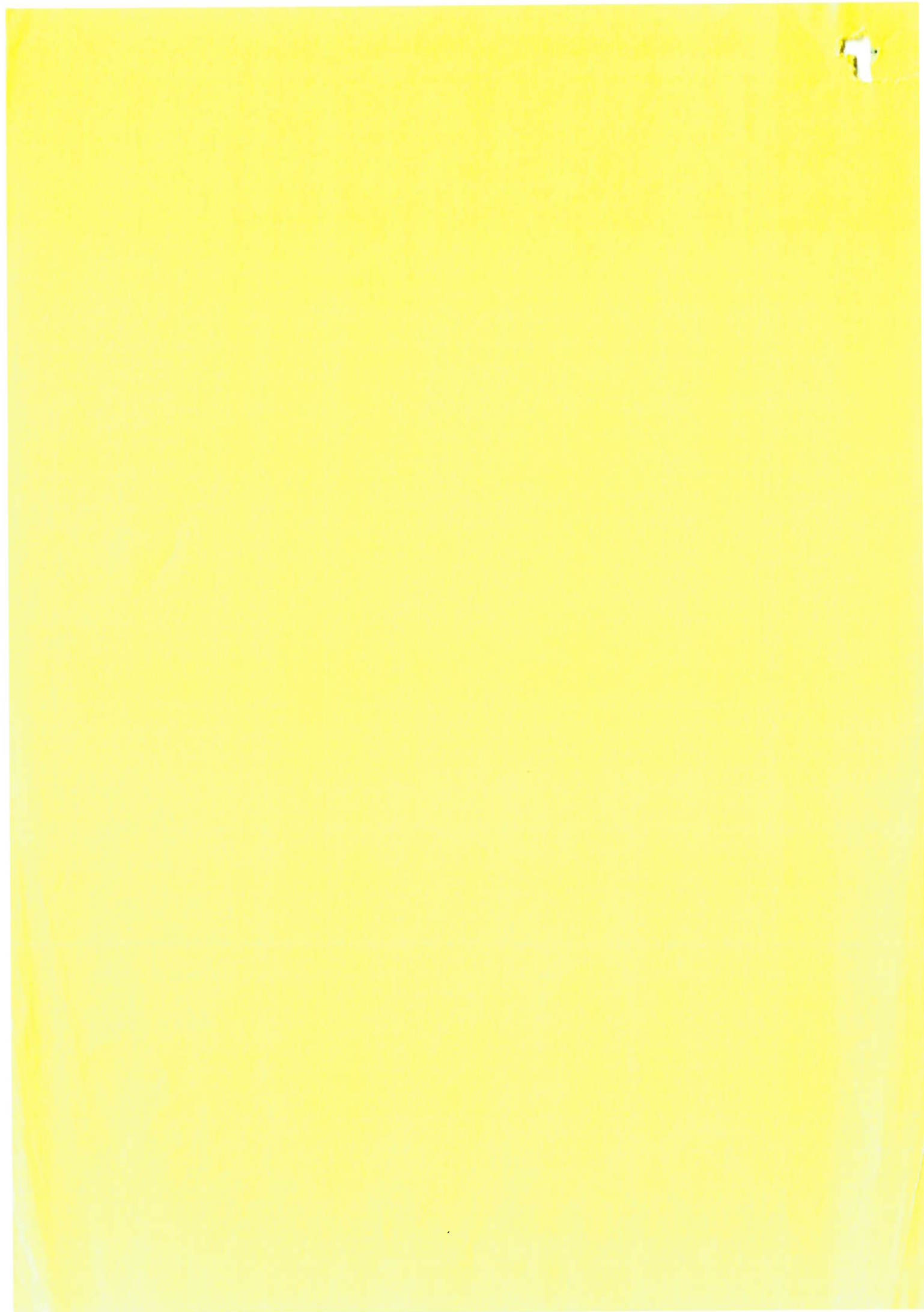


EIA Pre-screening – EIAR Not Submitted

An Bord Pleanála Case Reference	ABP-308442-20		
Development Summary	Whether the construction of a fence, a pedestrian gate and a vehicular gate on the road is or is not development and is or is not exempted development. Former Anglers Rest, Droichead Bemanuse, Cloanlara, Co. Clare		
1. Does the proposed development constitute an EIA project? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	<input checked="" type="checkbox"/>	
	No		
2. If YES, does the proposed development, or any part of it, fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations?			
Tick	Threshold	Comment (if relevant)	Conclusion
No	N/A		No EIAR or Preliminary Examination required
Yes	If YES, tick one of the following:		
	Exceeds / Is equal to / No Threshold		EIAR required
	Sub threshold		Preliminary Examination required (Issue letter to EPA if IED/ IPC/ Waste licence)
3. If Preliminary Examination is required, has Schedule 7A information been submitted?			Yes No N/A

