[redacted]

27TH September 2022

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01V902

Re: your ref no ABP-313930-22

Dear Mr Sweeney,

As the owners of our home and lands at Doonass, Clonlara in the County of Clare, we are obliged to An Bord Pleanála (hereinafter the "Bord") for this opportunity (by letter dated 13th September 2022), to respond to a Submission received by the Bord on the 2nd December 2020 (the "Submission") authored primarily by Fiona MacCarthy (also known on social media as Fiona Fennell and hereinafter referred to as the "Requester") although seeking to incorporate a number of other documents including 57 almost identical statements and a Map provided by Mr. Denis McKeon.

While we have received assistance from our legal and engineering advisors in creating and drafting our response, we believe the statements and assertions contained in this document are true and accurately reflect our views and experiences.

The Issue

Before embarking on an assessment of the degree to which the Submission and the documents contained in the Submission are relevant and therefore, whether they may be taken into account by the Bord, we would ask the Bord to recall that this application is not an appeal against a grant, or refusal, of planning permission.

Rather the matter before the Bord is a section 5 referral, on the question of whether the construction or erection of a fence, pedestrian and vehicular gateway erected by us on our property (which was formerly a public house but which is now a private family home), is or

is not, development. There is no dispute but that this is our family home and the property constitutes a 'house', within the curtilage of which, we have erected the gate and fence.

We feel it necessary to highlight the nature of the section 5 application, because in essence this section 5 referral does not raise any issue about the development which has been carried out and which is necessary for our privacy and security and that of our children. Indeed, in her Submission, the Requester makes no allegation, nor makes any comment, nor remarks on, the fence, pedestrian and vehicular gateway (hereinafter the "development") with regard to scale, dimension, design or colour. There is no claim that the development itself is offensive from a planning perspective, or incongruous in this rural area.

Rather this section 5 referral, is being utilised as a platform to mount an argument that our property, is subject to some form of public rights, whether a right of the public to use our property for recreational purposes, or indeed a right to park on our lands to facilitate persons visiting the adjacent graveyard, notwithstanding that the provision of parking and roadways are clearly the responsibility of Clare County Council, not us, as owners of private property.

The Submission in its penultimate paragraph suggests that if (as is the case) there are not public rights on our property, that there should be. In this regard the Requester complains that she was unaware of the role of Clare County Council in protecting "*Public Right (sic.) of Way*" and states that her lack of knowledge in this regard has:

> *"denied the general public [of] the benefit of a statutory process to decide on [the] preservation of a right of way.."*

further stating that:

> *"We will be taking this concern to as many councillors as possible with immediate effect."*

In this case there are no public rights, for any purpose, registered or unregistered, on our property. There is no legal proceeding pending, or in existence (of which we are aware), asserting such public rights, nor have any such rights been established, whether by Clare County Council, the Attorney General, or any body, or individual. Our Consulting Engineers *Hutch O'Malley* have carried out an extensive review of the history of our property and confirmed there is no evidence of access over our property to the river and we attach a copy of their Report.

There is no right of parking, or right of way, recorded on any map or document having the authority of the State. As will be seen below, the documents appearing in the Submission cannot be relied upon, nor do they have any legal standing. Indeed, the local and roads authority, Clare County Council (letter dated 12th June 2020) accepts that "*there is no registered right of way in place*".

It is clear that the Requester misunderstands the role and function of the Bord in deciding upon a section 5 referral and wrongly believes that the Bord has power to 'find' or 'declare' the existence of public rights, which is in any event not solely a matter of fact, but is one of mixed fact and law.

In circumstances where there is no agreement, acknowledgement or indeed lawfully authoritative recording of public rights over our property and where the Bord has no function in determining legal rights, or resolving disputed issues of fact (having legal import) and where the development itself is uncontroversial and not impugned in the Submission, it is submitted that this section 5 referral should be rejected on the basis that absent some complaint about the development, the issue of public rights is not only one which the Bord may not determine, but is tangential and extraneous and therefore, this section 5 referral constitutes an abuse of process and is vexatious.

Finally, it is submitted that the inability of the Bord to assume or confer rights on the public at large, at the expense of the owners of private property, is established for the past two decades and illustrated by the case of *Ashbourne Holdings Limited v. An Bord Pleanála* [2003] 2 I.R. 114, decided by the Supreme Court. Whilst the Requester may not understand the limits of the Bord's powers and functions, the Bord is expected to.

Manner of the Application and Interpretation of Article 9 by the Bord

Should you decide to reject our contentions set out above and proceed to consider the Referral, we submit the Bord must have regard to the manner in which it carries out its functions. In this regard it must be presumed that the provisions of Article 9(1)(a) were drafted and will be interpreted by the Bord in a manner consistent with the existing law of the State and the user period of 10 years applied on the basis of *lawful* and effectively uncontested access. Were it otherwise, the Bord would be in breach of its duty as a State body, to vindicate and protect our rights as private property owners and would hold itself out as a tribunal which can determine legal rights. As a result, the period of 10 years of 'habitual' use or lawful access (even if proved which is not the case here) would appear to be an indicative period or administrative 'short-hand', that is all it is.

To suggest, as does the Requester, that if a weight of submissions can be gathered in support of public rights, that the Bord can make a finding of public rights which then sets at naught our right to erect our development and our right to avail of the exempted development provisions to protect our home, is to misunderstand the powers and functions of the Bord and the extent of those functions and powers which do not extend to the finding of public rights.

In support of our contention, we would highlight three aspects applicable to determining this Referral.

Absence of Correlation with the Existing Law

First, the period of 10 years: does not correspond with the periods necessary to establish a private right of way (20 or 12 years); is insufficient to bar the title of private property owners (12 years) and is unrelated to the establishment of public rights (dedication and acceptance). Therefore, the 10 year period of itself, cannot be determinative of the existence of a public right.

Secondly, as affirmed by the Supreme Court in the case of *Walsh v. Sligo County Council*, mere 'use' of land for periods considerably in excess of ten years, without more, is insufficient to establish public rights. In this instance it is clear there has been no expenditure of public money on our property, there is no 'roadway' taken in the charge of Clare County Council, there is no map or deed demonstrating the existence of a "road" or pathway to which the public have a lawful right.

Necessity for Lawful User

It is a fundamental incident of the rule of law, that rights, whether private or public, can only be established on foot of lawful user and where such user is *proven* not merely asserted, no matter how frequently or how vehemently the assertion is made.

One example of this principle, on the basis of facts which are *entirely similar* to this referral, is the case of *Dennehy v. An Bord Pleanála* (High Court 16.01.18 and 19.05.20, Meenan J.) (RL 08.RL3525). It is submitted that *Dennehy* is on 'all fours' with this case, in as much as it was also a section 5 referral, concerning (as here) the erection of a gate on the boundary of the landowner's property, over whose private property it was claimed, existed a public right to access (as here) to a lakeshore, which access was (as here) not recorded and which had no basis in law, except for claims (as here) by neighbours, whom also delivered statements of usage in circumstances (as here) *where the landowners* (as found by Meenan J.) were "*subjected to violence and intimidation, and to their property being wantonly damaged*" and where the landowners had given permission (as here) to persons to use their property from time to time and for specific purposes.

The Bord in *Dennehy* made the finding urged by the Requester, of access by the public, or the enclosure of land habitually used by the public for 10 years, within the meaning of (as here) Article 9(1)(a) of the Regulations. The High Court struck down the decision of the Bord and refused the Bord leave to appeal the decision, for reasons which have an exact parallel in this Referral.

Nature of the (public) "Use"

With regard to the provisions of Article 9(1)(a)(x) and (xi), the Court determined (paragraph 53, page 19) that the finding by the Bord that habitual access could be established by unlawful acts or trespass was a finding which was not "*legally permissible*". The Court continued to state:

> *".. It could not be the case that the Board is permitted to take a decision to the effect that the gate was not an exempted development on the basis of a public user which was unlawful".*

Upon the Bord in *Dennehy* seeking leave to appeal [*Dennehy v. An Bord Pleanála (No. 2)* (18.09.20, Meenan J.)] the Court clarified the position with regard to the interpretation of the 'public' access provisions of Article 9(1)(a) holding (paragraph 11):

> *"The Board appears to be submitting that all that has to be established is that there is a "use" and it matters not that such "use" is lawful or unlawful. ... such a proposition is untenable. If unlawful means were permissible for the establishment of a "use" or, for that matter, a right of way, such could readily be established by deliberate and persistent trespass, wanton destruction of private property and threats of personal violence. The law is there to protect people from such, not to benefit those who engage in or perpetrate such activity."*

Indeed, the Court went further, when refusing the Bord's application for leave to appeal on the basis that the Bord desired to be able to take into account *any* use (lawful or unlawful) when applying the provisions of Article 9, the Court holding:

> *"I do not think that it is "desirable in the public interest" that in considering whether or not the appropriate use has been established for Article 9(1)(a)(x) that the Board should consider a "use" which is illegal. I am, therefore, satisfied that there is no basis for certifying this question."*

It is our understanding that given this finding was not appealed, it is binding.

