals will not have a negative impact on the amenities of the surrounding area.

The remainder of the subject land is zoned as 'Open Space' where the zoning objective states as follows:-

"It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas but these would only be small component of the overall areas involved".

3.1.2 Other Designations

The western and southern boundary of the subject land directly bounds parts of the River Fergus which forms part of the Lower Shannon River SAC (Site Synopsis Site Code 002165).



Figure 3 – Lower River Shannon SAC area. Subject lands
Source: National Parks and Wildlife Services

The River Fergus in the vicinity of the subject lands hosts a number of species which are qualifying interests for the SAC.

The subject lands are contained with lands identified as Flood Zones A, B and C.

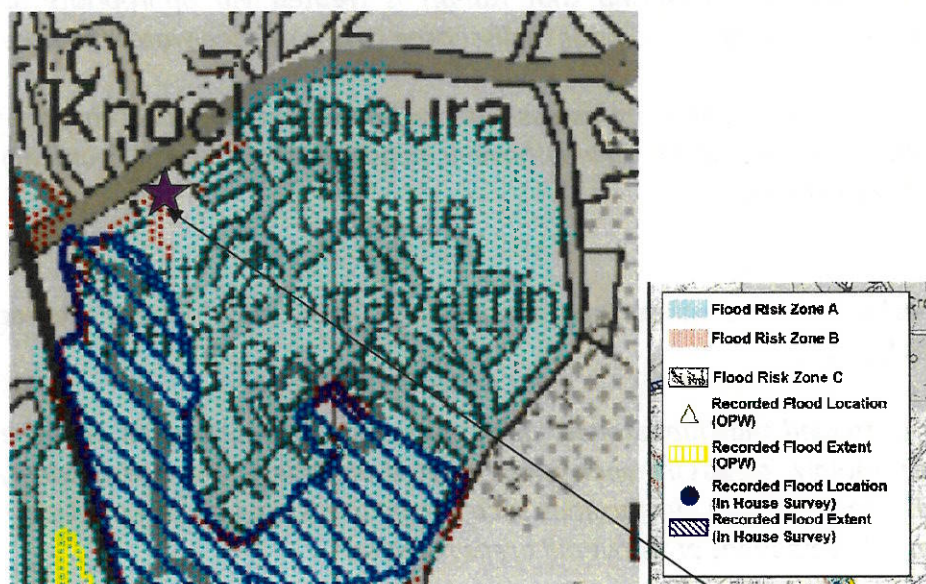


Figure 4 – Flood Risk Zones and Flooding Map showing subject lands in Flood Risk Zones A, B & C

Source: Clare County Development Plan 2017-2023.

3.2 Planning History

The following is a history of the planning applications pertaining to the subject land:-

Planning Ref: 97/61 (9721061)
Applicant: Noel Glynn
Development Description: Construction of retail warehousing and light manufacturing units at Knockanoura, Tulla Road, Ennis.
Decision: Refused by An Bord Pleanala on 14th. May, 1998 following a first party appeal against refusal by Ennis Urban District Council.

Planning Ref: 98/212 (9821212)
Applicant: Mr. Noel Glynn
Development Description: Permission for 20 townhouses at Knockanoura, Tulla Road, Ennis.
Status: Application deemed withdrawn as no reply received to further information request.

Planning Ref: 98/213 (9821213)
Applicant: Mr. Noel Glynn
Development Description: Outline permission for retail and office building at Knockanoura, Tulla Road, Ennis.
Decision: Granted by Ennis Urban District Council on 28th. January, 1999 subject to 30 No. conditions.
Status: Expired. No approval consequent to outline applied for.

Planning Ref: 01/152 (0121152)
Applicant: Mr. Noel Glynn
Development Description: Permission to retain and complete landfill at Knockanoura, Tulla Road, Ennis.
Status: Application deemed withdrawn as no reply received to further information request.

Planning Ref: 05/142 (0521142)
Applicant: Noel Glynn & Tom O'Keeffe
Development Description: Demolition of existing retail /commercial building, construction of mixed use building containing retail floor space to the ground floor, commercial office space to the first floor, 9 no. apartments to the second floor, 9 no. apartments to the third floor and 7 no. apartments to the fourth floor including duplex accommodation to one of the apartments on a fifth floor (25 No. apartments in total) and completion of all associated site works including vehicle parking and connections into the public water supply and public sewers at Knockanoura Townland, Tulla Road, Ennis.
Decision: Refused by An Bord Pleanala on 28th. June, 2006 following a first party appeal against refusal by Ennis Urban District Council.

Planning Ref: P19-409
Applicant: Valley Healthcare Fund
Development Description: for a four storey care health facility with photovoltaic arrays on the roof comprising a maximum gross floor area of 2623m²; (i) on site car and bicycle parking provision, (ii) associated building signage, (iii) landscaping and all ancillary signage; and (iv) all associated site development works at Tulla Road, Knockanoura, Ennis.
Decision: Deemed an invalid planning application.

Section 5 Referrals

An Bord Pleanala Ref: 03.RL3611
Referrer: Clare County Council
Question: Whether groundworks, including the importation and disposition of fill material, creation of a hardstanding area and raising of the land area is or is not development or is or is not exempted development at Tulla Road, Ennis.
Decision: Is development and is exempted development.
 Decision quashed by High Court on 11th. February, 2020

Enforcement History

We note the following enforcement history in relation to the subject land:-

- Warning Notice Ref: W.N. 23/99 issued on 27th. August, 1999 to Mr. Noel Glynn regarding '*Unauthorised filling of site*' at Knockanoura, Tulla Road, Ennis.
- UD15-30 Enforcement File open in relation to the works the subject of the Section 5 Referral as outlined above.
- Warning Letter Ref: MM/UD15-030 issued on 1st. August, 2017 to Crossfield Property Company Ltd. c/o Noel Glynn regarding "*The importation of fill material onto lands and the creation of a hard standing area on lands at Tulla Road, Ennis, Co. Clare*".

4.0 DESCRIPTION OF WORKS

Our Client is aware of extensive infilling works carried out on the subject land since 1999. Our Client is mainly concerned regarding the works which have taken place on the subject lands since 2013 which have resulted in the creation of a full hardstanding area covering the full area of the subject land.

Phase 1 Infilling Works - 1999-2002

1999 The original infilling of the subject land took place by the Landowner in 1999. A Warning Notice Ref: W.N. 23/99 was issued to Mr. Noel Glynn on 27th. August, 1999 regarding '*Unauthorised filling of site*' at Knockanoura, Tulla Road, Ennis. We refer to photographs taken by the Planning Authority dated 21st. September, 1999 which are available to view in Planning File Ref: 9821212 which clearly show infilling works taking place on the subject land at that time. Ennis Urban District Council (Ennis UDC) also prepared a sketch map of the various areas within the subject land showing the extent of the infill which is also available to view in Planning File 9821212.

A note on Planning File 9821212 dated 04/11/1999 states the following:-

"Site has been levelled off and graded to a respectable condition. We should adjourn until January in case there are any further transgressions".

2000 The only further action we found on planning file Ref: 9821212 in relation to this unauthorised infilling was a letter from Brian McMahon, Ennis UDC Solicitor, dated 14th. April, 2000 to the Town Clerk of Ennis UDC stating in relation to Ennis UDC v Noel Glynn WN23/99 (and 2 other cases),

"At Ennis District Court on the 14th. April, 2000 fines and costs were granted in the sum of £25.00 for fine and £300.00 costs in relation to the above matters".

- 2001** Planning File Ref: 0121152, contains a letter from Duchas, The Heritage Service to Town Engineer dated 23rd. May, 2001 whereby they expressed concerns regarding the infilling of the subject land which is immediately adjacent to the River Fergus (Lower Shannon SAC). Duchas noted that spoil is composed of gravel, sand and soil and boulders at its most southern point spills over into the SAC. They also noted that brushwood and paint cans are also dumped here and some sediment was put in a back drain of the river and that the infill was causing sedimentation of the river itself. The letter notes that Mr. Glynn intends to continue infilling.

Ennis UDC inspected the infill and plotted the filling on the map which is available to view in Planning File Ref: 0121152. A memo on the file dated 8th. June, 2001 notes that the fill was approximately 2-3m. in depth and consists of soil and rock. It also notes that Mr. Glynn intends to fill the remaining section of the drain as far as the new sluice gate and that he would apply for planning permission for all of this filling.

The site was re-inspected by Ennis UDC in July, 2001 and further infilling had taken place with no planning application by Mr. Glynn for the retention of this infilling. By way of letter dated 11th. July, 2001 to Mr. Noel Glynn, Ennis UDC advised Mr. Glynn that no further filling shall take place in this area until the matter has been regularised and a deadline date of 20th. July, 2001 was given for this.

Ennis UDC Memo on file dated 9th. November, 2001 stated that filling was still continuing and that it contains a large amount of rubbish, builder's rubble, glass, washing machines. Photographs are available of this on planning file Ref: 0121152.

Mr. Noel Glynn subsequently lodged a planning application on 16th. November, 2001 (Planning Ref: 0121152) for permission to retain and complete landfill on part of the subject lands at Knockanoura, Ennis.

- 2002** On 16th. January, 2002 a request for further information was issued to Mr. Noel Glynn by Ennis UDC in relation to this application.

Memo dated 11th. February, 2002 states filling and levelling of mounds of rubble, rubbish and fill is on-going at Noel Glynn's property at Knockanoura. Photographs on planning file Ref: 0121152 dated 8th. February, 2002 show filling of the site was still continuing and was continuing outside of the application area of planning application Ref: 0121152.

No reply was ever received to the request for further information and therefore the application was deemed to be withdrawn. It is our understanding that the infilling was never removed and no further enforcement action was ever taken by Ennis UDC in relation to this matter.

In relation to the Warning Letter Ref: W.N. 23/99 referred to above, we understand from Planning Enforcement, following a recent enquiry by our office, that this matter was never resolved.

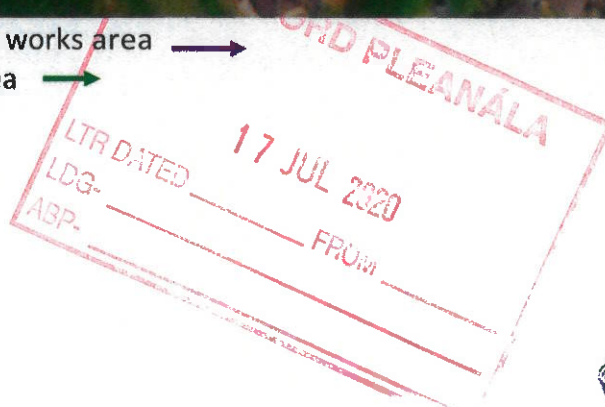
Phase 2 Infilling Works 2013-2014

As part of the River Fergus Lower (Ennis) Certified Drainage Scheme – Phase 2 (the Drainage Scheme) an embankment from Tulla Road to Whitepark housing development was to be rehabilitated. Access to this area was originally approved through the Drainage Scheme via an existing vehicular access through Mr. Pat Fitzpatrick's property which was between the existing supermarket and the commercial units to the west. However, Mr. Fitzpatrick objected to the use of this access route by the Contractor for these works. Our Client understands that Mr. Noel Glynn of Crossfields Property Company Limited and owner of the subject land offered access to the Contractor through the subject land to the area of the proposed works and hence the reason for the alternative access route proposed directly adjacent to our Client's property (Refer to Figure 5).



Figure 5 – Original proposed access to works area

Revised access to works area



Our Client was contacted by Wills Bros. Ltd. (WBL) (Contractor for the Drainage Scheme) in the early part of 2013 to discuss the nature of this work and the impact of it on his property. Our Client had subsequent meetings and discussions and email correspondence with J.B. Barry and Partners Ltd. in association with Byrne Looby Partners Water Services Ltd acting on behalf of the Office of Public Works. Given that the works which were to alleviate flooding to the town of Ennis and its Environs, our Client agreed to the provision of this access track on the basis that the temporary access track would be removed and the land restored once the works were complete.

However, the provision of the temporary access track was not the only work which took place on the subject land outside of the works associated with the Drainage Scheme works. Additional works were undertaken outside the scope of the temporary access track to the embankment works area which were not associated with the Drainage Scheme. These works included the importation and deposition of hardcore fill material outside the line of the access track for the contract which resulted in the creation a hardstanding area and the levelling out and regrading of existing mounds of fill within the land. This work resulted in raising the ground levels throughout the subject land.

This submission will clearly show that this work was not required as part of the Drainage Scheme but instead pursuant to an agreement between the Landowner and the Office of Public Works by way of accommodation works (a deal sweetener, in effect) for the Landowner as compensation for the use of part of his land for the provision of the temporary access track.

We refer to emails (copies enclosed in Appendix A of this submission document) from Mr. Richard Long, Senior Employer's Site Representative of J.B Barry & Partners Limited dated 19th. September, 2014 and 17th. October, 2014 to our Client and we note the following relevant sections from these emails:-

Email dated 19th. September, 2014

*'With regards to the construction drawing for that of Cappahard Area and those specifically in relation to Mr Glynn's Site, the Tulla road and your property. As indicated to you previously the construction drawing for the Cappahard area relates to the various embankment and drainage works for the flood relief scheme itself. **That the construction drawing would not make reference to the works carried out on Mr Glynn's property adjacent to your property as the levelling out of the site came about after the works were underway as accommodation works for Mr Glynn**'. (Emphasis added)*

Email dated 17th. October, 2014

'As noted to you previously the top section of Mr Glynn site was not intended to be part of the River Fergus Lower (Ennis) Certified Drainage Scheme Contract and during our conversation on the 4th April'13 with regards to noting access to Mr Glynn's site there was no intentions of carrying out any works on this section of Mr Glynn's property. This issue changed however during the extent of the works following various discussions with Mr Glynn with regards to the interference on this property for the duration of the works and compensation. Mr Glynn requested that his site be levelled out with all scrub removed. Additionally that the top section of the site be stoned. Mr Glynn had looked to the entire site to be stone out, however this was not carried out by WBL to date. Mr Glynn may carry this out on this own accord in the near future' (emphasis added).

A sketch was provided with email dated 17th. October, 2014 (See Figure 6) which identified which areas which were infilled and levelled out and which areas were filled with stone by WBL. Mr. Long notes that up to 17th. October, 2014 the remainder of the land (i.e. area marked as 'Not stone') was not stoned out by WBL.