EOI/SEO *Quinn K. Honan* Date: 16/11/2020





Mill Road, Corbally, Limerick, V94 RVW2
P: 061-341782 M: 086-6887402
E: info@akplanning.ie

Town Planning & Development Consultancy

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

16th of November 2020

Referral Details

An Bord Pleanala Reference: 308442-20

Clare County Council Reference: R20-44

Development Address: Doonass, Clonlara, Co. Clare.

To Whom it Concerns

I have been requested to formulate a response by Michelle Caffrey & Derek Cox in relation to a 3rd party Section 5 referral involving their property at the aforementioned address.

Background

My clients purchased this property at auction for use as a family dwelling in 2017. Following refurbishment, they moved into the property in April 2018. Due to sporadic incidents of trespass they were forced to erect a garden fence and gates in June 2019.

Both Michelle and Derek are working in the area as second level schoolteachers, they have a young family and are acting to secure their property from unlawful encroachment. Previously the property operated as a public house before closure in 2011 or thereabouts. The then owners allowed access with conditions across their property for people walking toward the river. This may have been a commercial decision as it would have attracted additional footfall for what was primarily a commercial enterprise at the time. Those who passed across this space while in use as a public house and subsequently while vacant following its closure believe there is an ongoing entitlement to do so now even when it is in



use as a private residence. Once the gate was locked earlier in the current year a Section 5 was submitted to the Local Authority.

Site Context

The subject property is located in a rural area at Doonas Demesne, Clonlara, in South County Clare. The property bounds the River Shannon to the south and Doonass Graveyard to the east. It is in close proximity to Castleconnell, Co. Limerick as the crow flies. The property is currently in use as a residential dwelling. Prior to the current use as a primary residence it was in use as a public house known as the *Angler's Rest*. The public house structure was laid out over two storeys with a single storey function room on its western side (see figure 1)



Figure 1 Front Elevation Addressing the River Shannon

The property use as a public house was abandoned in 2011. There is a car parking area to the north now disused save for occasional overspill funeral parking which the current owners facilitate in conjunction with the local graveyard committee. The property appears to date back to the mid-19th century (See Figure 2).





Figure 2 Historic Mapping 1837 courtesy of OSI Geohive

The original dwelling's front elevation addresses the River Shannon (Figure 1). The fence and gates that are the subject of the Section 5 application and referral are hence located to the rear of the property and come within exemption height limits.

Local Authority Referral

The Local Authority received a 3rd party Section 5 application that asked the following question.

'whether a fence, a pedestrian gate and vehicular gate on a road is or is not exempted development'

The Local Authority opted to refer the Section 5 application unaltered and in so doing formed a subjective opinion of the context under the heading of 'Site Location'. An extract from the Local Authority property description states;

The site comprises the former 'Anglers Rest' building and associated curtilages of walls and fencing and adjoining road which provides access to the river via land in an OPW folio.

I must challenge this assertion. It is clear from mapping and from my site visit that a 'road' does not access the river. The public road ends as per Figure 3 at the entrance to the council owned graveyard. From this point to the subject property is served by a driveway that wraps around the front of the building providing a bitumen hardstanding apron (figure 1).

Further, the status of the lands identified by the Local Authority as 'OPW land' is questionable. The solicitor acting for my clients has conducted an ownership search of these lands and actual ownership cannot be ascertained.