Conclusion in respect of the operation of Article 9(1)(a)

The *Dennehy* cases were decided prior to the acceptance of this Referral. The Bord have guidance from the High Court as a result of the *Dennehy* cases as to first, how Article 9(1)(a) must be interpreted by the Bord and secondly, a definitive and binding finding, that access, otherwise known as (unlawful) trespass on private property by the public, is not only insufficient to establish the existence of public rights, but cannot be taken into account by the Bord for the purposes of Article 9(1)(a).

In particular, as held in *Dennehy* it is "*legally impermissible*" for the Bord to rely upon the activities described in the Statutory Declarations to support an argument that our lands are subject to public rights or "*habitually open to or used by the public during the 10 years preceding such fencing or enclosure*" and such use must be entirely disregarded.

Indeed the only facts the Declarations confirm, is that absent the securing of our boundary at the end of the public roadway, by our fence, pedestrian and vehicular gateway, our home is likely to continue to be subject to unlawful incursions, which is already the subject of Garda investigation.

Should the Bord decline to accept our arguments set out above as determinative, we address the substantive issue without prejudice to our arguments already set out and while maintaining the Bord may not make a determination of the existence of public rights, on the basis of the documents submitted so far, as follows:

Exempted Development

The nature and extent of the development is not in dispute. At the risk of repeating, there is no question except our property is our family home and a house. No issue is raised with regard to these basic facts. The public road ends at our property and no portion of our property has been taken in charge by Clare County Council, as evidenced by the letter dated 18th May, 1983 and Location Map from Clare County Council, confirming that the public road is situate to "*the northern boundary of the site*" and the more recent letter of the 30th March 2021 referring to the L-30501 which is not situate within and terminates before entering, our lands, affording access to the adjacent Graveyard. We have already set out that remedial works to the L-30501 roadway by Clare County Council did not trespass on our lands.

There is no allegation that our fence and gate fall other than within the exempted development provision of section 4(1)(j) of the Planning and Development Act, 2000 which permits us to carry out:

> *"development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such"*

As already pointed out, the Requester does not allege the development is outside our property, or that it is other than within the curtilage of our house. It cannot be seriously claimed that the development (fence, pedestrian and vehicular gateway) is other than incidental to the enjoyment of our house, all the more so where we are manifestly subject to repeated and on occasion, violent assertions by persons, of public rights on our property and which have already been detailed.

The Requester makes no reference to our entitlement to erect the development under section 4(1)(j). Rather, she attempts to introduce an argument, utilizing the Planning and Development Regulations, that the Bord should make a finding of public rights, or the fencing or enclosure of land "*habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any ... lakeshore, riverbank ..*".

In other words, the Requester makes no argument pursuant to section 4(1)(j) of the Act (which take precedence over the Regulations) and tacitly accepts that the development falls within the exempted development provisions of the Regulations and in particular Classes 5, 9 and 11. The Requester does not claim the height, depth and location of the development exceeds the conditions and limitations mandated within these classes. Similarly, while the Requester makes reference in her Submission to our porch, this does not form part of Referral, nor is there any allegation that it exceeds the conditions and limitations imposed by the Regulations.

However, it appears the Requester, misunderstanding the powers of the Bord and the rights of private property owners, believes that the Bord can make a determination of contested facts having a legal import. This is not a case where "*habitual*" access or availability to the public, is admitted, or accepted. It is not a case where the lands over which access is claimed, forms part of the foreshore, or is owned by the State, or not owned at all. This is not a case where the alleged public rights are recorded or reflected in any map or document indicating the

existence of public rights, this Referral is a blatant attempt to obtain a finding from the Bord which it cannot provide.

The "evidence" contained in the Submission

Legal Considerations

With regard to the Submission itself, it is patently obvious that the Submission is a document which seeks to agitate with the Bord to make a finding of habitual access by the public in such a manner as to deprive us of the protection of section 4(1)(j) of the Act and the exempted development provisions of the Regulations, as opposed to utilising those statutory provisions which are open to any person including the Requester and to one of which the Requester explicitly refers, in the penultimate paragraph of her Submission, should she or anyone else, wish to try and establish public rights over our property.

That this is the (impermissible) purpose of the Submission is clear and apparent from the vehemence and frequency of a claim for public right. The Requester refers to "*habitual access*", "*closing off traditional areas*", our property being "*used for parking of cars associated with graveyard visits*", also use by "*pedestrians to the bank of the River Shannon*" and claims that on the basis of this 'use' our development "*therefore, is non-exempted development under the provisions of Article 9(1)(a)(x)*".

Indeed, claims by the Requester of "*public use*" and "*arbitrary and unilateral interference*" being caused to access to a large (specified) number of sites of antiquity, as well as "*fishing stances along the bank of the River Shannon*" by our development, is not only incorrect, but is readily seen to be factually incorrect.

Close scrutiny of the maps provided by the Requester, show that our development does not interfere with any access between the Graveyard and St. Senan's Well, as neither of them are located on our property and both can be accessed from the (accepted) public road (L-30501), to the north of our property. Regarding the footbridge and river amenities, the actual Right of Way that leads to the footbridge is more than a kilometre from our property. The "*fishing stances*" which the Requester clearly believes should be available to all and sundry, constitute a facility only available to those persons who purchase licences from the owner of the *private* fishing rights (ESB Fisheries) and access to the Shannon for fishing, is restricted to those licence holders.

It is the claim for the existence of "*a de facto right of way*" which we believe, reveals that even the Requester is aware that her claims have no lawful basis and she has made this Referral, not for the purpose of obtaining a decision on our actual development (fence, pedestrian and vehicular gateway) but rather to have the Bord support her assertions of "*habitual comings and goings*" and "*Public Right of Way*" on the basis of allegations and claims which are entirely unsubstantiated and incapable of supporting such a finding and in circumstances where it is not the Bord's function to adjudicate between public and private rights.

We believe that on any rational and disinterested assessment, the Submission itself makes rash, overblown and unsubstantiated claims and is of no substance. Further, none of the documents contained within it, are sufficiently reliable or capable of demonstrating the allegations made by the Requester made are true (the contrary is the case) and worse, such facts as are submitted with regard to access by the public, demonstrate, were there any doubt, that the incursions onto our property are unlawful and which the Bord therefore, is not entitled to consider.

If the Bord accepts that the true motivation for this Referral is an attempt to establish rights for the public over our property and accepts the High Court decision in *Dennehy* determines the manner in which the claims of the Requester must be viewed, we believe the Bord is obliged to reject the Referral on the basis that it is brought for an improper purpose and is therefore frivolous and vexatious.

While maintaining our position in this regard and not accepting the content of the Submission, we would highlight some of the allegations to which we take particular exception, before examining the individual attachments to the Submission.

Factual Inaccuracies and Evidence of Bias in the Submission

As already set out, the Requester makes little reference or complaint about the development carried out by us, but focuses on the issue of public rights. In an abundance of caution, lest the Bord consider we accept what is said about the development itself, we would comment as follows:

The Requester refers to: *"The physical-substantiality of the locked gates"*

In response we would highlight, as we have already set out above, the gates do not exceed, nor does the Requester claim the gates are in breach of the conditions and restrictions attached to Classes 5, 9 and 11 of the Regulations. The Requester can point to no specific issue relating to scale, dimension, design or colour which breaches those conditions. It is submitted that the issue of whether or not the development is or is not exempted development, cannot be reduced to one of "taste" and indeed the "taste" of the Requester appears to differ, depending on whose gates she is looking at.

As can be seen from the photographs, our gates are standard gooseneck gate. They are no larger nor more physically substantial than the Requester's own gates, situate some 50 meters north of our property, which are similar in style. Similar gates are utilised by two of our four neighbours on the L-30501 and our development is entirely consistent and congruous with neighbouring houses.

The Requester claims: *"Further, the three elements of the development are of such standard as to have required the services of professional contractors using specialist equipment to build and install each in place, including the excavation of foundations for the mounting of supporting posts fixed into concrete."*

While we doubt that the "standard" to which the Requester refers, is meant to be complimentary, as a matter of fact we installed the gates ourselves with assistance of a family member.