Referring to the area closest to the public road and our Client's property the email of 17th. October, 2014 states the following:-

'Due to the overgrown nature of the site and the fact that it was not intended to carry out any works on this section, the site had not been surveyed'. (emphasis added)

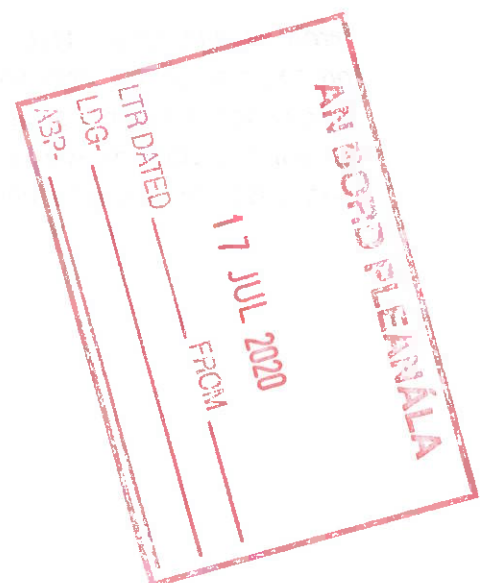




Figure 6 – Sketch No. 1 from Richard Long – Areas of Noel Glynn’s Land Stoned and Not stoned (levelled out).

We refer to Sketch No. 2 prepared by Richard Long included with the email of 17th. October, 2014 (Figure No. 7 below shows part of this Sketch No. 2 – Full copy of Sketch no. 2 is included in Appendix B of this submission) which is of a survey carried out by WBL on 3rd. September, 2014 on part of the lands adjacent to our Client’s property. In relation to levels across the site, Richard Long’s email states the following:-

‘From looking at the level that have been acquired for the track and what is present on the site at the moment the levels in and around the entrance has remained somewhat the same, as you work your way along the track the area has been raised by approx. 300mm. which increases to 700mm. as you make your way towards the petrol station area and then back to 350mm. at the back of the petrol station’.

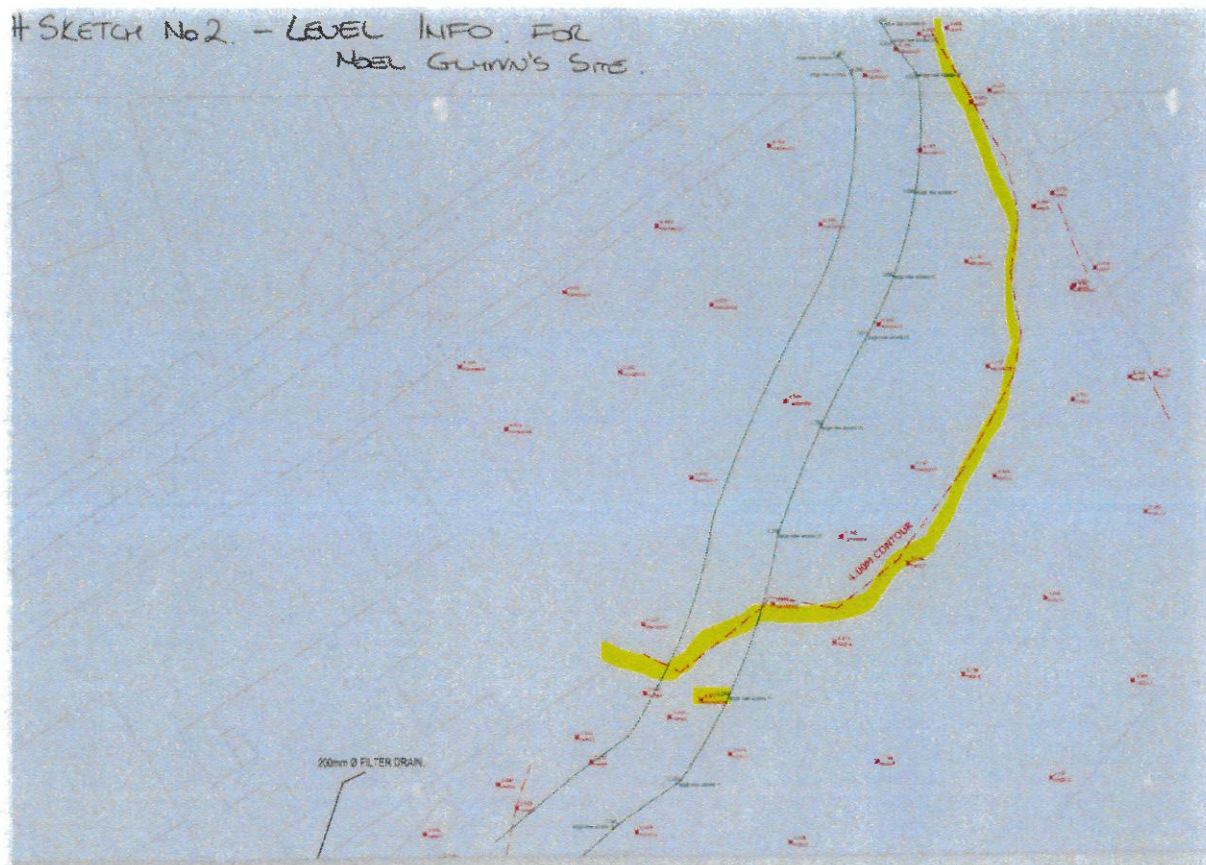


Figure 7 - Part copy of Sketch No. 2 from Richard Long email dated 17th. October, 2014.
Note line of 4 m. contour

We note from the information provided on Sketch No. 2 that all of the levels identified in the area north of the 4m. contour line were noted as hardstand. This would imply that the hardstand area is actually more extensive than shown on Sketch No. 1 (Figure 6). We have marked out the extent of the area stoned by WBL based on the details provided in Sketch No. 2 on Figure 12 below.

We refer to the Section 5 Referral application by Clare County Council to An Bord Pleanála Ref: 03.RL.3611 where Clare County Council subdivided the subject lands into two parts Area A and Area B (See Figure 8). Note that these areas are not physically subdivided on ground but Clare County Council subdivided them for the purpose of differentiating between the sections of lands which they considered to be within the works area for the Drainage Scheme (Area B) and the land which they considered to be outside of the works area (Area A).



Figure 8 – Subdivision of Subject lands by Clare County Council into Area A and Area B.

In relation Area A, Clare County Council state in their Section 5 application to An Bord Pleanala (Ref: 03.RL3611):-

'Area A was located outside of the flood relief works area, however, the Planning Authority understands that an access route to the river embankment "works area" through this section of lands was agreed between the landowner and the OPW, and the resulting access route led to accommodation works being carried out on the site. At the time of the works, the site was overgrown and there were numerous mounds of material deposited throughout the site. It is understood that the area was cleared and mounds of material within the site were levelled and additional hard core material was imported and deposited within the site'.

We also refer to submission from Brendan McGrath & Associates dated 1st. September, 2017 on behalf of Mr. Noel Glynn of Crossfields Property Company Ltd. on An Bord Pleanala File Ref 03.RL.3611. This submission includes an email from Mr. Richard Long of J.B Barry and Partners to Brendan McGrath in August, 2017. The email notes that *"the section up by the road was carried out early on during their WBL's time with the land cleared and stoned around September/October, 2013"*. Referring to photographs Richard Long enclosed with his email he stated the following:-

*".....levelling out of the area outside of the works area up at the Tulla Road. This was carried out as requested by Mr. Glynn as part of the accommodation works".
(emphasis added)*

We refer to the description of the works in this area as outlined in the Aquafact Report for the Drainage Scheme contract dated April, 2011 which states as follows:-

'The embankment from Tulla Road to Whitepark will be rehabilitated through a combination of partial removal of the existing embankment, installation of vinyl sheet piles and filling with imported/re-used material to final design levels. Drainage outfalls will be constructed through the embankment. It is also proposed to construct a new embankment on the east side of the river downstream of Whitepark, traversing an immature ash plantation. Instream works will be required at the southern end of the Whitepark Housing estate to facilitate a sluice gate for the existing stream/back drain at this location'.

There is no mention anywhere the description of the works in this area of a requirement for additional infilling of lands outside of the works area and the creation of a hardstanding area.

The Aquafact Report also advises works areas be minimised:-

'Mitigation measures to protect this river channel will be implemented by minimising works areas.....'.

Drawing No. 530 prepared by WBL entitled 'Overall Layout Plan for Castlerock, Whitepark, Cappahard Embankment' which formed part of the Drainage Scheme approval document, did not show any works being carried out outside of the embankment area along by the river. The embankment works area only formed part of Area B. The full extent of Area B did not form part of the works area and Area A was not even shown on this drawing. Clearly Area A was not part of the approved scheme area.

It is clearly evident from the above information, that the infilling of the lands which were outside of the works area and which resulted in the creation of the hardstanding area within Area A were not part of the Drainage Scheme works but arose purely as a result of a private arrangement between the Contractor and Mr. Glynn.

It is also clearly evident that the remainder of the lands were not stoned out by WBL during the course of Drainage Scheme contract.

Phase 3 Infilling Works 2014 – 2016

After the completion of the Drainage Scheme contract therefore it appears that additional stone was imported and the remainder of subject land was subsequently stoned. This resulted in the full extent of the subject lands (Areas A & B) forming a full hardstanding area. From Aerial photos of the subject lands (Figure 17), the full extent of the subject land was fully stoned by July, 2016.

In 2015 part of the subject land was used as a temporary storage depot by Ward & Burke Construction Limited for works they were undertaking on the upgrading of watermain around the town of Ennis on behalf of Irish Water. According to our Client the Ward & Burke temporary site depot was to the front of the subject lands adjacent to his property i.e. to the front of Area A directly fronting the R352. This was confirmed in Planning File P19-409 (invalid planning application on part of the lands zoned as OP18 in Area A – See Figure 9 for Site Application Area). The Flood Risk Assessment Report and the Planning Statement submitted as part of this application both state

".....the land was used as temporary compound for improvement works to a water supply scheme which necessitated the importation of gravel to enable use of the site".

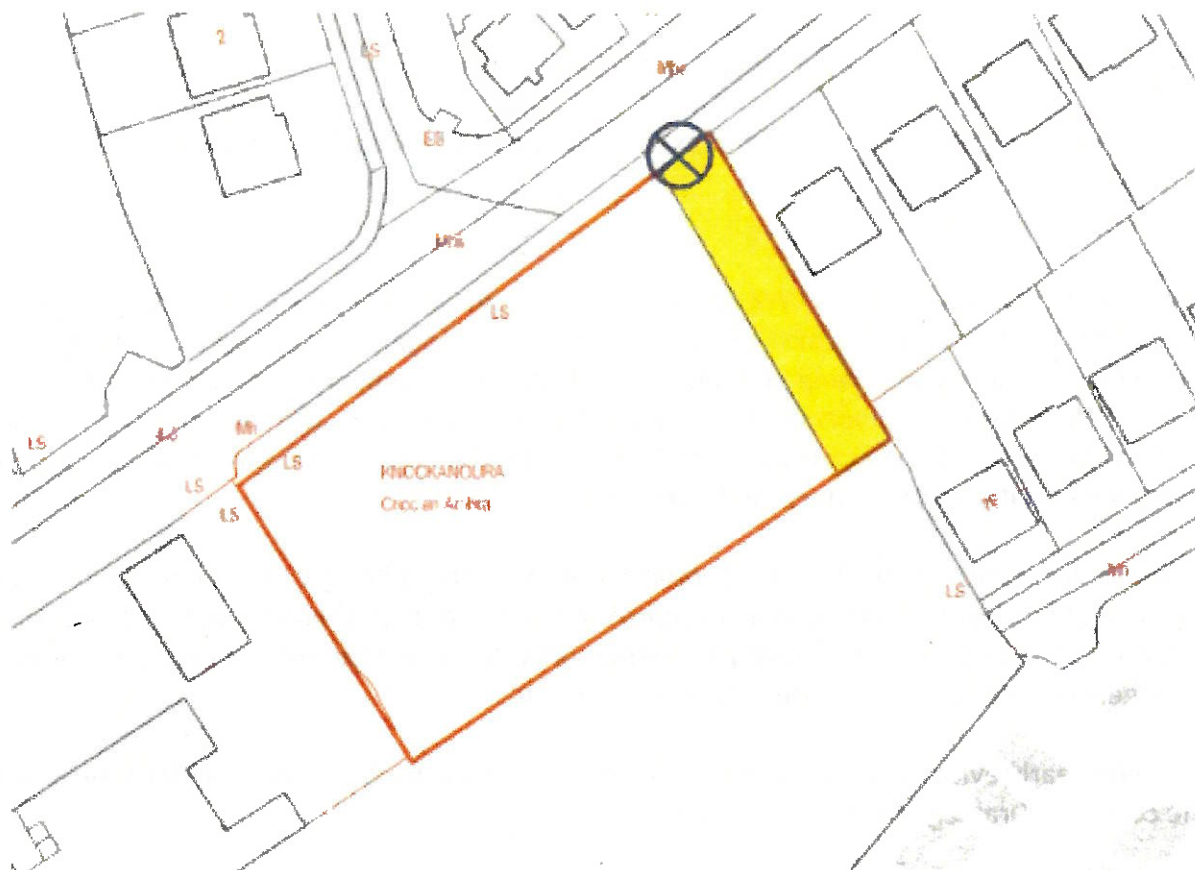


Figure 9 – Application site P19-409 outlined in red. Right of Way marked yellow. Portion of the Application site was used as Temporary Storage Depot by Ward & Burke in 2015.

Ward & Burke state in an undated letter included in the Landowners submission to the Section 5 Referral application to An Bord Pleanála (Ref: 03.RL.3611) that 15 loads of stone were imported onto the site to facilitate a *"site compound"* on the lands for the duration of works they were undertaking on a watermain rehab on the main Tulla Road Ennis late in 2015. The Landowner's submission states that this work was undertaken on behalf Ennis/Clare County Council. According to our Client this watermain rehabilitation contract was undertaken on public roads behalf of Irish Water and not on private lands of the Landowner. Our Client informs us that the use of the subject lands by Ward & Burke was simply a temporary storage area for materials and was not the regular site compound for these works which we understand was located on the Quin Road at Doora, Ennis.

Our Client refutes that 15 loads of stone were imported to facilitate the provision of a *"site compound"* for this contract at this location. As there was already a hardstanding area to this part of the site, our Client reasonably postulates as to why there would have been any need to import additional stone to level the site in this area to make it safe before it could be utilised as a *"site compound"*? The levels shown on the survey from Richard Long in Figure 7 above, clearly show a sufficient hardstanding area within Area A which is what Ward & Burke made use of, as a temporary depot for the storage of materials and not as a *"site compound"* as stated. No information was provided by the Landowner in its submission to the Section 5 Referral application to An Bord Pleanála (Ref: 03.RL.3611) in relation to this site being an approved site compound as part of this public works contract.