> *The Requester claims: "The developments referred to have had the effect of closing-off traditional access to what space had been used for parking of cars associated with graveyard visits, and also by pedestrians to the bank of the River Shannon and to the turret at the well-known 'Falls of Doonass' by means of the 'Cead Mile failte' steps"*

Again, for the reasons set out above there is no 'traditional' parking of cars and a period long enough to constitute a 'tradition' could only run from the manufacture of the internal combustion engine. No cars were ever parked on our property inside our development. It is the case that given the proximity of the area of our property outside our development to the Graveyard, that we were asked for and granted to, the Graveyard Committee, a key to access that portion of our property for their convenience.

There is no impediment by virtue of our development, of access to the Turret or Doonass House. The Turret or Folly being referred to, is on our neighbour's (private) property. Doonass House is to the east of our property and has been vacant for over ten years since the death of the owner of this property which is also privately owned. However, the land on the Doonass house side is effectively impassable for most of the year because of waterlogging. There are 'No Trespassing' signs on this property.

With regard to the suggestion that what is referred to as the 'Cead Mile failte' steps' supports the argument for a 'loop walk', again this suggestion is not well founded. As can be seen from the actual Deeds recording the ownership of these lands, they were formerly owned by Earl Massey and sold in 1929 by Colonel John Thomas Massey-Westropp at which time they continued to comprise the Doonass Demense. It is therefore the case, that the lands either side of the steps were in common ownership. If the steps were to be utilised for the purpose of trying to establish a right of way, this could only be done by our adjoining landowner whom might claim that a quasi-easement was elevated to private right of way between our land and this neighbour, upon severance of the lands comprising the Doonass Demense. No such claim has been made. The existence of the steps is irrelevant to public rights as the lands continue to be privately owned and therefore incapable of raising an inference, never mind constituting actual evidence, of a public right or the dedication of the land for the purpose of creating a 'loop walk' over our property.

Having demonstrated that the Submission is without substance or veracity, we now wish to turn our attention to the enclosures:

The Statutory Declarations

The Submission states:

> *"Among the enclosures herewith please find some 57 signed and duly witnessed testimonies to such use for at least 10 years from members of the local community.*

Since the closure, they find themselves deprived of enjoyment of long cherished amenity."

Similarly the Submission claims:

"You will have received from the Council details of the road/pathway, the long-enjoyed habitual use of which has now been-blocked-by the developments in question. Among the enclosures which accompany this Submission may be found maps which show the road or pathway and the location of the blocking developments, namely two locked gates and a fence"

First and foremost, there is no "road / pathway". If there were a "road" it would be readily evidenced by the Requester by reference to an Ordinance Survey map or other document having the authority of the State.

Secondly, for the reasons already set out above in the context of the discussion about the High Court findings in *Dennehy,* the Statutory Declarations may not be relied upon by the Bord, as they evidence no more than unlawful trespass and nuisance.

If the statements contained in the Statutory Declarations are examined, their lack of specificity with regard to the ten year period claimed, or the path allegedly followed by the public, render them unreliable and effectively meaningless. They do not prove the truth of the statements contained within them and we do not accept that the apparent signatories are correct, nor do we accept that they were properly executed.

In particular, Mary and Richard Caffrey spoke to some of the signatories who were known to them and were told that they had not signed them in front of the Peace Commissioner, George Lee. When spoken to, George Lee maintained that he had signed them. When shown the documents that were not signed in front of him, he had no explanation for this, except to say that he signs lots of documents and that maybe he could have signed two documents together.

In addition, George Lee is a Peace Commissioner but not an independent or unbiased party and his partiality has not been disclosed. His lack of impartiality is demonstrated, we believe, by the fact that he signed one of these statements and then 'declared' it, before himself. This is entirely inappropriate and indicates the seriousness with which he undertook the witnessing of these identical Declarations.

In addition, Mr. Lee is well known to our entire family and we confirm that he has never passed our door since we purchased the property five years ago. We were on site full time renovating the property and we never saw George Lee pass or come into the area in question. Indeed, while there have been a number of persons who constitute the 'hard core' of the group asserting a right to walk over our property (in particular John Galvin, Thomás Galvin, Mike Hannan and Francis Moloney) the remainder of the signatories to the Statutory Declarations have never been seen by us, or by members of our family or friends, attending our property.

Finally, there is a convergence between the names on the Statutory Declarations and the signatories to the 'petition' (appended to the first Referral). In such circumstances, it must be reasonably inferred that the intention of the Requester is to persuade the Bord by 'weight of numbers' to enter into a consideration, not of the development, but rather the issue of public rights. Not only is this impermissible but we would add that no matter how frequently you repeat an untruth, it does not make it the truth.

Clonlara Development Group dated the 15th of November, 2020

Attached to the Submission is an entirely new and fresh submission from the Clonlara Development Group dated the 15th of November, 2020, even though this Group is not the Requester and we do not accept that another body, other than the Requester, should be entitled to become involved in this matter at this stage.

Setting that aside, while this group may be an unincorporated association of persons, this document has been prepared solely by "*Peggy Ryan on behalf of Clonlara Development Group*".

This document is not authoritative. The author is not an historian, an engineer or an expert in documentation. There is no independent or authoritative source for any claims made by the 'Clonlara Development Group'. Indeed the document is itself entirely aspirational.

The Bord will have noted references to a future or intended "*heritage trail*", what it is hoped such a heritage trail "will be". It states that <u>if</u> the trail is developed (Section 4) it:

> *"would be a major benefit for the economic, social and environmental growth for the local community and could direct and enhance community partnerships among the various groups within the locality".*

Indeed, we believe that the statement (1. Introduction to the document) not only fails to demonstrate our lands ever formed part of an established right of way, but in addition expressly recognises in a general sense, that there is no right for walkers to enter private property when its states:

> *"The Heritage Trail will consist of a trail head map and 14 lectern type interpretative mounted panels at each site of interest. This trail will be on public roads mainly until it reaches the River Shannon .."*

Importantly, the document is not related to, nor does it specify the 'way' or path which it is said is supported by the Statutory Declarations, or the development the subject of this section 5 referral and must therefore be deemed irrelevant.

Finally, we would draw attention to the fact that a close examination of all of the features envisaged as comprising the path of the intended "*loop*" are entirely divorced from and outside our property and the document explicitly confirms that with regard to actions for "*tourism development*": "*To date no action has occurred in the Clonlara District*".

Appendix 1 UL North Campus and Economic Development Zone

As part of the Clonlara Development Group submission this Appendix was included. This document has nothing to do with our lands at Doonass, Clonlara in the County of Clare and we do not know why it has been included in the Submission.

Birdwatch Ireland Walk Notes July 22nd 2018

Also included as part of the Clonlara Development Group submission are these 'Birdwatch Ireland Walk Notes' dated the 22nd of July, 2018. It should be noted that the Birdwatch Ireland walk on the 22nd July 2018, was one which occurred on foot of members of Birdwatch Ireland seeking our permission to enter and park on our lands (to the north of the development) and therefore, far from supporting the Requester's case, fundamentally undermines it.

Pictures of Gates and Fences

We will not repeat what has already been set out above.

Map and Diagram by Denis McKeon

While Denis Mc Keon may be qualified as an engineer, is not a member of the Society of Chartered Surveyors of Ireland. We contacted this professional body. His drawing is wholly inaccurate and incorrect. However, as a professional person he is prohibited from misrepresenting what he knows to be incorrect and a failure to observe proper professional standards must impact on his credibility and we believe he has not applied those standard.

By way of example, Mr. McKeon has written the word "ROAD" on the map on the south-eastern boundary of our property. This legend is portrayed in a type and size which is exactly the same as marked on the public road, the L-30501. It is manifestly the case, as demonstrated by Ordinance Survey maps and the map appended to the letter from Clare County Council that the public road designated as the L-30501, ends at our boundary. The upgrading of the L-30501 by Clare County Council did not involve our property. There is no public road on our property in the charge of Clare County Council. Mr. McKeon has written "ROAD" on our private property as if it is a continuation of the L-30501 when this is manifestly not the case and when Mr. McKeon, an engineer, knows or ought to have checked, whether this is the case.

Similarly, Mr. McKeon refers to land at the southern portion of our property as "*newly created Folio in 2018 that was previously unregistered land without any neighbour or public consultation ..*". We have no idea what this is about.

Even Mr. McKeon, an engineer, must know that rivers move by a process of sediment deposition and erosion and that riparian owners, such as ourselves, must tolerate the moving

of our boundary on foot of this natural process. That Mr. McKeon attributes a malevolent motivation to a natural process again, we believe, is not merely opportunistic but demonstrates that the Map produced by him, cannot be relied upon.

In this regard we would also highlight the reference to the point in our boundary to the South East, referred to in the Submission and Mr. McKeon's Map as the "Cead Mile Failte" steps. As Mr. McKeon could have discovered had he investigated the matter, the lands either side of the steps were in the common ownership of the same Doonass Demense. The existence of the steps is therefore incapable of raising a presumption of a private right of way, never mind a public right, to support what Mr. McKeon refers to as a 'Loopwalk'.

Finally, the Map produced by Mr. McKeon and attached to the Submission is notable for (on this occasion) not claiming ownership on behalf of the OPW of part of our Folio lands. The Bord will recall that on his drawings submitted in Ms McCarthy's first or previous submission, he indicated that the semi-circle by the river, was OPW land. Indeed, his assertion in this regard was accepted by Clare County Council without question and repeated by Clare County Council in its letter to the Bord dated 5th November 2020.

For the avoidance of doubt, there is no ownership of land by the OPW of which we are aware and no documentary evidence to support this assertion by Mr. McKeon, now implicitly withdrawn by the second map of Mr. McKeon's, attached to the Submission.

Conclusion

While our Reply is long, given the credence being afforded to this section 5 Referral and the plethora of claims made by the Requester and her supporters, we feel it is necessary to try and set out with sufficient particularity, the reasons why those claims are groundless, unsustainable and not supported by the actual reality and history of the area.

It is clear to us that this process is being utilised for a 'political' and not a planning purpose and is being used as a vehicle to advance an organised campaign to obtain a public right of way over our property, to which the campaigners are not entitled and which has resulted in great distress to our family, both by virtue of Social Media and unlawful direct confrontation and harassment of us and even our children, in our own home.

We are members of the community in Clonlara, our children attend local schools, we have always facilitated such neighbours and groups (Birdwatch Ireland, the Graveyard Committee) who seek our support or assistance.

There were times over the past few years when we felt so under siege that we considered just giving up and selling up. It is true to say that without the support of some of our neighbours, family and An Garda Siochána, we would not have been able to withstand the constant agitation and confrontation. Several of the people who have come onto our property have been so brazen, that they have refused to obey the directions of the Gardai. While we know that is a matter for another forum, as the same time, the agitation continues. A gravel path has been recently constructed (using heavy machinery) in the vacant neighbouring property

leading to our boundary, by persons who have been instructed by An Garda Siochána to stay off our private property.

While it is a matter for the Bord, we do not believe this Referral is *bona fide*, we believe it is merely part of a campaign which might be ended upon the conviction of some of the activists and the rejection of this blatantly misguided section 5 Referral.

Should any further additional information be required by the Bord we are more than willing to provide it, We submit this Referral is made for an improper purpose and should be rejected but if it is considered by the Bord, the Referral is patently so biased, inaccurate, insufficient and lacking in substance, that it cannot possibly be deemed to contain objective and credible facts sufficient to arrive at a finding that our development has been carried out on land "*habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any ... lakeshore, riverbank ..*"

Thank you for your attention.

Michelle Caffrey and Derek Cox

Attachments

1. Engineer's report
2. Taking in charge letters Clare County Council (1983 and 2021)
3. Sworn oaths (2 pages)
4. Title Deeds
5. 2 Photos of heavy machinery used to create unauthorised path in neighbouring property in 2021
6. Map of Right of Way to Footbridge
7. Declaration made by George Lee, Peace Commissioner

HUTCH O'MALLEY
CONSULTING ENGINEERS

The Railway Station, Attyflin
Patrickswell, Co Limerick.
V94 A8N2
☎: 061-320260
E: admin@HutchOMalley.ie

HUTCH O'MALLEY
CONSULTING ENGINEERS

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Patrickswell, Co Limerick.
V94 A8N2
☎: 061-320260
E: admin@HutchOMalley.ie

Our Ref: 22105/BH/NOD

Attention of

23rd September 2022

Re: Examination of OS maps with respect to any Obvious Rights of way.

Our clients: Derek Cox & Michelle Caffrey

Dear Sirs,

I have read over the information submitted to an Bord Pleanala and the following information is pertinent to the history and ownership of their property, It is in our client's case a saga which has seen their property for which they have full ownership and title being wholly invaded for a claimed right of way. It is worth considering the history of this property and its connection with Doonass house

In 1786 Sir Hugh Massey had acquired the lands at Doonass, Clonlara and starts construction in that year. The Doonass falls were famous for sport fishing and attracted a lot of very famous people to the area, but as guests of Sir Hugh Massey. it is clear from 1839, 6 inch OS maps that the estate was well-developed in 1839 with internal pathway being clearly evident within the estate, one of these paths lead straight down to our client's dwelling house which was probably the house belonging to the estate manager and land agent. The old gate adjacent to our client's property would have provided him with access to the estate, but this would only appear to part of the story, and we note from one of the oldest OS Map circa 1840 No 5 attached and map 4 & 3 it is clear that a canal was constructed adjacent to the river Shannon from this house to further down the Shannon, it is difficult to know what was the purpose of this canal, however, we know from research that the Massey family were involved in a Flax mill which was located adjacent to Summerville House on the river and I have attached showing the adjacent estates

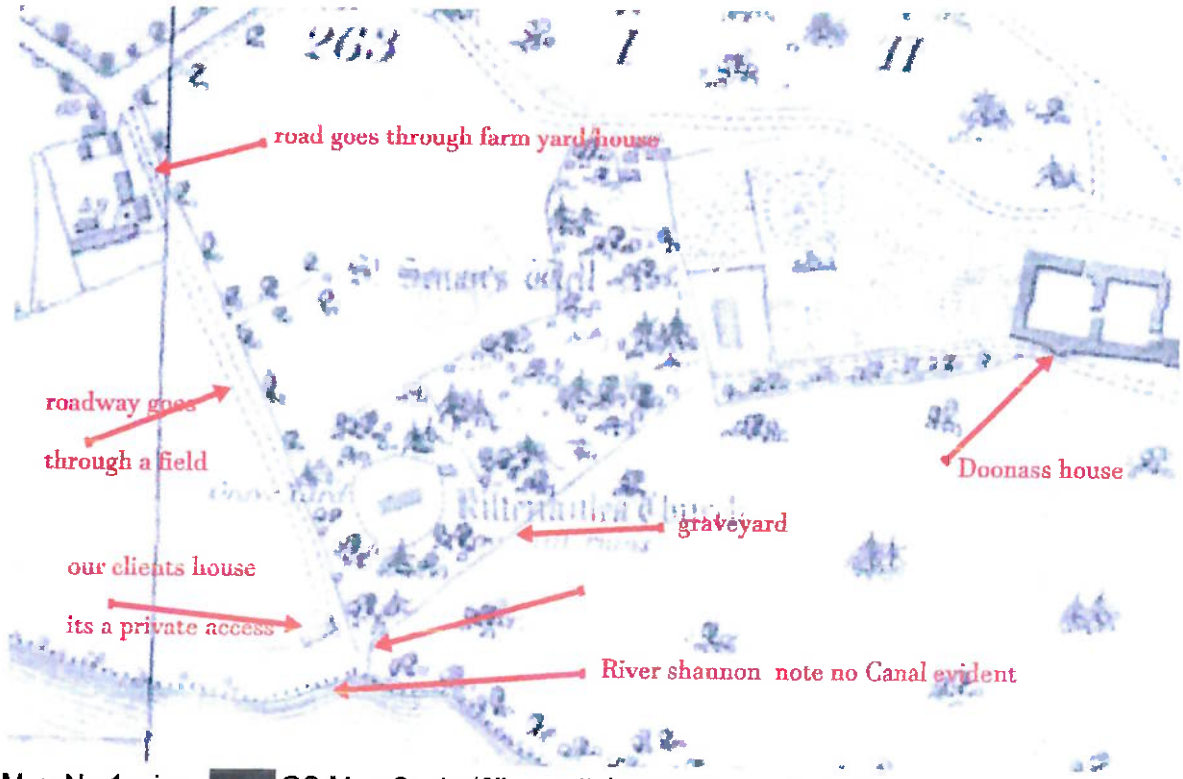
It is also clear that the flax had to be transported to Limerick, from where it would be exported. The mill was used to bleach the flax again from records it would appear that the Massey family got into financial trouble around the time of the famine and the surround estates which were leased by the family had to be sold off. The number of estates developed adjacent to Doonass House is quite numerous, immediately adjacent are the estates of Summerhill house, a Massey house,Waterpark house, Errina house and Lucufield house and many more. The cause of financial crisis is not fully known, but the growing of flax was done by farmers with poor land and small holding. The famine saw most of these farmers emigrate, flax mill work was extremely arduous, and labour costs rose significantly. The Massey Family managed to retain Doonass house and some surrounding lands, until the early 1920s

it is clear from maps that the estate did not have any accesses which could be construed as giving access to anybody other than employees or invited guests of the owners of the lands which bounds the river Shannon and surrounding roads which feed down from Clonlara Village. The following maps with commentary, in my opinion the best testament as to the past with the current OS map