The remainder of Area A together with the full extent of Area B (see Figure 12) have now been covered or surfaced with hardcore so that the full extent of the subject land is now a level hardstanding area. Our Client is of the view that this work was undertaken by and/or on behalf of the Landowner, Crossfield Property Company Ltd/Mr. Noel Glynn to enhance the market value of the lands in readiness of advertising them for sale.

Our Client has advised us that in the Summer of 2016 these lands were publicly advertised for sale by private treaty as a *"3 acre site with commercial zoning"* (See Figures 10 & 11). In 2016 the subject lands were zoned as *"Other Settlement Land"* in the Ennis & Environs Development Plan 2008-2014. There was no *"Commercial"* zoning on any of the subject lands in 2016. The Selling Agents website states *"This site is zoned commercial under the Draft Clare County Development Plan 2017-2023"*. It was only the front section of Area A which measures approximately 0.79 acres (i.e. application site for Planning Application Ref: P19-409 as per Figure 9) which was subsequently zoned as *"Commercial"* when the Clare County Development Plan 2017-2023 was adopted on 19th. December, 2016. The remainder of the subject land was reclassified as *"Open Space"*.

Tulla Road, Ennis, Co. Clare



Price On Application

3 Acre Prime Development Site with Substantial Road Frontage.

This site is Zoned Commercial under the Draft Clare County Development Plan 2017 – 2023.

All Services are readily available and passing.

For Further Details Contact Sole Selling Agents Arthur & Lees Auctioneers

Figure 10 – Selling details for subject lands.

Source: www.arthurandlees.ie



Figure 11: Street View June, 2017 lands advertised as “3 acre site – Commercial Zoning”

Source: Google Maps.

Clearly the additional hardcore infilling of the lands did not form part of the use made of the lands by Ward & Burke as a temporary storage depot of materials in connection with works they were undertaking around Ennis as part of the upgrading of watermains as the temporary storage depot was located in the original stoned/hardstanding section of Area A. Clearly this work was also not carried out as part of the Drainage Scheme contract as it was not carried out before the contract was completed. This is confirmed by Richard Long in his email to Brendan McGrath in August, 2017 which was included with the Landowners submission on the Section 5 Referral to An Bord Pleanála (03-RL3611). In this email, Richard Long states the following:-

"I believe that the bulk of the flood defence works were complete by August, 2014 with some minor works/close out items happening after this time but that all works were closed out/completed by October, 2014".

Richard Long also states in this email in relation to the hardstanding area that is on site at present (August, 2017),

".....I am not aware of the timeline from October, 2014 that Mr. Glynn placed additional material onto the site in order to have the full site hard surfaced. Following the completion of the flood relief works Mr. Glynn had another contractor on site who were carrying out the water main rehab works in Ennis".

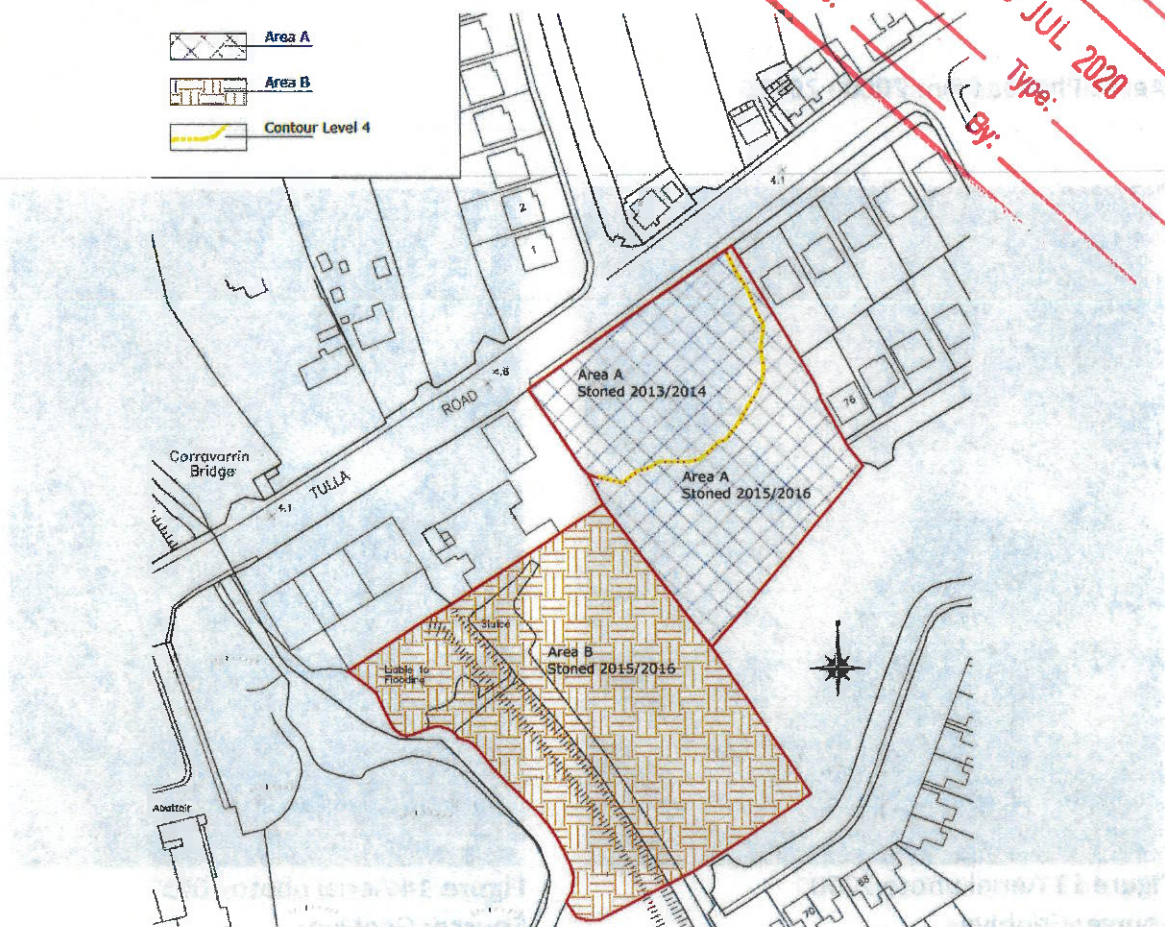


Figure 12 – Map showing timelines for when areas were stoned and line of 4m. contour for hardstand area created by WBL in Area A in 2013/2014.

In relation to the Enforcement file which was opened in 2015 (UD15-30) and the Warning Letter issued to Crossfield Property Company Ltd, c/o Noel Glynn regarding *'the importation of fill material onto lands and the creation of a hard standing area on lands at Tulla Road, Ennis, Co. Clare'*, dated 1st. August, 2017, Planning Enforcement have confirmed, following a recent enquiry by our office, that this file remains open and that the matter has not yet been resolved.

In addition to the above works being carried out, our Client informs us that the subject land has been used for the following purposes over the years:-

- The deposited of motor vehicles for commercial and waste purposes.
- The placing of mobile homes for caravanning purposes.
- A depot by a contractor engaged by the local authority for the painting of markings on public roads.
- A storage depot by Ward & Burke whilst it was engaged by a statutory undertaker to upgrade water mains on public thoroughfares around Ennis.
- A car and motor home park for Fleadh Cheoil na hÉireann in 2016 and 2017.

The following aerial views and street views show the extent of the works undertaken on the subject lands over the years.

Aerial Photos from 2000 - 2016



Figure 13 Aerial photo 2000
Source: Geohive.



Figure 14 Aerial photo 2005
Source: Geohive.

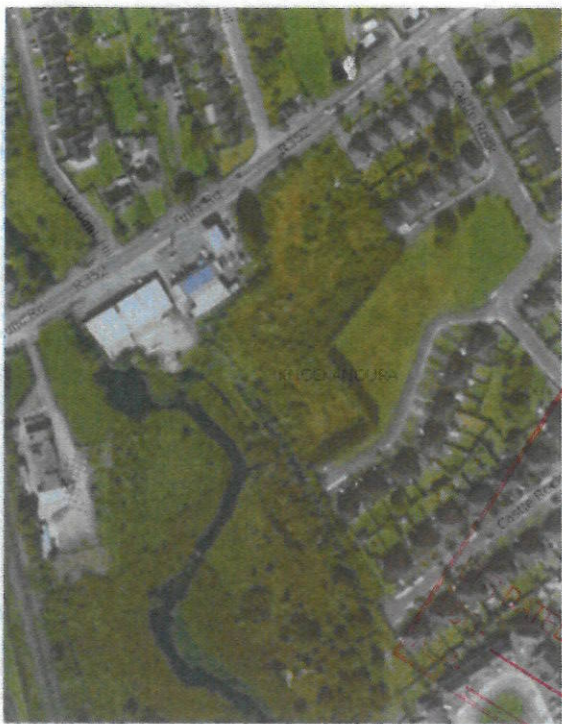


Figure 15 Aerial photo 2005-2012
Source: Geohive.



Figure 16 Aerial Premium
Source: Geohive.



Figure 17 Aerial view of subject lands in July, 2016 – Note excavator on the site in Area A

Street View Images from June, 2009 to July, 2018

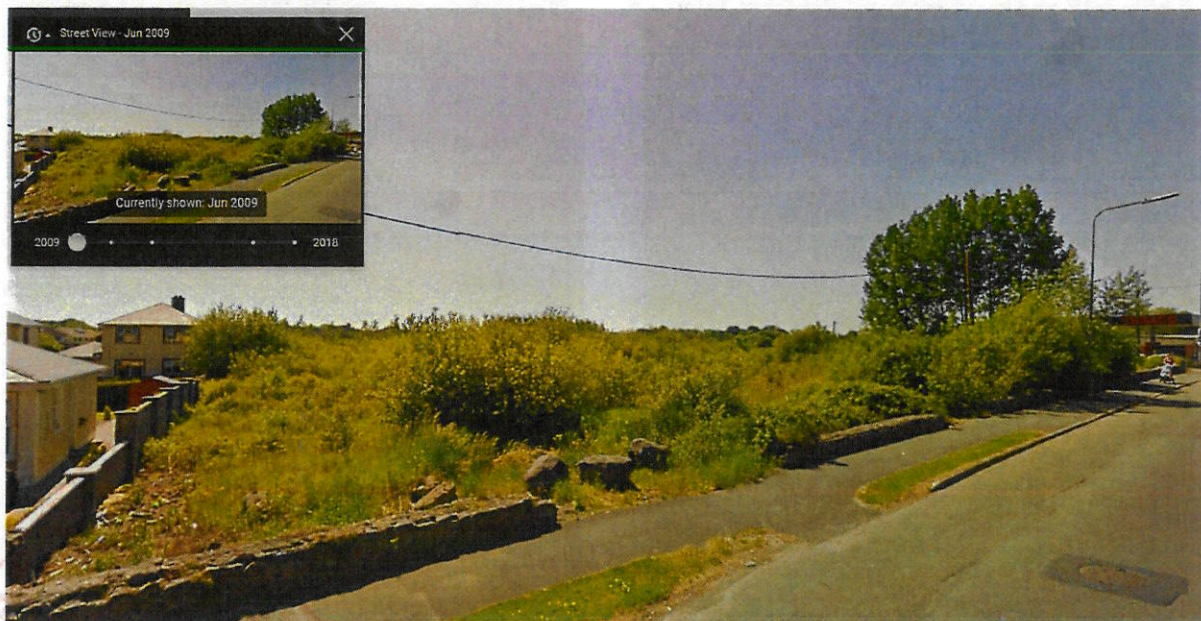


Figure 18 – Street View image – June, 2009. Note height of our Client's western boundary wall versus the ground levels in the subject land.
Source: Google Maps

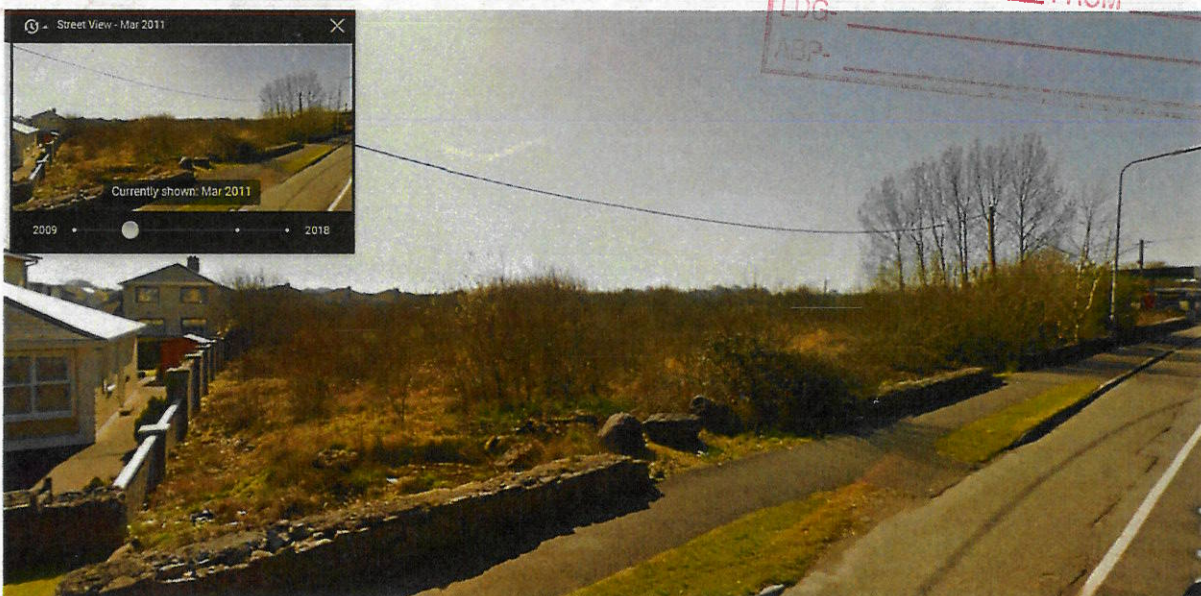


Figure 19 – Street View image – March, 2011. Note height of our Client's western boundary wall versus the ground levels in the subject land.
Source: Google Maps



Figure 20 – Street View image – June, 2017. Note height of our Client’s western boundary wall versus the ground levels in the subject land.