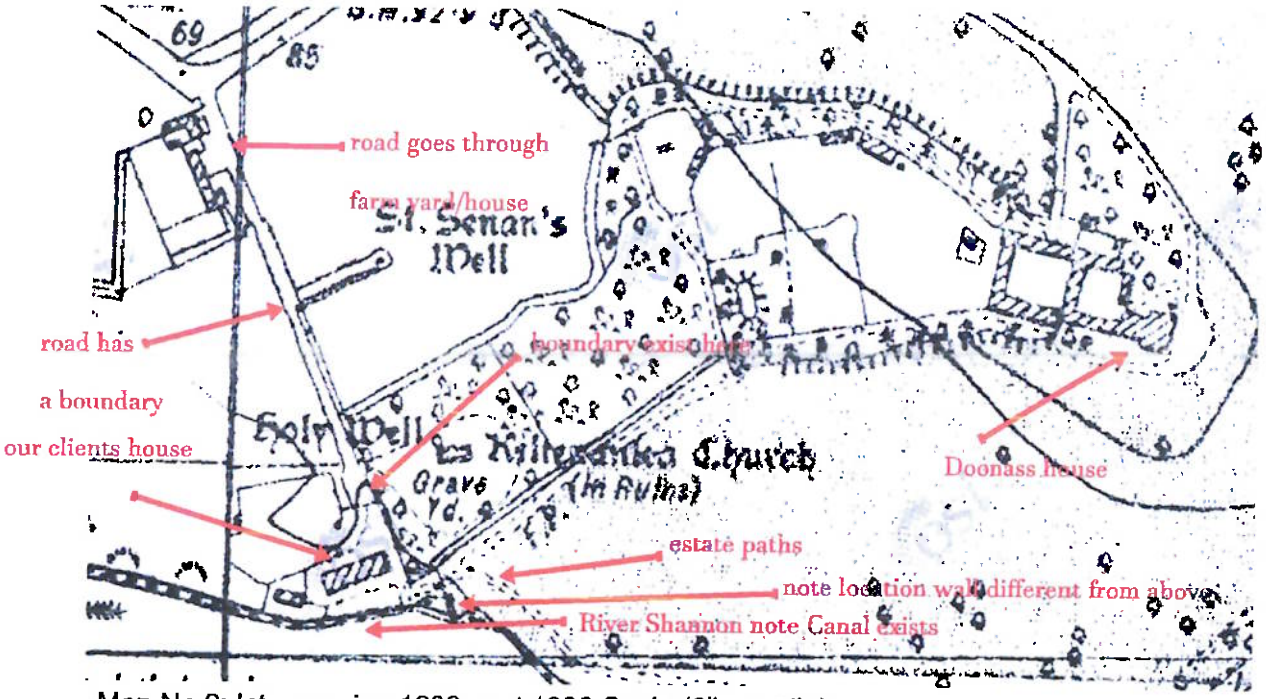
Yours sincerely,

Bill Hutch
Hutch O'Malley

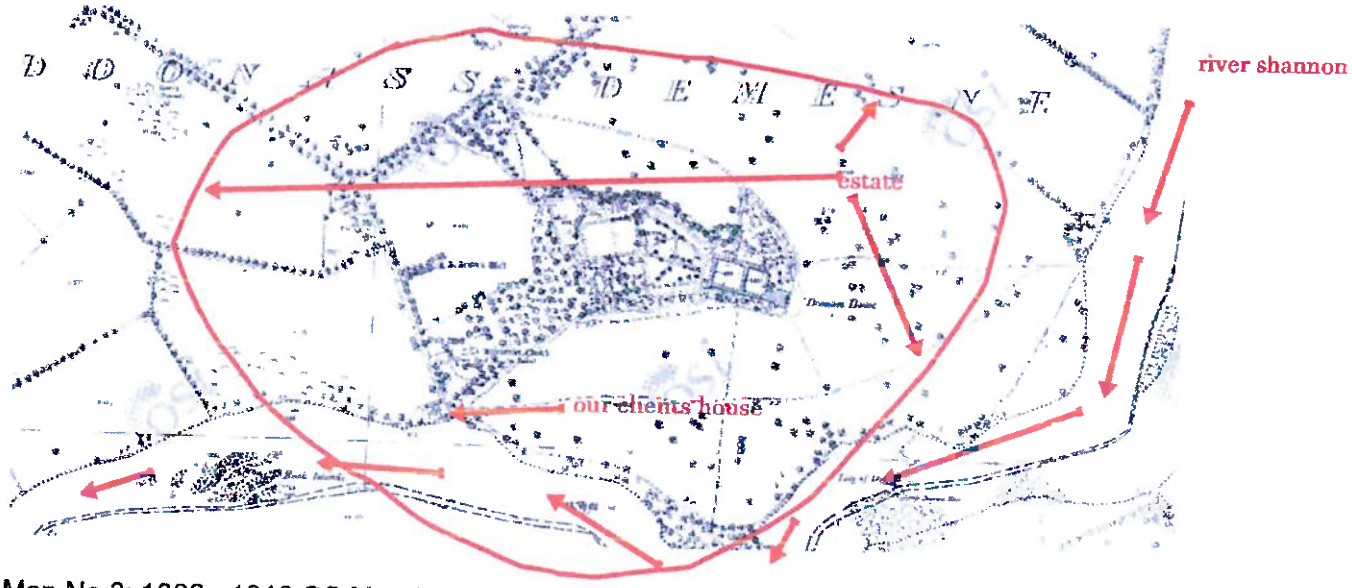
See attached Maps



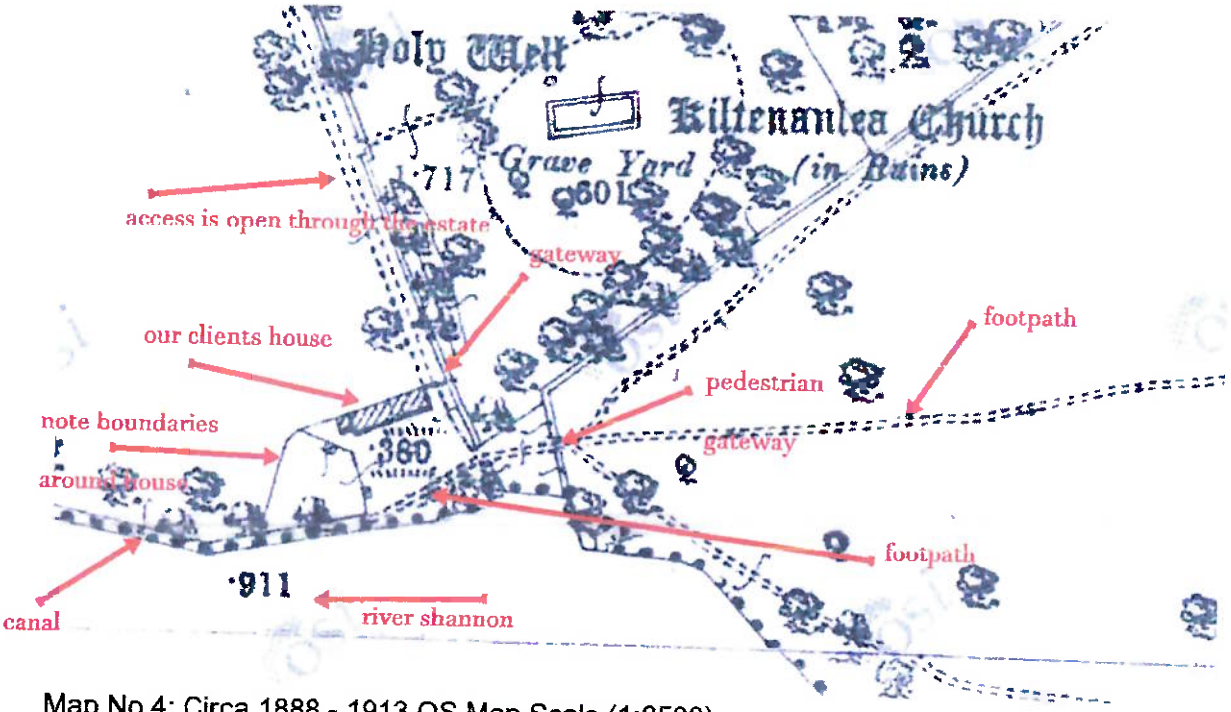
Map No 1; circa [redacted] OS Map Scale (6" - a mile) early version circa 1939



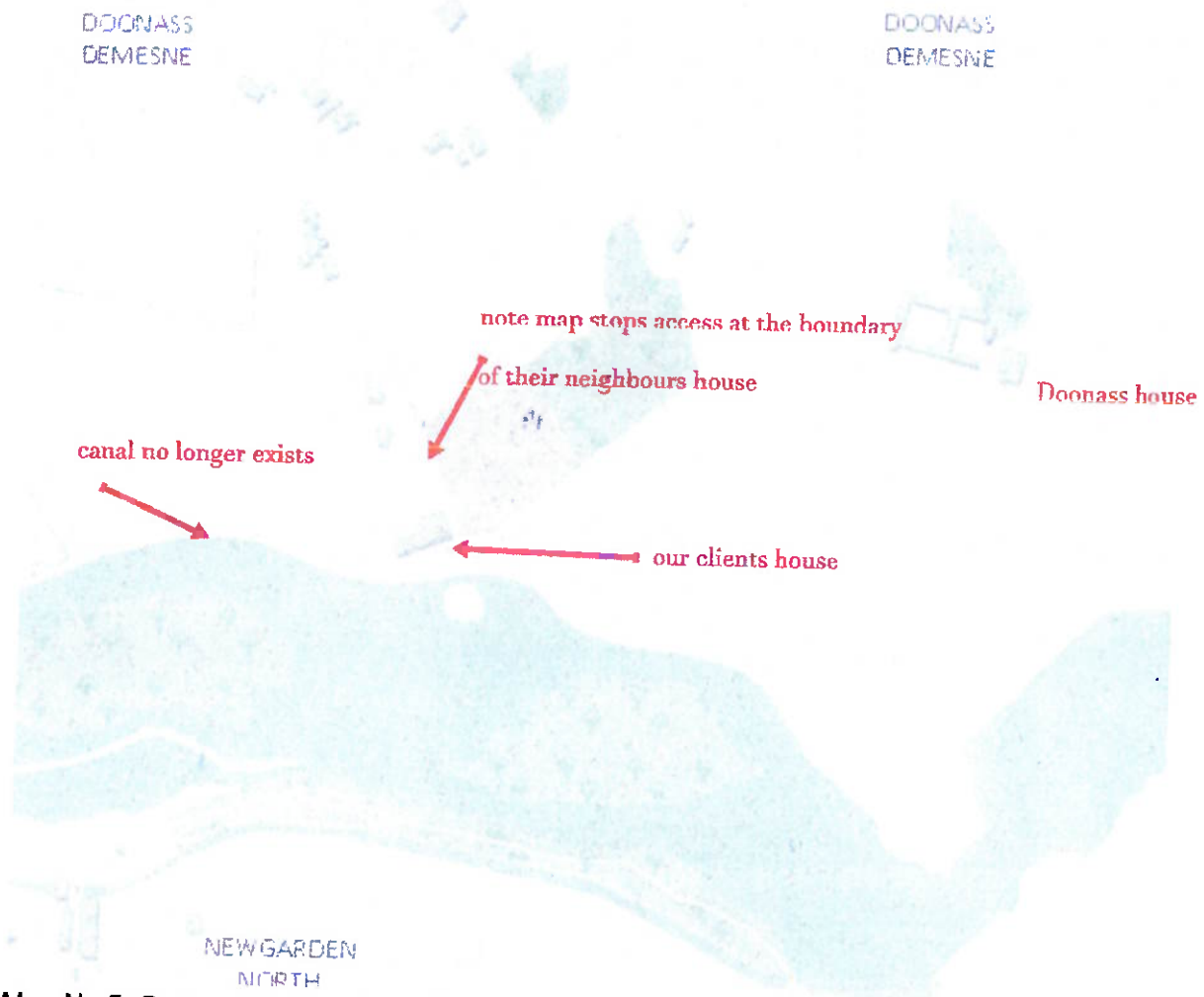
Map No 2; later version 1939 post 1939 Scale (6" - a mile)



Map No 3; 1888 - 1913 OS Map Scale (1:2500) but reduced to show the area



Map No 4; Circa 1888 - 1913 OS Map Scale (1:2500)



Map No 5; Current OS Map Scale 1:2500

COMHAIRLE CONTAE AN CHLÁIR | CLARE COUNTY COUNCIL

Our Ref: LOC/CF/TIC 21/684

9th April 2021

Derek & Michelle Caffrey Cox
[redacted]

Re: Property at Doonass, Clonlara, Co. Clare
Folio No: [redacted]

Dear Sir/Madam,

I wish to acknowledge receipt of your correspondence dated 01 April 2021 regarding the above.

I wish to confirm that the L-30501 is in the charge of Clare County Council and the road length currently in charge is 260m as indicated on the attached map.

Attached please find receipt in the amount of €74 for your records.

Yours faithfully,

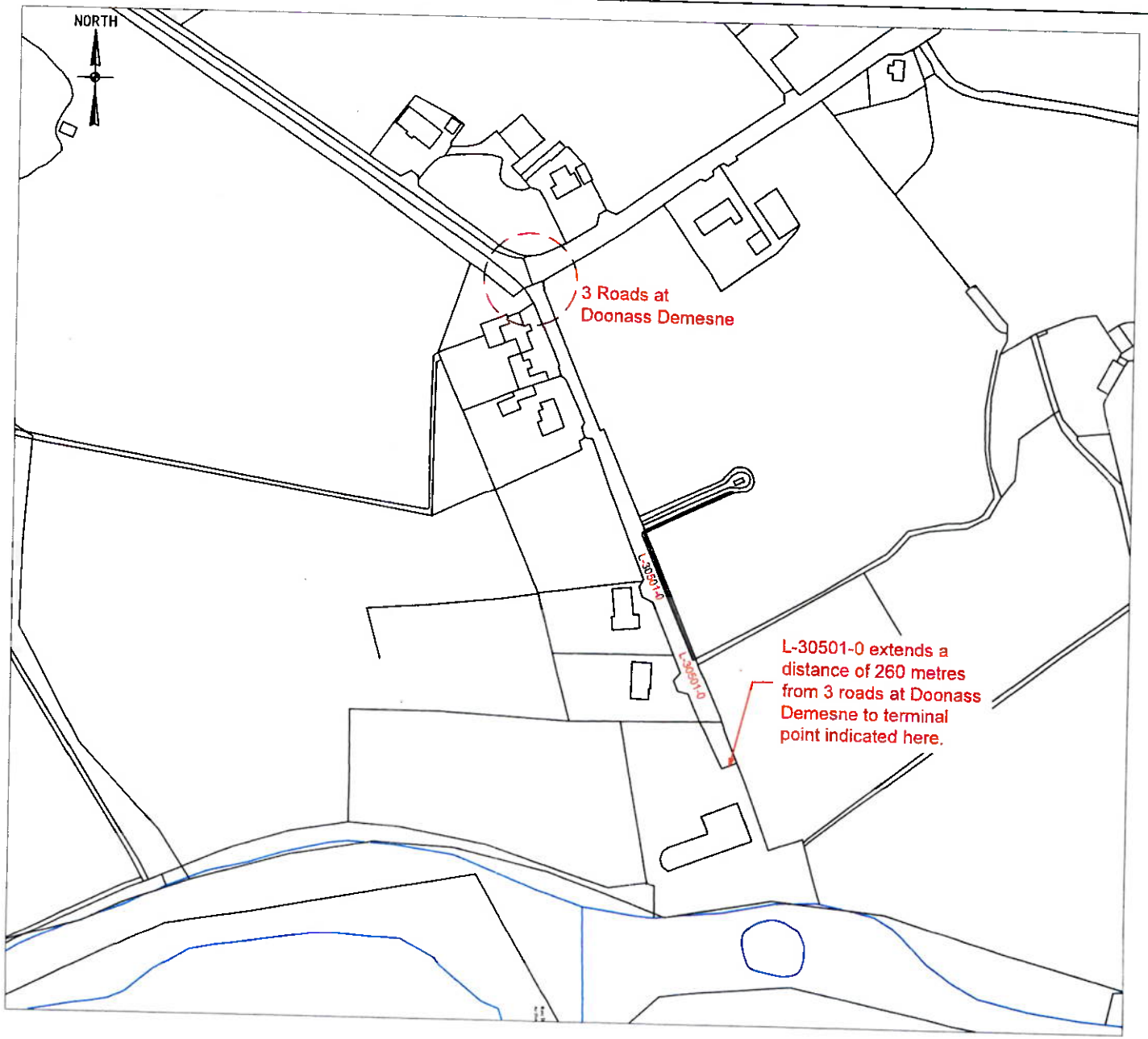
Liam O' Connor
Administrative Officer
Roads & Transportation