Source: Google Maps

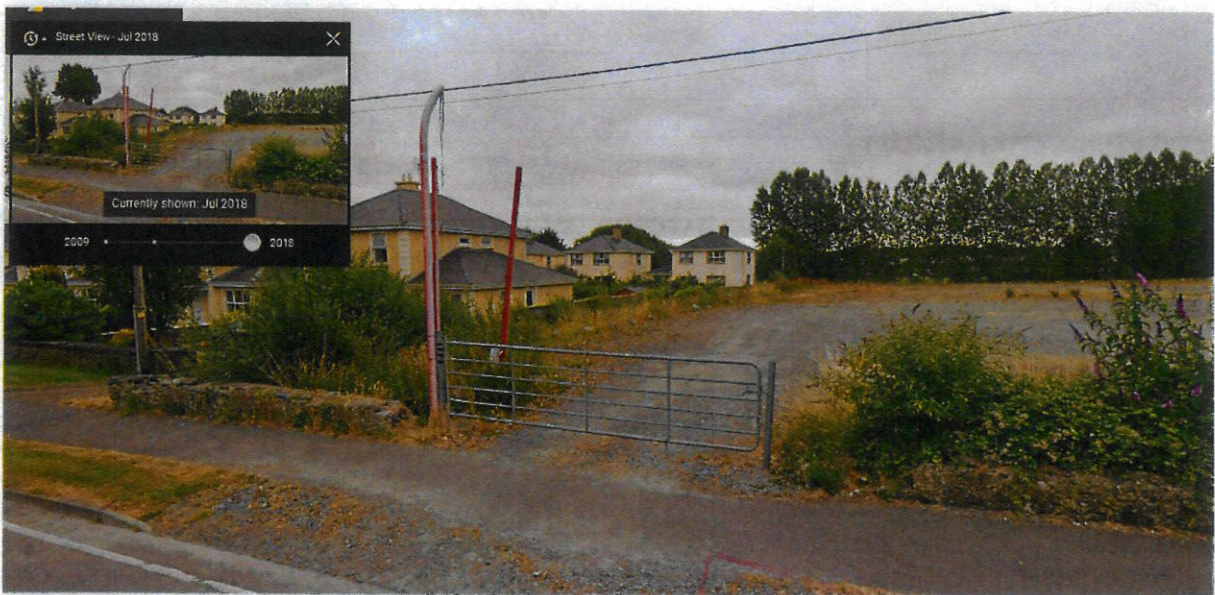


Figure 21 – Street View image – July, 2018. Note height of our Client’s western boundary wall versus the ground levels in the subject land.

Source: Google Maps

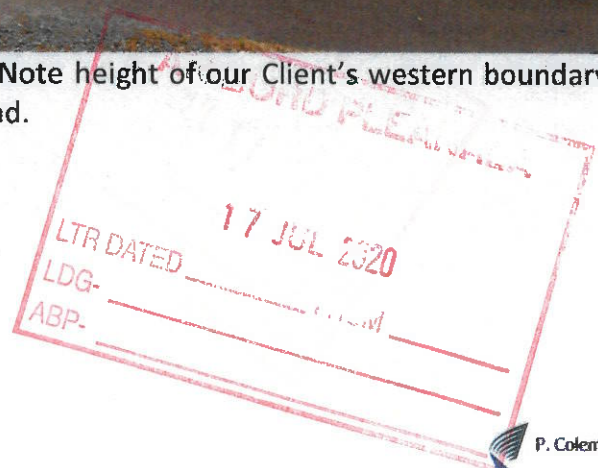




Figure 22 - Works underway by WBL on temporary access track.

5.0 RESIDENTIAL AMENITY

The raising of ground levels and the creation of an extensive hardstanding area over the entire subject land has resulted in our Client's residential amenity being grossly interfered with.

The following photos (Figures 23 to 27) were taken by our Client in January, 2017 and clearly show the significant variation in site levels on the subject land in comparison to our Client's property.

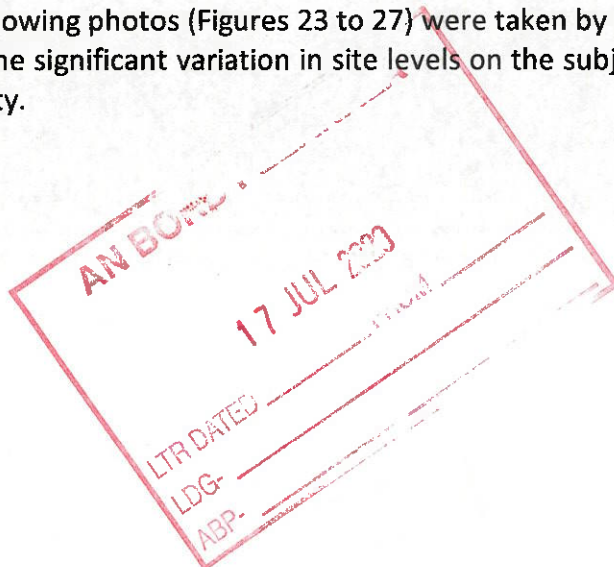




Figure 23 - View from inside our Client's western front boundary to subject land – Jan 2017



Figure 24 - View from inside our Client's western side boundary towards the subject land – Jan 2017

AN BORD PLEANÁLA

LDG- ABP- 03 JUL 2020

Fee: € Time: Type: By:

17 JUL 2020

LTR DATED FROM

LDG- ABP-

P. Coleman & Associates



Figure 25 - View from inside our Client's western side boundary towards subject land – Jan 2017



Figure 26 - View from inside our Client's western side boundary towards subject land – Jan 2017

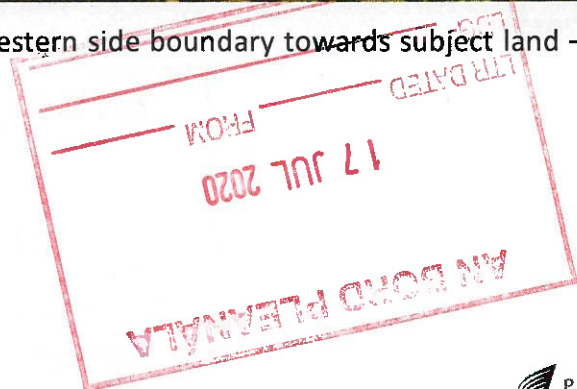
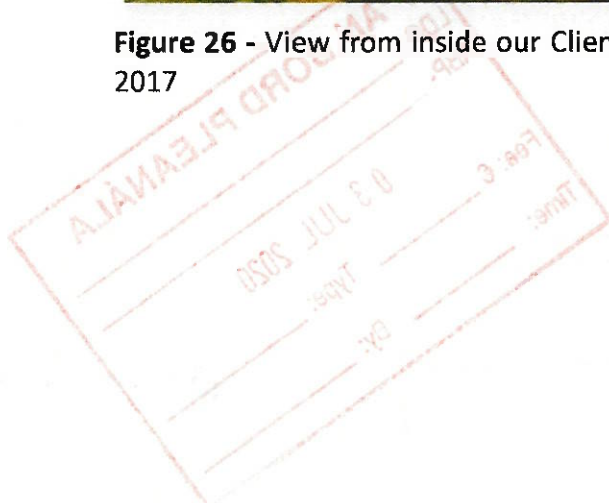




Figure 27 - View from inside our Client's western rear boundary towards subject land – Jan 2017

In relation to the changes in ground levels over the years, we have reviewed the details in the planning files referred to in Section 3.2 above and also noted the levels as shown in Richard Long's drawing – 'Sketch No. 2 – Level info for Noel Glynn's site' (Figure 7 above) and we note the following in relation to the changes in levels of the subject land over the years:-

	Planning File 9721061 (prior to any infilling works)	Planning File 0521142 (post the original infilling works 1999-2002)	JB Barry Survey 03/09/14 (post Drainage Scheme contract)	Planning File P19-409 (post all infilling works)
Levels on Tulla Road (R352)	4.46m-4.6m.	4.44m – 4.63m	Not given	4.4m-4.6m
Stoned Section of Area A	3.02m-3.07m.	3.75m-4.5m.	4.4m-4.7m.	4.4m-4.8m.
Rear of Area A	3.12m.-3.3m.	3.0m-3.25m.	3.0m-3.1m.	3.97m-4.079m.

Table 1 - Ground Level Comparison

Overall the front of the subject land, i.e. front portion of Area A fronting onto the Tulla Road, would appear to have been raised by between 1.4m. and 1.7m. approx. from the original ground levels. The rear of the site would appear to have been raised by between 0.85m and 1m.

Most of the infilling has taken place to the front section of Area A, directly adjacent to our Client's property, with the levels sloping downwards as you go to the rear of the lands.

In relation to the change in levels on the subject lands versus the levels on our Client's property we refer to part copy of Richard Long's Sketch no. 2 (Figure 28 below) which shows the variation in levels between our Client's site and the subject land.

3.655 v 4.269 (+ 0.614m)
 3.225 v 4.023 (+ 0.818m)
 3.081 v 3.964 (+ 0.883m)
 2.518 v 3.801 (+ 1.283m)

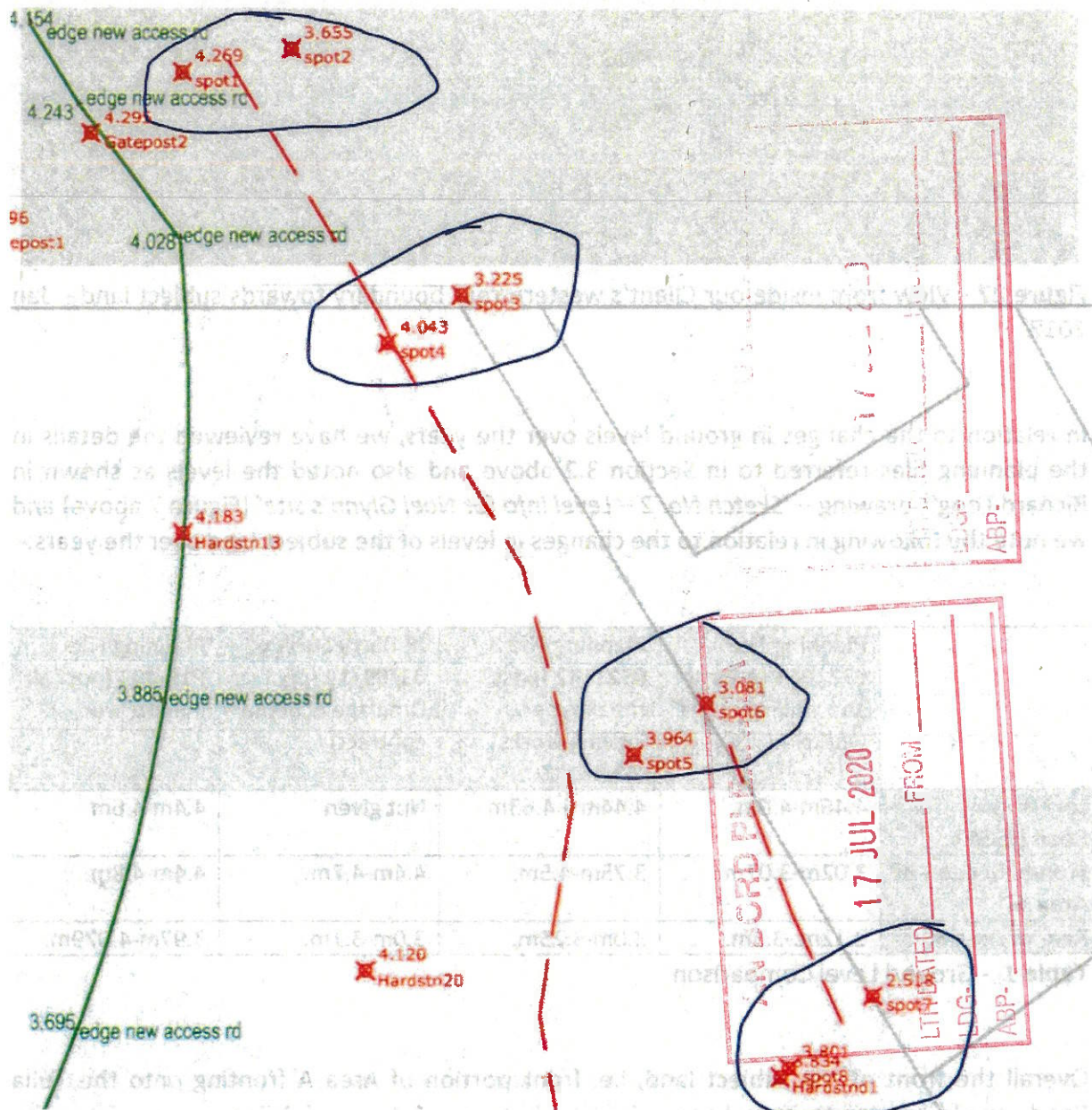


Figure 28 - Part copy of Richard Long Sketch No. 2 (3rd. September, 2014)

We note from Planning File P19-409 that the Flood Risk Assessment Report and the Planning Statement submitted as part of this application both state in relation to the infilling works carried out on the application site (OP18 site within Area A) in 2013/2014 and 2015

".....works has resulted in a significant difference in site levels between the subject site and adjoining lands to the east and west".

Overall the works have resulted in a uniform increase in ground levels throughout the subject land which has severely diminished our Client's residential amenity. Our Client's western boundary wall has been made redundant as a result of the infilling of this land thus depriving our Client and his family of the privacy to their own home.

All of these works have taken place without the benefit of planning permission which has precluded our Client from having any say through the planning application process.

6.0 SECTION 5 APPLICATION

Our Client has referred two questions to the Council as part of this application. In this section we express our opinion on the two questions posed which is based on the information which has been supplied in this submission.

6.1 Question 1

In relation to the first question posed in this Section 5 Referral, it is our opinion that the works as described in Section 4 above are development within the meaning of the Planning & Development Act, 2000 (as amended) (hereinafter referred to as the Act) based on the following:-

Section 3 of the Act defines "development" as 'the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land'. Having regard to Section 2 of the Act wherein "works" are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...', it is clear in our opinion that the provision of the temporary access road and infilling with imported materials, the raising of the ground levels, the creation of a hardstanding area over the entire subject site involves the carrying out of 'works' and constitutes 'development' within the meaning of the Act.