Enc

Roinn na Bóithre agus Taistil
An Stiúrthóireacht Forbairt Fhisiceach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Roads and Transportation Department
Physical Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2

☎ 065 6846333 roads@clarecoco.ie www.clarecoco.ie



OS REF : 4624-A

Revision	Description of Changes Made	By	Date

Road Design Office, Áras Contae an Chláir, New Road, Ennis, Co. Clare
T: 065 6821616 F: 065 68 21915
E: rdo@clarecoco.ie W: www.clarecoco.ie

Project Title: Doonass, Cloniara Road Schedule Query

Drawing Title: Extent of Public Road L-30501-0

Status:		Drawing No.:	Rev:
Designed by:		R2021-59.5-100	-
Drawn by:	C.E.		
Checked by:			
Approved by:		Location: W:\59.0 Road Schedule\59.5 ROAD SCHEDULE QUERIES	
Scale:	1: 2000 @ A3		
Date:	0000-00-00		

SCALE 1:2000

Telephone 065/21616
Telex 8144

Clare County Council

Address any reply to/The County Engineer

Roinn Innealtóireachta,
Bothar Nua,
Inis.

Comhairle Conndae an Chláir

Mr. Patrick J. O'Meara,
Solicitor,
Liberty Square,
THURLES,
Co. Tipperary.

18th May, 1983

Our Ref: ETS 150/GR 24

Re: Lands at Doonass - Folio 10388 Co. Clare

Dear Sirs,

I refer to previous correspondence and wish to confirm that the road to the northern boundary of the site is in the charge of Clare County Council. There are no other services.

Please forward £20 processing fee.

Yours faithfully,

Patrick J. Gleeson,
County Engineer.

CE/959A/83

28th September 2022

Regarding the signed declarations attached to Fiona Mac Carthy's submission to An Bord Pleanála dated 3rd of December 2020. These declarations stated that;

'I ..... hereby declare that I have habitually used the now blocked road/pathway running between (what was) the 'Anglers Rest' and the graveyard to the River Shannon and the 'Cead Mile Failte' steps at Doonass for recreational and access purposes during at least the 10 years preceding the first blockage of this road/pathway.'

I Michelle Caffrey secondary school teacher of the Anglers rest Doonass Co. Clare

I Derek Cox School Principal of the Anglers rest Doonass Co. Clare

We were working on renovating our home and garden between January 2018 and March 2020 and we never saw any of these people on our property (with the exception of one person who Derek had given permission to pass).

I swear the above to be true.

Michelle Caffrey M Caffrey Date 28/9/22

Derek Cox Derek Cox Date 28/09/2022

Sworn by the said Michelle Caffrey and Derek Cox this 28th day of September 2022 before me Thomas Dowling at Castletroy House, Dublin Road, Limerick and the Deponents are duly identified to me by passport no.s PV6645919 and PE3068103 respectively.

THOMAS DOWLING
Commissioner for Oaths
Castletroy House, Dublin Rd.,
Limerick.

28th September 2022

Regarding the signed declarations attached to Fiona Mac Carthy's submission to An Bord Pleanála dated 3rd of December 2020. These declarations stated that;

'I ..... hereby declare that I have habitually used the now blocked road/pathway running between (what was) the 'Anglers Rest' and the graveyard to the River Shannon and the 'Cead Mile Failte' steps at Doonass for recreational and access purposes during at least the 10 years preceding the first blockage of this road/pathway.'

I Mary Caffrey retired Transport Manager of 2 Bellefield Grove Farranshone Limerick V94AKC3

I Richard Caffrey retired Aeronauts Inspector of 2 Bellefield Grove Farranshone Limerick

Mary Caffrey telephoned Ann O'Brien of The Lodge Coolbawn Castleconnell and ask her about her signing of this Declaration. Ann said a person called to her door and spoke to her about a right of way near the footbridge that was now blocked and she signed the declaration, she said she did not sign this declaration in front of George Lee Peace Commissioner.

Mary and Richard Caffrey called to Celie O' Rahilly 7 Castleview Castleconnell at her home and spoke to her about the declaration. Celie said that someone called to her door about the blockage of a right of way and that she did not sign this declaration in front of George Lee Peace Commissioner

We spoke to a number of other signatories known to us regarding their signing of this declaration and with the exception of 1 they all said that someone called to their door and that they had not signed the declaration on front of George Lee Peace Commissioner

Mary and Richard Caffrey called to George Lee in his role as Peace Commissioner at his shop on Main Street Castleconnell. We asked him about the declarations and he said that yes it was his signature on the declarations, when asked if the person had to be there on front of him to witness their signature he answered yes, when shown Ann and Celie's declaration and asked where they on front of him he said yes, when told that they had said that they did not sign the declaration on front of him he could not explain it.

I swear the above to be true,

Mary Caffrey Mary Caffrey. Date 28-09-2022.

Richard Caffrey Richard Caffrey Date 28/09/2022.

Sworn by the said Mary Caffrey and Richard Caffrey this 28th September 2022 before me, Thomas Dowling at Castletroy House, Dublin Road, Limerick and the Deponents were duly identified to me by passport numbers PV h109752 and PV 618624 respectively.

THOMAS DOWLING
Commissioner for Oaths
Castletroy House, Dublin Rd.,
Limerick.

A 5.1

Dated 21st day of October 1929.

399

Colonel John Maxwy-Westropp
and Others

— To —

Laurence Meany, Esquire.

Conveyance.

Barre

D.D. MacDonald & Co.
Solicitors
16, Upper Merrion Street,
Dublin, C.4.

A5.2

This Indenture

made the fifth day of August one thousand nine hundred and forty six between LAURENCE MEANY of Angler's Rest Doonass in the County of Clare Farmer (hereinafter called the Vendor) of the one part and THOMAS FITZGERALD of Twenty Shannon Street in the City of Limerick Esquire (hereinafter called the Purchaser) of the other part. WHEREAS the Vendor now holds in fee simple in possession free of rent the plot of ground portion of Doonass Demesne with the buildings and erections thereon known as The Angler's Rest situate in the Parish of Kiltenanlea Barony of Tulla Lower and County of Clare and has agreed with the Purchaser for the absolute sale thereof to him free from incumbrances for the sum of One Thousand Four Hundred Pounds. NOW THIS INDENTURE WITNESSETH that in pursuance of said Agreement and in consideration of the sum of One Thousand Four Hundred Pounds paid by the Purchaser to the Vendor at or before the execution hereof (the receipt whereof the Vendor doth hereby acknowledge) the Vendor as beneficial owner doth hereby grant and convey unto the Purchaser ALL THAT AND THOSE the plot of ground part of the Townland of Doonass Demesne containing in area two rood and six - - perches Statute Measure situate in the Parish of Kiltenanlea Barony of Tulla Lower and County of Clare and more particularly delineated and described on the Map or Plan thereof hereon endorsed and thereon coloured Red. TO HOLD the same unto and to the use of the Purchaser his heirs and assigns forever. IN WITNESS WHEREOF the Vendor has hereunto subscribed his name and affixed his Seal the day and year first above written.

Signed Sealed and Delivered by the said Laurence Meany in presence of:

Michael Tynan
Solr
Limerick

Anna O'Mahony
Swope Forest Limerick Typist.

+ Laurence Meany

Registered in the Registry of Deeds, Dublin, on the 28th day of August 1946 Book 36 No. 214 Folio 8 minutes after 12 noon

A5.3

This Indenture

made the 21st day of October One Thousand Nine Hundred and Twenty Nine Between John Macy-Westropp at present residing at Squire's Cottage, Bramley Down Surrey Retired Colonel in His Majesty's Army (hereinafter called the Vendor) of the First part Edward White of 10 Gardiner Street in the City of Dublin Solicitor and Peter Maurice Healy of Grosvenor Square in the County of Dublin Barrister-at-Law (hereinafter called the Trustees of the Settlement) of the Second part and Laurence Healy of Grafton Rest Kensington in the County of Middlesex Esquire (hereinafter called the Purchaser) of the Third part Whereas under and by virtue of an Indenture of Settlement dated the Sixth day of December One Thousand Eight Hundred and Ninety Seven and expressed to be made between the said Vendor of the First part Hugh John Macy-Westropp of the Second part Georgina Maria Macy-Westropp of the Third part and Frances Georgina Hamilton-Kennedy and Hugh Macy-Westropp of the Fourth part the said Vendor is beneficially entitled to the possession of the lands and premises hereinafter mentioned and Whereas by Deed of Appointment expressed to be made the Twenty-First day of August One Thousand Nine Hundred and Twenty Nine and made between the said Vendor of the First part Frances Georgina Kennedy of the Second part and the said Trustees of the Third part the said parties of the Third part are the Trustees under the said Settlement with power of sale of the said lands and premises and Whereas the said Vendor in pursuance of the power in the Deed given to a Tenant for life by the Settled and Not One Thousand Eight Hundred and Eighty Two has agreed to sell to the said Purchaser for the sum of Sixty-Five Pounds the fee simple in possession of the lands and premises hereinafter mentioned Now this Indenture witnesseth that in pursuance of said agreement and in consideration of the said sum of Sixty-Five Pounds to the said Trustees by the direction of the said Vendor this day paid by the said Purchaser (the receipt whereof the said Vendor doth hereby acknowledge) the said Vendor in exercise of the power above mentioned as beneficial owner Doth hereby grant and convey unto the said Purchaser his heirs and assigns All that and those the plot of ground now in possession of the said Purchaser (and on which said plot the said Purchaser has erected a dwellinghouse being portion of the Demesne Demesne containing in or about One rood and twenty one perches

Registered in the Registry of Deeds, Dublin, at 11 minutes after 3 o'clock on the 6th day of November 1929 Book 42 No. 159

situate in the Parish of Kilbannober barony of Ballyadams and County of Offaly To hold the same unto and to the use of the said Purchaser his heirs and assigns Provided that as regards the reversion or remainder expectant on the fee estate of the said Vendor in the said lands and premises and the title to and further assurance of the said premises after his death the covenant on his part in these presents implied by Statute shall not extend to the acts deeds or defaults of any person or persons other than or besides himself and his own heirs and persons claiming or to claim through or in trust for him them or some of them And the said Vendor doth hereby acknowledge the right of the said Purchaser to production of the Indentures specified in the Schedule hereto and to delivery of copies thereof and undertakes for the safe custody thereof And It is hereby Certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Five Hundred Pounds.

Schedule.

1. Marriage Settlement dated Tenth day of December One Thousand Eight Hundred and Ninety Seven and made between Colonel John Macey-Westropp First part Major John Macey-Westropp Second part Mrs. Georgina Maria Macey-Westropp Third part and Francis George Muckowland-Kennedy and Hugh Macey-Westropp Fourth part.
2. Appointment of New Trustees dated Twenty-first day of August One Thousand Nine Hundred and Twenty Nine Colonel John Macey-Westropp First part Frederick William Kennedy Second part Edward White and Keith Munro Meares of the Third part.

In Witness whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein Written.

Signed Sealed and Delivered by the said John Macey-Westropp in presence of:-

G. A. Jones
Solicitor
Ballybrophy

J. Ellis
Clerk to Messrs. Frederick Jones & Son
Solicitors Ballybrophy

John Macey-Westropp
Trustee.

A5.5

Signed Sealed and Delivered by the said Edward White in presence of:-

Peter J Williams
Helpprentice to Mr St
Paul
Assistant to Robert Mears
Solr

E White

Signed Sealed and Delivered by the said Keith Maurice Mears in presence of:-

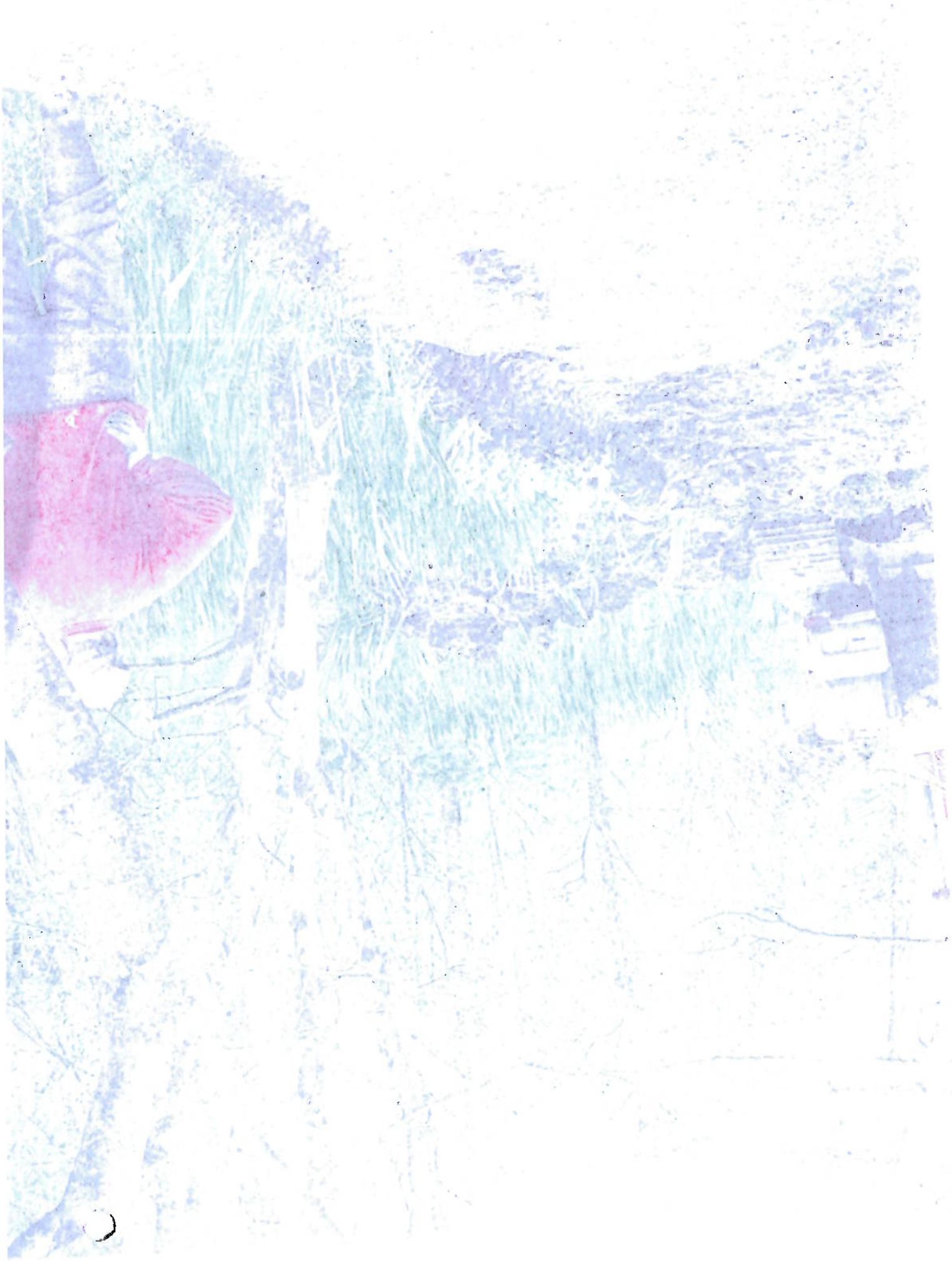
Simon de Cou [illegible]
Solicitor Apprentice
to Mr Everett St Paul

Keith M. Mears.

Signed Sealed and Delivered by the said Lawrence Heavy in presence of:-

12345XJZJZ(ZZ

2345XJZJZ(ZZ



A 8

From Land Direct.ie The official PRA online service which allows you to search the Land Registry map and view and order title documents

Burdens and rights of way in the locality of our property are highlighted in yellow on the map. There are no burdens on our property in the SW corner of the map

DECLARATION

FROM:

Name (print out): [illegible]

Address (print out): [redacted]

Phone No, [redacted]

I, [illegible] hereby declare that I have habitually used the now blocked road/pathway running between (what was) the 'Anglers Rest' and the graveyard to the River Shannon bank and the 'Cead Mile Failte' steps at Doonass for recreational and access purposes during at least the 10 years preceding the first blockage of this road/pathway.

Signed: [illegible]

in the presence of

Witness: [illegible]

Peace Commissioner.

LEE'S SHANNON STORES LTD.
CASTLECONNELL
PH: 061 377129