6.2 Question 2

In relation to the determination of An Bord Pleanála on the question of whether the above works were exempted development we note An Bord Pleanála referred to the following exempted development provisions: -

Section 4(1)(g) of the Act which states the following shall be exempted development for the purposes of the Act.

'Development consisting of the carrying out by any local authority or statutory undertaking of any works for the purpose of inspecting, repairing, renewing, altering or removing of any sewers, mains, pipes, cables, overhead wires or other apparatus including the excavation of any street or other land for that purpose'.

Section 4(2)(a) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning & Development Regulations 2001 (as amended) (the Regulations).

In relation to the Regulations, An Bord Pleanála considered the following:-

Article 6(1) of the Regulations which states:-

'(a) Subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposed the mention of that class in the said column 1'

An Bord Pleanála also had regard to Article 8 of the Regulations which states as follows:-

'Works specified in a drainage scheme confirmed by the Minister for Finance with the Part 2 of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by or behalf of or in partnership with the commissioners with such additions, omissions, variations, deviations or other works incidental thereto as may be found necessary by the commissioners or their agent or partner in the course of the works shall be exempted development'.

An Bord Pleanála also had regard to Schedule 2, Part 1, Class 16 regarding Temporary Structures and Uses which states:-

Class	Description of Development	Conditions/Limitations
16	The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.	Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Article 9(1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

We refer to Class 58 of the Regulations which permits a range of development by Irish Water for the purpose of the provision of water services as exempt development. However, this exempted development class was not available at the time these works were undertaken as it was only inserted by Article 4 of S.I. No. 29/2018 – Planning & Development (Amendment) Regulations 2018. Furthermore, this provision does not refer to a change of use of the land or the provision of a depot for the storage of materials.

6.2.1 Works 1999-2002

In relation to the works undertaken in 1999-2002, it is our opinion that there is no provision in either the Act or the Regulations to exempt this work and therefore this work should have the benefit of planning permission, which is not the case. This work is therefore unauthorised and no action has been taken by the Local Authority in relation to this matter.

6.2.2 Works 2013-2014

In relation to the works undertaken in 2013-2014, it is our opinion the works undertaken outside of the works area for the Drainage Scheme and which were clearly accommodation works for the Landowner and cannot be regarded as works incidental to or necessary for the Drainage Scheme and therefore do not come within the scope of Article 8 of the Regulations.

We have reviewed An Bord Pleanála Inspectors Report for the Section 5 Referral (03.RL3611) and we refer in particular to paragraphs 7.3 and 7.4 which state as follows:-

'I cannot conclusively state that the works undertaken were strictly and fully in accordance with the drawing submitted. However, I do note that the Planning Authority do not express any concerns in this regard and furthermore the submission on behalf of the owner states that as part of the Certified Drainage Scheme, a large portion of the site was required to be filled with imported material. There is nothing to the contrary which suggests that any works undertaken were not in connection with the Certified Drainage Scheme and as such the works undertaken would appear to be exempt by virtue of Article 8 of the Planning & Development Regulations 2001 (as amended)' (7.3)

*'The Planning Authority raise some concern that some of the importation of fill and levelling of the grounds did not fall within the area designated for the flood relief scheme. These essentially relate to the land referred to as Area "A" in the information contained on file. However, Article 8 does specifically state that works connected with the Arterial Drainage Act and "or other works incidental thereto as may be found necessary by the commissioners or their agent or partners in the course of the works, shall be exempted development". Area "A" as indicated in the drawing was used to create an access to the flood relief works and were also likely to be used as a temporary compound area associated with the works to be undertaken. Therefore it can be reasonably argued in my view that the **infilling and levelling of Area "A" constituted works that were incidental and ancillary to the main works carried out as part of the drainage scheme and as such also constituted exempted development under the Act**' (7.4)*

We do not agree with the Inspectors view that works outside of the temporary access track are deemed incidental to the works associated with the Drainage Scheme works. It is our opinion that the only works which could be deemed to be incidental and necessary for the main Drainage Scheme works are the works associated with the provision of the temporary access road from the Tulla Road to the works area adjacent the embankment.

According to our Client, An Bord Pleanála entirely failed to differentiate between the works which were part of the Drainage Scheme and the works which were carried out on land outside of the works area. The works to accommodate the temporary access road need to be distinguished from the accommodation works. The accommodation works were not required or incidental to the Drainage Scheme and therefore cannot be deemed to be exempt under the provisions Article 8 of the Regulations. Very clear evidence has been provided in this submission that the infilling of the lands with hardcore to create a hardstanding area in Area A, outside the works area, was accommodation works only and was not incidental to the main Drainage Scheme and to even consider this work as being incidental to the main Drainage Scheme project is a total misapplication of the provisions of Article 8 of the Act.

It is our opinion that if our Client had been provided with the opportunity to make a submission or observation on this Section 5 Referral that the detailed information which he could have been supplied would have conclusively proven that the infilling of the lands with hardcore material and creating of a hardstanding area in Area A was not part of the Drainage Scheme works which should have influenced An Bord Pleanála decision on the previous Section 5 referral.

In any case, it is our opinion that the provision of Article 8 of the Act only permits additions, omissions, variations, deviations or other works incidental to the main Drainage Scheme works *'in the course of the works'* i.e. for the duration of the main Drainage Scheme contract. Once the main Drainage Scheme works are complete, the incidental works which were deemed to be exempted development for the duration of the main Drainage Scheme contract under the provisions of Article 8 of the Act, must be removed as these works can no longer be deemed to be incidental to the main Drainage Scheme works which has been completed. In this case, all the infill material, the hardstanding area, temporary access track, etc must be removed and the land reinstated to its original state once the main Drainage Scheme contract was completed. These incidental works cannot be left in situ and avail of the Article 8 exemption indefinitely.

In summary there are two reasons why we believe that the hardcore infilling which created the hardstanding area in Area A which is still in place cannot be deemed to be exempted development under Article 8 of the Act. Firstly, these works were not works incidental or necessary for the Drainage Scheme contract but were simply accommodation works for the Landowner for use of part of his land for the temporary access track. The Office of Public Works or the Landowner have not demonstrated that the works were necessary for the Drainage Scheme contract. Secondly, this hardstanding area is still in situ and if it were deemed incidental or necessary to the main Drainage Scheme contract it should have been removed once this contract was completed. These works in our opinion are deemed development and are not exempted development.

Our Client invites Clare County Council to retrieve from Office of Public Works all relevant information, including drawings and surveys that would have been undertaken on their behalf for this area as part of the Ennis Flood Relief Drainage Scheme so as to provide (i) details on before and after site levels (ii) details on the quantities of imported material on the subject lands and (iii) documentation authorising the infilling of the lands outside of the works area as being necessary for the Drainage Scheme works.

6.2.3 Works 2015

In relation to the works carried out in 2015, we note An Bord Pleanála regarded *“the use of the lands in question as a temporary site compound associated with improvements in the water supply network fall within works which are exempted under the provisions of Section 4(1)(g) of the Act and Class 16 of Part 1 of Schedule 2 of the Regulations”*. Our opinion in relation to the Section 4(1)(g) exemption is that (i) the use that was made of part of the subject lands by Ward & Burke in 2015 was as a temporary depot for the storage of material, (ii) any infilling of the lands in 2015 was not development carried out by a local authority or statutory undertaker for the purpose of inspecting, repairing, renewing, altering, or removing any sewers, mains or pipes, (iii) any works that were undertaken in Ennis in 2015 by Ward & Burke for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains or pipes were effected on public roads throughout Ennis and not on these private lands, in the ownership of Crossfield Property Company Ltd.

It is also our opinion in relation to the Section 4(1)(g) exemption that if the *“site compound”* and alleged works associated with the use of these private third party lands as a temporary depot for the storage of materials are deemed to be works for the purpose of a public works contract to upgrade a public watermain on public roads so as to be exempt under the Section 4(1)(g) exemption, then on completion of that public works contract the temporary *“site compound”* including any works associated with the provision of the temporary *“site compound”* (i.e. the alleged importation of 15 loads of stone which our Client disputes) would be required to be removed and the land restored to its original state prior to the completion of the works. The works associated with the public works contract are only exempt for the period of the actual public work contract period and cannot remain in situ and avail of the Section 4(g) exemption indefinitely. This public works contract has been completed since 2015 the works associated with the use of the lands as a temporary depot for the storage of materials are no longer required. While the security fencing which cordoned off that part of Area A thereby facilitating its use by Ward & Burke as a temporary depot for the storage of its materials has been removed from the subject lands ever since Ward & Burke’s presence in Ennis ceased with the completion of their public works contract, our Client is satisfied that there has never been removal of as much as a single stone imported onto these lands, (let alone 15 loads as allegedly imported by Ward & Burke) and which our Client vehemently disputes was ever imported by it at all, for the reasons as set out above. The position of our Client with regard to the use made of the lands by Ward & Burke in 2015 is that such encompassed the temporary erection of some security fencing on a portion of Area A, which enclosed therein, a depot for the storage of some materials that came to be used by it in the course of their public works on public roads around the town of Ennis. It is therefore our opinion that the alleged provision of 15 loads of stone allegedly imported by Ward & Burke cannot be deemed to be exempted development under the provision of Section 4(1)(g) of the Act.

The Landowner or Ward & Burke did not provide any information about the works carried out as part of this contract on the subject lands other than to state that 15 loads of stone were imported. They failed to provide any supporting information or evidence that any of the works carried out on these lands were approved works carried out on behalf of Irish Water as part of the public works contract.

The contract documentation for this public works contract should provide details of the use of part of the subject lands as a temporary storage depot and an agreement with the Landowner for the use of this land. In general, a contract of this nature would require the Contractor to obtain written approval from the Client or the Employer Representative for the location of the storage depot and the contract should stipulate that the land should be subsequently restored on completion of the works. The Contract should also stipulate that the Contractor is obliged to comply with any Planning or Statutory requirements. Our Client requests Clare County Council to retrieve and examine the documents for this public works contract which (i) authorised/identified the use of these lands for the purpose as enunciated by Section 4(1)(g) of the Act and (ii) referenced the importation of 15 loads of stone thereon as being a necessary part of such public works contract.

In relation to the use of the Temporary Structures and Uses exemption as provided for in Schedule 2, Part 1, Class 16, it is our opinion that the alleged importation of the 15 loads of stone to provide for the temporary site compound by Ward & Burke does not comply with conditions and limitations of this Class of exemption as the alleged works (importation of the stone fill) was not removed at the expiration of the public works contract period and the land was not reinstated.

6.2.4 Works 2015-2016

It is our Client's understanding that the infilling of the remainder of the subject lands with stone creating a hardstanding area over the remaining land block (i.e. remaining lands in Area A and all of Area B) took place over the course of 2015 -2016. These works clearly did not form part of either the Office of Public Works Ennis Main Drainage Flood Relief Scheme or the use made of the existing hardstanding area as a temporary storage depot for Ward & Burke's materials for the duration of Irish Water's public works contract, upgrading water mains on public roads around the town of Ennis and therefore do not come within the scope of Article 8 of the Regulations or Section 4(1)(g) of the Act. It is our opinion that there is no other provision in either the Act or the Regulations exempting this work. We note from our review of the An Bord Pleanála Inspectors Report associated with Ref: 03.RL3611 that no assessment was made in relation to these works.

In summary, it is our opinion that all the infilling works which have taken place on the subject land since 1999 constitute 'works' as defined by Section 2(1) of the Act and that the said 'works' constitute 'development' as defined in Section 3(1) of the Act.

It is also our opinion that there are no exempted development provisions in either the Act or the Regulations which exempt any of this work.

We are not aware of any valid planning permission which authorises any of this work and therefore it is our opinion that this work is therefore unauthorised development.

7.0 ENVIRONMENTAL & OTHER ISSUES

Our Client is concerned that the likely significant effects on the surrounding environment and the likely consequences for the proper planning and sustainable development of the area from the above works over the years has never been assessed.

7.1 Flooding

As previously noted the subject land lies within Flood Risk Zones, A, B, and C. We note the zoning objective of OP18, which is on part of the land fronting the Tulla Road, requires a Flood Risk Assessment for any development proposal on that part of the site having regard to the location of the site on Flood Zones A and B.

The only Flood Risk Assessment which was carried out on the subject lands was on the area of the application site for Planning Application P19-409. Our Client is not aware of any Flood Risk Assessment having been carried out on any of the remainder of the lands despite the fact that a large amount of the infilling took place on lands within Flood Risk Zones A and B.

The hydrology of the site could be affected by the raising of the levels on foot of the infilling of the lands and other areas, including our Client's property which maybe more at risk of flooding as a result displace surface water.

7.2 Appropriate Assessment/Environmental Impact Assessment

Our Client is concerned that the environment impacts have not been assessed for any of the works undertaken on the subject lands to-date by either Clare County Council, An Bord Pleanála or the Office of Public Works.

We refer to a submission made by The Department of Culture, Heritage and the Gaeltacht on Planning Application Ref: P19-409 where the stated the following:-

"The application area (0.32ha) is part of an area of infilled land (approximately 1.1 ha) adjacent to the River Fergus Minor and to the Lower River Shannon Special Area of conservation SAC (site code 002165). Available imagery shows that these lands supported natural or semi-natural habitats in March, 2012. Reedbeds were lost as a result of infilling, meaning that wetlands were present on at least part of the site in the past".

The submission also noted the presence of wetlands on the subject land and the loss of reedbeds as a result of the infilling works. The original nature of the site prior all of the works being carried out has not been investigated. If reedbeds were lost and wetlands were present in the past on the lands and were lost as a result of this work, it will have significant negative impact on the adjoining SAC.

The Department of Culture, Heritage and the Gaeltacht submission also noted the following:-

"It is understood that the lands were infilled and utilised in connection with the OPW's River Fergus (Ennis) Certified Drainage Scheme – Phase 2. Based on the information available, including scheme drawings and the EIS for that project, these lands did not form part of the confirmed scheme, and were not subject to EIA and appropriate assessment as part of the project at the time. This should be taken into account when considering the current proposed development. The Department of Public Expenditure and Reform will have details of the full extent of the scheme, as confirmed, and will have details of the EIA and appropriate assessment which were carried out at the time. Any changes or extension to the project after the scheme was confirmed may not be covered by the consent and the assessments carried out".

The physical link between the subject land and the river gives rise to a clear source-pathway-receptor link between the land and the works. The works involved the removal of habitat both within and immediately adjacent to the designated area of the SAC and the importation of new material. The fact that the works clearly can be deemed to be development as defined in the Act would trigger the need for screening for AA at the very least. If no screening for AA was carried out in relation to the infilling works, one cannot be satisfied that the works individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Fergus SAC or any other European Site. We refer to the Court of Justice of the European Union in Case C-127/02 Waddenzee, an appropriate assessment is required *"if it cannot be excluded, on the basis of objective information, that [the project in question] will have a significant effect on [the Natura 2000 site in question], either individually or in combination with other plans or projects"*.

We refer to the Aquafact Report dated April, 2001 which formed part of the Drainage Scheme approval documents and note that screening report made no reference to any of the accommodation works carried out on the subject land outside of the main Drainage Scheme works as these accommodation works came about after this report was prepared. Therefore no assessment of these works appears to have been taken. We would also question the quality of this report based on the fact that this document appears to be an AA screening report however, it recommends mitigation measures as part of the Ennis Main Drainage Scheme. It is our understanding that AA screening requires to assess the likelihood of the effects on the Natura 2000 network in the absence of mitigation measures.

In relation to the need for Environment Impact Assessment (EIA)/Environmental Impact Statement (EIS), we have no information on the amount of infill or the type of fill which has been imported into the subject lands over the years. We note from Ennis UDC memo dated 9th. November, 2001 on Planning File Ref: 0121152, previously referred to in Section 4 above, that some of the fill imported between 1999 and 2002 had rubbish, builder's rubble, glass and washing machines in it. We do not know if this rubbish was ever removed.

While the works may not require a mandatory EIA, given the close proximity of the receiving environment to the SAC, it cannot be excluded that the works would not meet any of the criteria set out in Schedule 7 to Articles 103, 109 and 120 of the Regulations for determining whether a sub-threshold development would be likely to have significant effects on the environment. The infilling of the subject land at least should have been the subject of screening for the need of EIA. The need of an EIS for this work cannot be excluded.

While it is our opinion that the infilling works are development which is not exempted development, given Section 4(4) of the Act which requires that development which is exempt by virtue of certain sections of the Act or the exempted development regulations, shall not be exempted development if an EIA or AA is required, it is imperative that Clare County Council carry out a full assessment of the works and the fill material imported over the years in order conclusively determine if the works can be deemed to be exempted development or not.

8.0 REMEDIATION

If the works are found by Clare County Council to be development which is not exempted development and therefore unauthorised, careful consideration on the appropriate course of action to deal with this unauthorised work needs to be considered. The original nature of the subject lands needs to be fully investigated, assessed and established. The contents and quantities of the infilling material over the years needs to be investigated and options to remove the infilling and restore the land need to be fully explored.

An application to regularise the unauthorised development through a retrospective permission may not be an option or an appropriate course of action.

9.0 SUMMARY

In our opinion it is clear that the groundworks including the importation and deposition of fill material and the creation of a hardstanding area and the raising of ground levels which has been carried out on the subject lands since 1999 constitutes development within the meaning of the Act and that the works cannot be deemed to be exempted development. the works undertaken on the lands over the years should have the benefit of permission(s), which is not the case.

It is also our opinion that the works should have been screened for AA particularly given the proximity to the Lower River Shannon (SAC) to the works. In addition the need for an EIS can also not be ruled out.

The landscape character of the subject land has been substantially changed over the years.

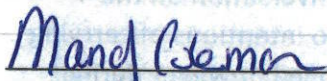
The impact of these works on our Client's property from these unauthorised works has been to grossly interfere with our Client's residential amenity which is totally unacceptable. The works in our opinion are not in accordance with the proper planning and sustainable development of the area.

The landowner has benefited from a series of infilling works which have substantially increased the levels of his land to achieve a uniform level hardstanding area over the entire site without the benefit of any planning permission(s). Our Client has been denied any opportunity to express his concerns in relation to these works through the planning application process.

It is incumbent on Clare County Council to fully assess the works undertaken to-date on the subject lands and to requisition all relevant and necessary information from Department of Culture, Heritage and the Gaeltacht, Department of Public Expenditure & Reform, the Office of Public Works and Irish Water in order to make a true and accurate determination in relation to this matter.

We finally ask your Council accept our opinion as expressed in this submission and deem the groundworks including the importation and deposition of fill material and the creation of a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road, Ennis to be development which is not exempted development.

Yours sincerely,



Mandy Coleman, MIPI
P. Coleman & Associates.

Enc.

APPENDIX A

From: Richard Long
Sent: 17 October 2014 17:45
To: Patrick Quinn

Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick,

Please be advised that to date the ER has not received any 'Post Constriction' Condition Survey reports for the River Fergus Lower (Ennis) Certified Drainage Scheme from WBL or Thorntons Chartered Surveyors the independence surveying firm acquired by WBL to carry out the necessary condition surveys. As indicated to you previously once the various reports are issued to the ER for review, a copy of the report relating to your property will be made available to you.

For clarity, please note that I have requested that WBL give the ER a time line for when they expect the various reported to be issued, as a number of property owns (yourself included) have request copies. As of yet I have not received an update on this request.

On the issue of the Mr Glynn's site and the levelling out of the property, please find attached for your records a number of photos taken of the area prior to and during the works. As you are no doubt aware the landscape of the area has been changed from what was present when the works got underway in the area back in March 2013. As noted to you previously the top section of Mr Glynn site was not intended to be part of the River Fergus Lower (Ennis) Certified Drainage Scheme Contract and during our conversation on the 4th April'13 with regards to noting access to Mr Glynn's site there was no intentions of carrying out any works on this section of Mr Glynn's property. This issue changed however during the extent of the works following various discussions with Mr Glynn with regards to the interference on this property for the duration of the works and compensation. Mr Glynn requested that his site be levelled out with all scrub removed. Additionally that the top section of the site be stoned. Mr Glynn had look to the entire site to be stone out, however this was not carried out by WBL to date. Mr Glynn made carry this out on this own accord in the near future. Please note attached sketch that was previously drawn up by WBL which gives an approx. indication of the areas that was stoned and that not stoned just levelled out.

On the issue of site levels, the existing site had numerous mounds of material deposited throughout the site with the site over grown with scrub at the time the River Fergus Lower (Ennis) Certified Drainage Scheme works started. Following on from your meeting of the 2nd Sept'14 I have tried at acquire and collate all surveying information available for the area. Due to the over grown nature of the site and the fact that it was not intended to carry out any works on this section, the site had not been surveyed. All existing survey information that I have obtained for the area relates to the river embankment. Prior to entering the area WBL did however carried out a minor survey along the track path which I have acquired.

This information has been inputted with the survey information that was taken of the site on the 3rd Sept'14. From looking at the level that have been acquired for the track and what is present on the site at the moment the levels in and around the entrance has remained

somewhat the same, as you work your way along the track the area has been raised by approx. 300mm which increase to 700mm as you make your way towards the petrol station area and then back to 350mm at the back of the petrol station. Please note the attached level sketch for your records which indicates the level of the site as it stand in red against the levels taken for the access track in green.

I know that this is not much to go by for your property but I hope this provided you with some information. If I can be of any further assistance or you wish to discuss this matter further please do not hesitate to contact me.

Regards

Richard

Richard Long
Senior Employer's Site Representative
J.B. Barry and Partners Limited
in association with Byrne Looby Partners

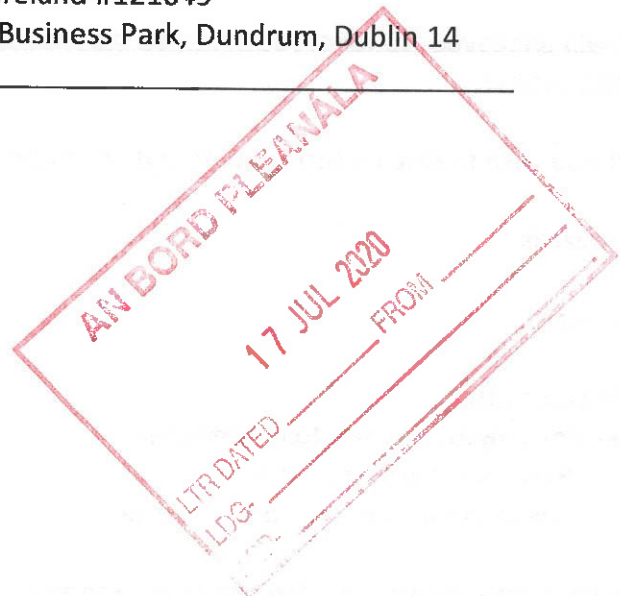
River Fergus Lower Certified Drainage Scheme - ER Site Office
Suite 9, Shannon Development, Information Age Park, Gort Rd, Ennis, Co. Clare

Tel:

E-mail:

Website: <http://www.jbbarry.ie>

J.B. Barry & Partners Limited is registered in Ireland #121649
Registered Office: Classon House, Dundrum Business Park, Dundrum, Dublin 14



From: Richard Long
Sent: 19 September 2014 13:58
To: Patrick Quinn
Cc: Tom McKeown; Jonathan Noonan; Fearghus Ryan
Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick

Please note that I am in the process of gathering information together for you on this matter as discussed at our meeting on the 2nd Sept'14. Following on from our meeting, I arranged to have the area in question surveyed. This was carried out on the 3rd Sept'14. The survey info has been reviewed with a sketch/drawing with the relevant levels been drafted up for how the property stand at present. Furthermore I am in the process of acquiring information from WBL for the area in question prior to the works getting underway. I am not sure however to what extent that they have in and around your property as that would of been considered to be outside of there works area.

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I will endeavour to revert back to you late next week with as much information as I can on this matter.

If you wish to discuss further please do not hesitate to contact me on this matter.

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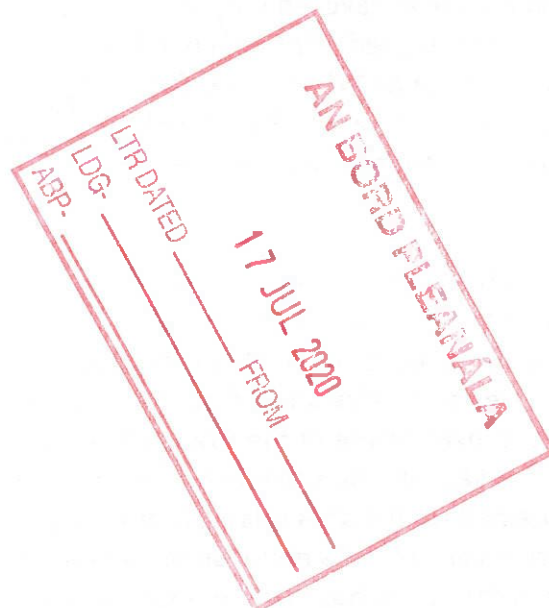
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Sent: 19 September 2014 13:58
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Richard

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Suite 9, Shannon Development, Information Age Park, Gort Rd, Ennis, Co. Clare

Tel:

E-mail:

Website: <http://www.jbbarry.ie>

APPENDIX C

From: Malcolm Duncan

Sent: 06 November 2013 13:30

To: 'Patrick Quinn'

Cc: 'Patrick Murray'; 'Jonathan Noonan'; 'Richard Long'; 'Tom McKeown';

Subject: RE: Mr Pat Quinn Tulla rd Ennis SoC report

Dear Patrick,

Apology for the delay in returning to you as I've been off work since 25th October. I thought this matter was dealt with. I can confirm that both Tony Lowe and Patrick Murray brought this issue to my attention. We would like to acknowledge that Wills Bros Ltd were instructed by the Employer's Representative to carry out a survey on your property due to the revised location of the site access off Tulla Rd. Our contract with the OPW does not allow us to provide these reports to third parties unless an instruction or approval is provided by the ER. We have discussed the matter further with Mr Richard Long (Employer's Site Representative) today who has granted approval of the submitted attached document. Please confirm that you received this ok. The report was issued to the Client for comment and some minor amendments may follow in a final report, however the content will be much the same.

I hope this is satisfactory and should you have any further queries regarding the River Fergus project, please do not hesitate to contact me.

Regards,

Malcolm Duncan

Project Manager

For and behalf of Wills Bros Ltd

Mob

Email:



Ats...

17 JUL 2020

LTR DATED _____

LDG- _____

ABP- _____

BORD PLEANÁLA

17 JUL 2020

LTR DATED

FROM

LDG-

ASP-





AN-208-1





LDG- _____
ASP- _____
AN BORD PLEÁNÁLA
Fee: € _____
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Type: _____
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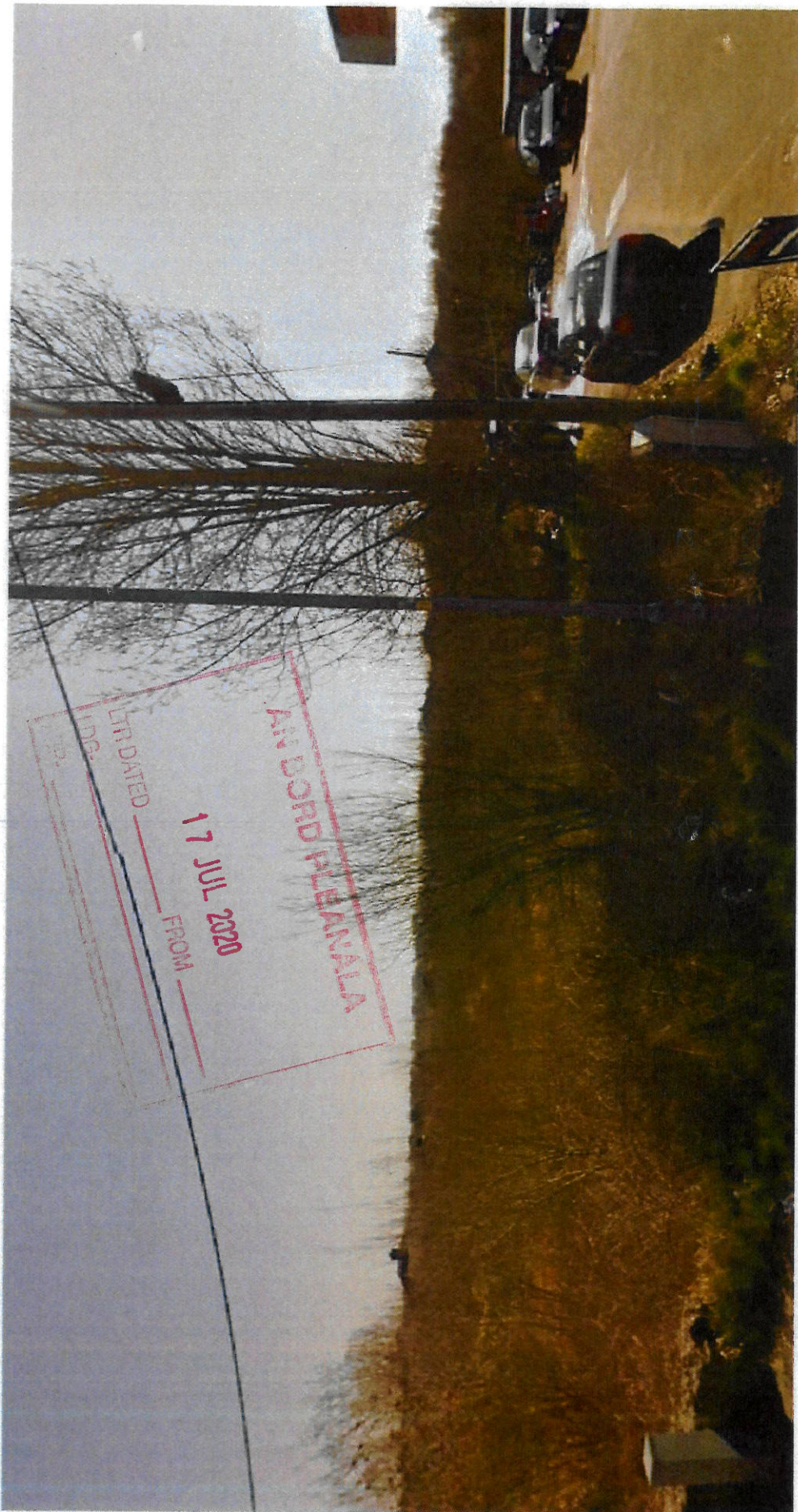
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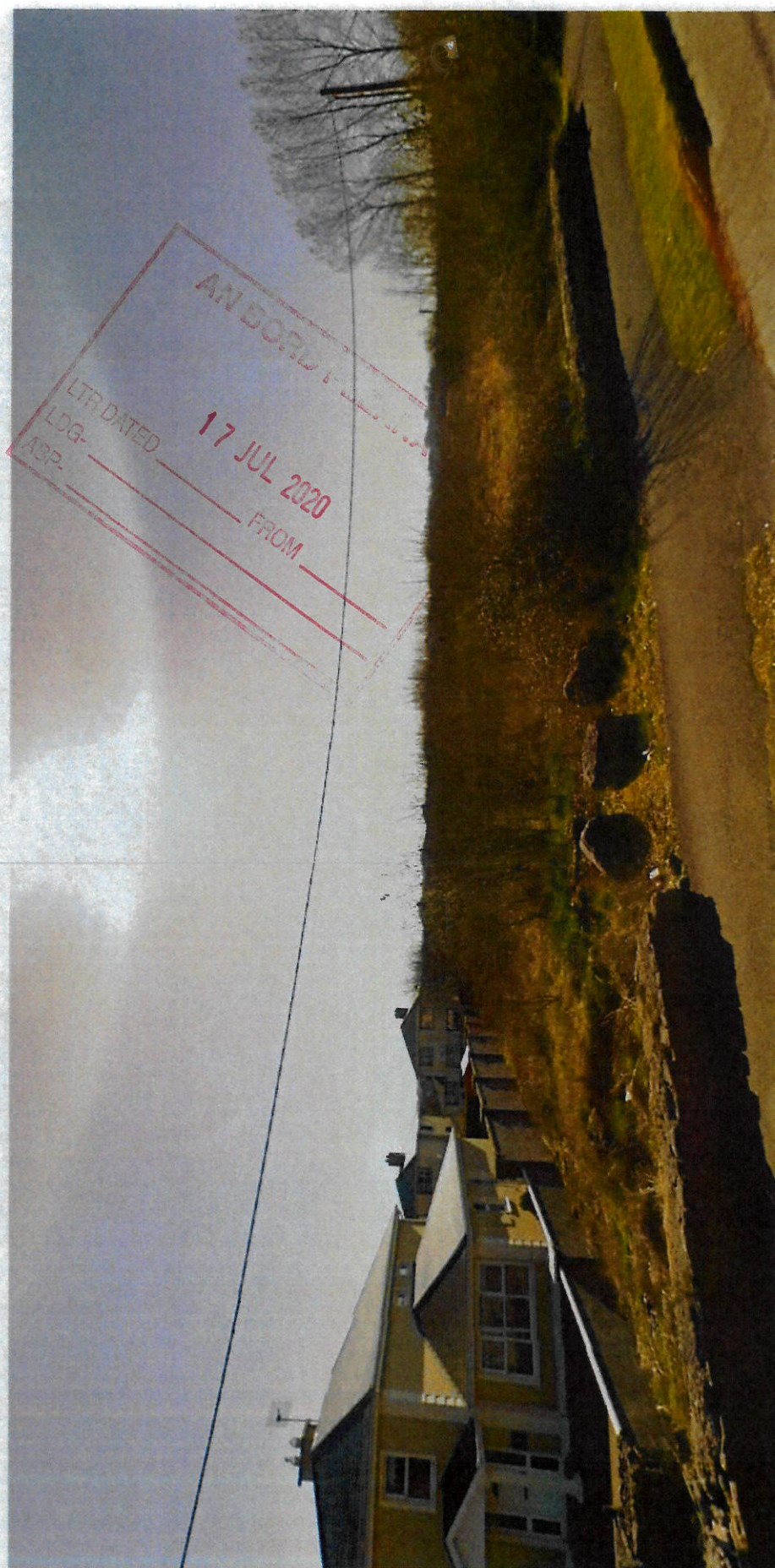
APPENDIX B











APPENDIX A

- 1.52 I believe that the assessment report prepared by Aquafact International Services Limited in April 2011 was neither an appropriate assessment, nor an appropriate assessment screening, nor even a recommendation in relation to such, that it could ever be relied by you in conducting an appropriate assessment, or appropriate assessment screening of the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of the ground levels of these lands, in the period since entry was first made thereon by Wills Bros. Ltd in 2013 and onwards to date.
- 1.53 In advance of the undertaking of the groundworks, including the importation and deposition of fill material to create a hardstanding area and the raising of the ground levels of these lands, in the period since entry was first made thereon by Wills Bros. Ltd in 2013 and onwards to date, I believe that there has been no assessment made of the cumulative environmental impacts of the filling of the site combined with the arterial drainage project, which, being flood relief works involving a length of river channel greater than 2 kilometres, required an Environmental Impact Assessment under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.
- 1.54 In circumstances where I believe no screening for Appropriate Assessment, or Appropriate Assessment was carried out with respect to the infilling works which have come to be undertaken on these lands since Wills Bros Ltd first made entry thereon in 2013, such development cannot be either "*Article 8 development*", or development of a class specified by Article 6 Schedule 2 Part 1 Class 16 of the Planning And Development Regulations 2001 as amended, as to be exempted development.

Dated the 5th June 2020

PATRICK QUINN

Assessment Screening carried out prior to the commencement of the works and made a direction in that regard.

- 1.47 By letter dated 7th September 2018, the planning authority wrote to An Bord Pleanála enclosing a copy of what it referred to as the “*AA Screening Report in relation to the Ennis Drainage Scheme*”, prepared by consultants Aquafact International Development Limited and is dated April 2011.
- 1.48 It is not apparent to me from that 2011 report whether it was compiled to inform an appropriate assessment screening, or a full stage 2 Appropriate Assessment. I do not believe that such satisfies the legal test for either an appropriate assessment screening, or a full stage 2 appropriate assessment for what has transpired on these lands since Wills Bros Ltd first effected entry thereon in 2013. In my opinion, such required that an Appropriate Assessment or appropriate assessment screening be undertaken and recorded, as well as a reasoned Environmental Impact Assessment, or an Environmental Impact Assessment Screening for the purposes of a complete determination of the questions referred.
- 1.49 It also seems to be to the case that in order to enable you to issue the declarations on the referral of questions (i) and (ii) above, it behoves you to exercise the powers available to you pursuant to s.6 of the Planning And Development Act 2000 to examine, investigate and survey these lands, in relation to the nature, extent and effect of the material deposited on the subject site and its potential to adversely affect the surrounding environment, including but not limited to the River Fergus (as part of the Lower River Shannon SAC) as well as my property, because I believe that since the filling of these lands there has been some displacement of the water table and/or shifting of the ground conditions in the area, as evidenced by subsidence and settlement of brick paviers comprising the patio at the rear of my dwellinghouse.
- 1.50 In the exercise of your statutory functions as requested of you pursuant to s.5 of the PDA 2000, I believe that, at a minimum, it is essential you procure the appropriate before and after ground level measurements/surveys of the lands that would have been taken by the Commissioners of Public Works, its servants, agents or contractors, as well as expert laboratory testing of the material filled on the lands, in order to properly determine the nature, extent and volume of the fill and its potential to adversely affect the surrounding environment, including but not limited to, the River Fergus and my lands.
- 1.51 The wording of Article 6(3) of the Habitats Directive provides:

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

“Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development.”

- 1.42 As a general rule, pursuant to Article 9 of the Planning and Development Regulations, 2001, exemptions from planning permission are disappplied, where a development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site; however, Inspector Caprani noted in relation to drainage works:

“.. that exemption from obtaining planning permission for drainage works under Article 8 of the Regulations are independent for many restrictions and exemptions under Article 9 of the said Regulations. The restrictions on exemption under Article 9 solely relate to development to which Article 6 relates. As such the fact that the works are located adjacent to a European site would not trigger any de-exemption under the provisions of Article 9(viib) (or any other restrictions under Article 9 for that matter). As such, de-exemption only relates to development under Article 6 and not under Article 8.

- 1.43 On foot of his interpretation of Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended, Inspector Caprani appears to have decided the provisions of Article 6 of the Habitats Directive, do not apply to development on the subject site or indeed any development specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995) or development determined by the Drainage Commissioners to be incidental to such development.
- 1.44 Additionally, in relation to any material allegedly imported by Ward & Burke into the site in 2015 to allegedly “create a compound for the watermain refurbishment works”, Inspector Caprani determined that “a strong case could be made for exempting the use of the site as a temporary compound under Article 6, Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001”, without conducting any reasonable investigative exercise in relation to such allegations.
- 1.45 It appears to me that Inspector Caprani recorded no screening for appropriate assessment and no appropriate assessment in his report or recommendations to An Bord Pleanála in this regard, for the purposes of Ref. O3.RL.3611 Inspector Caprani had no regard to the effect of the development on the water quality objectives of the River Fergus under the Water Framework Directive.
- 1.46 On or about 31st August 2018, An Bord Pleanála issued a notice to the planning authority pursuant to s.132 of the Planning and Development Regulations, 2000, as amended, requesting a copy of the Natura Impact Statement carried out in respect of the River Fergus Lower (Ennis) Certified Drainage Scheme or any Appropriate

- 1.36 The planning authority has previously described the subject site as being located at approximately 1.5 kilometres to the north east of Ennis town centre, stating that the site is made up of two adjoining parcels of land, one of which “Area A” fronts onto the Tulla Road, the other, “Area B” adjacent to the River Fergus, part of the Lower River Shannon SAC. I do not believe that is factually correct because at all material times heretofore, the site constituted a single parcel of land in the ownership of Crossfield Property Company Limited bounded by the Lower River Shannon SAC as part of a single land folio CE2627F, within which is also registered, the roads and castle of the adjoining Castlerock housing estate. I believe these subject lands were at all material times heretofore mapped on plans numbered E8MR, GH75, E8MM and 3536_2 within that folio.
- 1.37 As planning authority in your s.5 submission to An Bord Pleanála (Ref. O3.RL.3611) asserted that “Area B” *“relates to the area that the River Fergus Lower (Ennis) Certified Drainage Scheme applied to and which was used for flood defence works”*, while “Area A” *“was located outside of the flood relief works area.”*
- 1.38 I believe that Inspector Caprani in his report for the purposes of Ref. O3.RL.3611, correctly found that the activities undertaken on the subject site involved the importation of fill material which was deposited and levelled on the subject site which resulted in an increase of ground levels and that this comprised of ‘works’ as defined in the Planning and Development Act, 2000, as amended, and therefore was development. However, without questioning the purpose of the hard-standing works or any requirement for the hard-standing works, Inspector Caprani then fell into error by purportedly finding they *“were carried out in accordance with requirements under the Arterial Drainage Act of 1945”*, despite admitting that he *“cannot conclusively state that the works undertaken were strictly and fully in accordance with the drawings submitted.”*
- 1.39 As far as I am concerned, Inspector Caprani impermissibly regarded the appearance of a lack of concern by the planning authority in relation to the hardstanding construction, coupled with a (factually incorrect) submission on behalf of the owner that as part of the Certified Drainage Scheme, a large portion of the site was required to be filled with imported material, to arrive at wrongful conclusion that the works *“would appear to be exempted by virtue of Article 8 of the Planning and Development Regulations 2001 (as amended).”*
- 1.40 In my submission, any lack of concern heretofore by the planning authority in relation to the hardstanding construction truly has to be seen though, in the context of the direct and/or indirect (and unauthorised) uses made of the site since 2014 (ie as car park for Fleadh Ceoil na hEireann 2016-17 – Munster Senior Hurling Championship matches – A depot for road lining contractors engaged by the roads authority) in facilitation and/or to the benefit of the local authority.
- 1.41 Article 8 of the Planning and Development Regulations, 2000, as amended purports to give a blanket exemption from the requirement to hold planning permission for any works, even if only incidental to, the works specified in a drainage scheme confirmed by the Minister for Finance:

Wills Bros.) had nothing whatsoever to do with the Certified Drainage Scheme works, but arose purely a result of a private arrangement between the contractor and Crossfield Property Company Ltd/Mr. Glynn and subsequent private arrangements of Crossfield Property Company Ltd/Mr. Glynn. This was something that was never found by the OPW to be a necessary incidental of the works specified by the statutory scheme and is not exempted development pursuant to Article 8 or Article 6 Schedule 2 Part 1 Class 16 of the Planning And Development Regulations 2001 as amended.

- 1.30 Contrary to what has been stated by Inspector Caprani at paragraph 7.0 of his report for the purposes of the exercise that was Ref. O3.RL.3611, the permanent infilling of "Area A" was not carried out in accordance with requirements under the Arterial Drainage Act of 1945. The aforementioned e-mails of Richard Long, Senior Employer's Site Representative to me confirm that.
- 1.31 There are photographs on the public access file of An Bord Pleanála (Ref. O3.RL.3611) dated the 16th September 2013 and the 24th September 2013 which illustrate my house and the boundary wall adjoining the site. Even a most cursory examination of the present site level of "Area A" *vis a vis* my boundary wall, will reveal the extent to which further infilling has taken place on Area A since those photographs were taken in 2013.
- 1.32 Apart from the provision of a temporary track to facilitate Wills Bros. Ltd's access to embankments on adjoining lands in connection with River Fergus Lower (Ennis) Certified Drainage Scheme, all other works which have taken place on these lands ever since, have been for the purpose of accommodating and facilitating Crossfield Property Company Ltd/Mr. Glynn in the commercial enhancement of the market value of these lands and in readiness of their initial public advertisement for sale in the Summer of 2016.
- 1.33 The result is that under the "*guises*" of a statutory scheme and a public works contract, I have been left in a situation whereby my residential amenity has been grossly interfered with. A 6ft wall enclosing my rear garden is now effectively a 3ft wall and a 3 ft wall at the front of my property is redundant, as a result of the infilling of "Area A", thus depriving my family and I of the privacy we might reasonably expect as occupants of an adjacent private residential dwelling.
- 1.34 All of that was done without me being afforded any measure of public consultation whatsoever on the issues.
- 1.35 I also believe that the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from Wills Bros Ltd first effecting entry thereon, may have been undertaken in the absence of an appropriate assessment, or on the basis of an invalid appropriate assessment screening contrary to the Habitats Directive and Irish law, either in the absence of a proper or any environmental impact assessment, or that screening for same was invalid and contrary to the EIA Directive and/or possibly contrary to the Water Framework Directive also.

represented to me by the Contractor and what has subsequently evolved for me as I stand in my back garden.

- 1.23 What followed thereafter since entry was first made upon these lands seems to me to have entailed a subversion of the planning code by stealth. “Area A” (as described by Inspector Caprani in his report for the purposes of Ref: 03.RL.3611) was never part of the River Fergus (Lower Ennis) Certified Drainage Scheme.
- 1.24 The N(atura)I(m pact)S(tatement) for the Scheme states “*details of the works to be undertaken along the River Fergus Channel are as described in the contract specification and drawings and area summarised below*”. However, as the contract specification and drawings confirmed by the Minister made no reference whatsoever to, or provision for, what has subsequently transpired with respect to “Area A”, such could not have formed part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945 and thus constitute an exemption under Article 8 of the Planning And Development Regulations 2001 as amended.
- 1.25 I believe and have been advised by Wills Bros. that the Scheme as approved provided for access to the works to be achieved at an entry point proximate to Fitzpatrick’s (as it then was) Service Station premises and that when Mr. Fitzpatrick became aware of this, he made objection, because of apprehended commercial ramifications for his business, which would be occasioned by the vehicular movements accessing and egressing the site works. I further believe and have also been advised by Wills Bros. that Mr. Glynn, the owner of Crossfield Property Company Limited, then offered to afford that Contractor a site access for their vehicles at a point beside my dwellinghouse. In the Summer of 2013, employees of Wills Bros. attended at my house advised me of the foregoing and sought to ascertain my views on same. [c/f **Appendix C** - The email from Malcolm Duncan – Project Manager on behalf of Wills Bros to me of the 6th November 2013 at 13.30 corroborates this]
- 1.26 Because of the social utility of the nature of the works, in order to alleviate flooding in Ennis, I acquiesced in the proposal for an access track at this location, having secured verbal commitment from the Wills Bros. representatives, that the portion of the lands being availed of for the revised access track, would be restored to their original condition, once the works had concluded.
- 1.27 JB Barry & Partners Ltd (being the Employer’s Site Representative) to undertake a pre-works condition survey of my property which was undertaken on the 12th June 2013 by a Patrick Murphy.
- 1.28 In 2014, I had further correspondence with JB Barry and with Wills Bros. This is also contained at **Appendix C** hereto. The most important emails are those from Richard Long to myself of the 19th September 2014 and the 17th October 2014. The attachments to the emails which I am also forwarding to you at Appendix C hereto are what Richard Long furnished me with, as attachments to his email on the 17th October 2014 (with my boundary delineated in purple on Sketch No.1 for ease of reference by you)
- 1.29 Whatever about the provision of a temporary track for site access, these emails clearly illustrate what subsequently evolved on “Area A” (whereby a temporary access track metamorphoses incrementally into a completely infilled site in breach of representations made to me by

as I am concerned, such use did not require any infilling of these lands, as the portion of the lands which they made use of were already stoned and hardstanding.

- 1.18 I do not at all believe the use that was made of these lands by Ward and Burke necessitated the importation of 15 loads of stone as alleged, irrespective of the fact that the receptacle for such loads has not been identified, as far as I can see. Which or whether, if further infilling of these lands were undertaken at that time by Ward & Burke, or at any stage, I do not believe that such works, if they ever took place by them at all, had any statutory authorisation, or approval, or were otherwise exempted from the application to such works of the strictures of planning and development law. As far as I am concerned, any such “infilling” as alleged, did not encompass the erection, construction, or placing on lands of structures, works, plant or machinery needed temporarily in connection with Irish Water’s contract for the upgrade of watermain on public thoroughfares around Ennis in circumstances of the availability of the site compound at Quin Road, Doora Ennis and even if it did, such infilling ought to have been removed once works on that portion of the R352 immediately adjacent to “Area A” had been completed and the lands reinstated to their original level.
- 1.19 I honestly say and believe there is not, nor has there been, any legislative authority whatsoever for those works, contrary to what may have been represented to and purportedly found by An Bord Pleanála for the purposes of Ref O3.RL.3611 (now invalidated)
- 1.20 I refer to Figures 18-19 of the report of P. Coleman & Associates as submitted on my behalf. In particular, I invite the planning authority to particularly note
- the boundary wall of my residence which was constructed in accordance with the grant of planning permission for my residence.
 - the manner by which the boundary wall afforded privacy to the rear of my dwellinghouse and protection of my residential amenity.
 - the ground levels of the adjoining lands *vis a vis* the boundary wall of my dwellinghouse.
- 1.21 I say that commencing in 2013 entry was made through these “adjoining lands”, ostensibly for the sole purposes of creating a **vehicular track**, to facilitate construction works along the boundary with the Fergus Minor River, which were provided for as part of the River Fergus (Ennis) Certified Drainage Scheme – Phase 2. At all times such entry was to be temporary in nature and ostensibly with statutory authority.
- 1.22 I also attach to this submission two further appendices of five photographs each respectively,
- **Appendix A** depicts the situation prior to any works being undertaken on the lands.
 - **Appendix B** depicts the situation pertaining at or about the commencement of the “temporary” provision of the vehicular access track which is what the front portion of the lands were ostensibly to be used for throughout the currency of the Scheme and thereafter restored to their original condition, as was originally

not form part of the Scheme as confirmed and that they were not subject to EIA and appropriate assessment as part of that project.

- 1.12 Furthermore, I also believe that the groundworks as were undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels over such area of lands at Knockanoura, Tulla Road, Ennis, County Clare in the period from the entry of Wills Bros. Ltd thereon was development that would have required both an EIS and NIS and/or required to be the subject matter of screening for appropriate assessment under Council Directive 92/43/EU and also subject to the requirements of Council Directive 2014/52/EU and the carrying out of screening for the purposes thereof.
- 1.13 I therefore trust the planning authority, for the purposes of considering the within reference, shall *inter alia* actually requisition and examine the plans, specifications and drawings as submitted for the aforesaid Scheme as confirmed and have regard to same, together with the documentation accompanying and referenced by my request in support of my assertions.
- 1.14 I say that what developed on the portion of the lands adjacent to my property, whereby they came to be filled and the levels thereof raised to a wholly unauthorised level, grossly interfering with my residential amenity, was as a result of a private arrangement between the owner of the lands and the contractor engaged on the aforesaid Drainage Scheme at the time and wholly extraneous to it and in that regard, I especially note from Inspector Ciprani's report for the purposes of Ref. O3.RL.3611, that "*the Planning Authority submissions states that Area A is located outside the flood relief works area*".
- 1.15 I say that thereafter, further infilling continued at the behest of the owner of the lands and for anybody to suggest that it was *de minimis* is a gross misapplication of that concept. There has been a bald suggestion made that following completion of the aforesaid Drainage Scheme further infilling was undertaken by Ward & Burke contractor for the purposes of provision of a "*site compound*" in connection with a public works contract being undertaken by Irish Water. I say that represents a complete mischaracterization of the use that was actually made of these lands by Ward & Burke for the purposes of endeavouring to ascribe a lawful basis to such works as were actually undertaken on these lands.
- 1.16 Ward & Burke were engaged on behalf of Irish Water as part of a public works contract for the upgrade of water mains on public thoroughfares throughout the town of Ennis and its immediate surrounds. As far as I am aware, the official site compound was on the Quin Road, at Doora, Ennis, thus there was no "*need*" for any use to be made of these lands by Ward and Burke
- 1.17 I believe that what transpired is that whilst they were engaged on watermain rehabilitation works on the eastern side of Ennis in the environs of the Tulla Road Ward & Burke made some convenient use of the front portion of "*Area A*" adjoining the R352, as a temporary storage depot for some of their materials, whilst they were engaged upon the said public works contract. This entailed the erection on the existing hardstanding portion of "*Area A*" of some temporary "*security fencing*", in order to enclose a portion of "*Area A*", in order to securely store their materials therein. As far

“based on the information available in relation to the [OPW’s River Fergus (Ennis) Certified Drainage Scheme – Phase 2] including Scheme drawings and the EIS for that project, these lands did not form part of the confirmed scheme, and were not subject to EIA and appropriate assessment as part of the project at the time.The Department of Public Expenditure and Reform will have details of the full extent of the scheme, as confirmed, and will have details of the EIA and appropriate assessment which were carried out at the time. Any changes or extensions to the project after the scheme was confirmed may not be covered by the consent and the assessments carried out.”

- 1.06 My residence immediately adjoins the infilled site on the Tulla Road and I consider myself the person most directly affected to date by the activity which has taken place on these lands since entry was first made upon them by Wills Bros. Ltd in 2013.
- 1.07 To date, my private property rights have been entirely abrogated by the (former ?) owner of these lands and by the decision of the Board (Ref 03.RL.3611) of the 15th January 2019, now thankfully invalidated by Order of the High Court.
- 1.08 On the 9th October 2016, I made an extensive and detailed submission to Mr. Pat Dowling, Chief Executive of the planning authority (which Clare County Council has) with respect to what had transpired on these lands since Wills Bros. Ltd first entered upon them in 2013. Mr. Dowling in providing a report (which you are also in possession of) recognised the serious nature of my concerns and advised that it was a matter for planning enforcement. I also note that none of that information was ever transmitted by Clare County Council to the Board as part of the process which culminated in the decision of the Board Ref 03.RL.3611
- 1.09 On the 24th January 2019, I sent a registered letter and a Booklet of Documents to Mr. Dave Walsh, the Chairperson of An Bord Pleanála, which made An Bord Pleanála aware of the position regarding what had transpired on these lands since Wills Bros. Ltd first entered upon them in 2013 and I expect you are in possession of this documentation also.
- 1.10 Apart from what I consider to be bald, inaccurate, partial and misleading assertions made to the Board for the purposes of Ref 03.RL.3611, I believe there is no documentation in existence to evidence a finding that the groundworks undertaken including the importation and deposition of fill, the creation of a permanent hardstanding area and the raising of ground levels over the entire area of the subject lands, or any part of it at all, were works carried out as part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945.
- 1.11 I believe that it is indisputable that the portion of the site fronting the Tulla Road (ie “Area A” as described by Inspector Caprani in his report for the purposes of Ref: 03.RL.3611) which immediately adjoins my residence never formed any part of the River Fergus Lower (Ennis) Certified Drainage Scheme pursuant to the Arterial Drainage Act of 1945. I share the view of the Department of Culture, Heritage and the Gaeltacht that an examination of the Scheme drawings and the EIS for the OPW’s River Fergus (Ennis) Certified Drainage Scheme – Phase 2 project does indeed reveal that these lands did

**REQUEST MADE OF CLARE COUNTY COUNCIL AS PLANNING AUTHORITY
PURSUANT TO S.5 PLANNING AND DEVELOPMENT ACT 2000**

- 1.01** I hereby request Clare County Council as planning authority to make declarations pursuant to the provisions of S.5 of the Planning And Development Act 2000, (hereinafter "*PDA 2000*") as amended on the following questions;
- (i) Is or is not the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from 2013 onwards, development ?
 - (ii) Is or is not the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from 2013 onwards, exempted development ?
- 1.02** I believe the groundworks undertaken on this site from 2013 onwards in the nature of importing and depositing fill to raise the ground levels of the site and of the lands at the rear and western boundary of it to create a hardstanding area constituted development, which was not exempted development and amounts to an unauthorised development of the lands.
- 1.03** Insofar as a purported determination of the aforesaid questions, was purportedly made by An Bord Pleanála in a decision dated the 15th January 2019, (Ref 03.RL.3611) such decision of the Board was quashed by an Order of the High Court made on the 11th February 2020 in proceedings entitled "*The High Court, 2019 Record No:144 JR Between Peter Sweetman Applicant And An Bord Pleanála First Named Respondent And Ireland And Attorney General Second Named Respondent And Clare County Council, Crossfield Property Company Limited And Commissioners For Public Works, Maurice Buckley, John McMahon, John Sydenham Notice Parties*"
- 1.04** I say and believe the information that was provided to the Board for the purposes of Ref 03.RL.3611 was inaccurate and incomplete. Accordingly, I believe that it now behoves the exercise of your powers under s5(2)(c) the PDA 2000, to requisition all relevant and necessary information on the matter that is available to you from the Department of Culture, Heritage and The Gaeltacht, from the Department of Public Expenditure and Reform, from the Commissioners of Public Works, from Irish Water and from Clare County Council itself, in order to enable you to issue declarations on the questions referred, as part of a true, valid, relevant and transparent exercise of your functions, pursuant to the aforesaid legislation.
- 1.05** Neither the Department of Culture, Heritage and The Gaeltacht, the Department of Public Expenditure and Reform, the Commissioners of Public Works, or Irish Water participated in the (unlawful) exercise that was (Ref. 03.RL.3611) and Clare County Council are already in receipt of a submission from the Department of Culture, Heritage and The Gaeltacht in respect of a planning application P.19-409 regarding these lands, which notified it that,

APPENDIX B