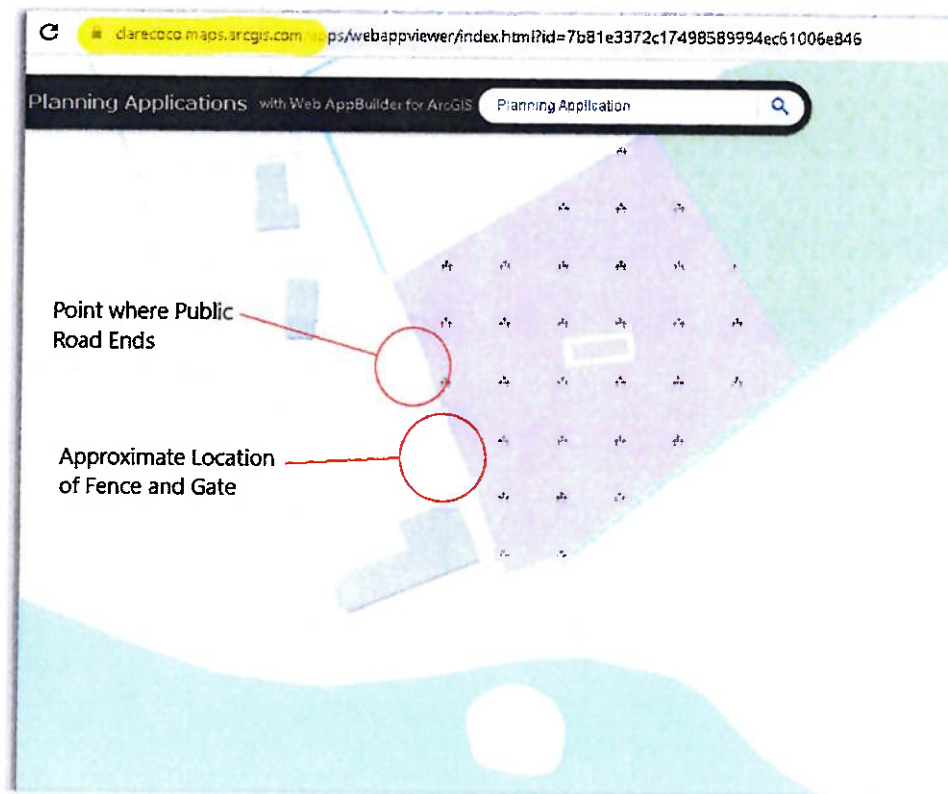


Figure 3 Local Authority GIS Mapping

The question asked at this juncture in my opinion should be rephrased as follows:

whether a fence, a pedestrian gate and vehicular gate within the curtilage and to the rear of a private residence is or is not development and if it is development and if it is development is it exempt development?

Question of a Right of Way

The original Section 5 application consisting of a cover letter, application form and accompanying drawings does not refer or make claims to a 'Right of Way'.

The subsequent Local Authority referral consisting of a Planner's Report does refer to a Right of Way in a note at the end of the report, but their referral question to the Board was not revised accordingly.

To confirm to the Board there is no registered 'Right of Way' in existence across the subject property (Folio No. CE58407F). This is supported by a letter from the solicitor for the property owners (Appendix 2.0). There are limited sporting rights for permitted fishing which is managed by the ESB who have responsibility in this area. Access across the

property to the north for fishing avoids the private residence and is functioning satisfactorily for all parties. This route is also open to members of the public to access the river and is used occasionally. The path is gated but this gate is unlocked and signage erected which clarifies that this is private property.

Assessment of Section 5 and ABP Referral Question

Under Section 3(1) of the Planning & Development Act “development” means, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

It is my view that the fence and gate erected is development but that it constitutes exempt development under Schedule 2 Article 6 Class 5 of the Planning and Development Regulations.

CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

The Local Authority in my opinion introduced the question of an informal right of way in order to provide a basis to de-exempt the works under Article 9(1)(a)(x) suggesting it would consist of the fencing or enclosure of land habitually open to or used by the public during the ten years preceding such fencing or enclosure of a means of access to the seashore or other place of natural beauty or recreational utility.

On taking ownership in 2017 the new owners discouraged periodic access within close proximity of their dwelling. A fence was erected in 2019 to provide security as there were instances when individuals not known to the family would pass within a few metres of the house and on occasion would loiter in their private open space (see Appendix 1.0 which includes a personal statement from the property owners expanding upon this point). There



is no amenity as such to engage with other than the view of the river within a small pocket of land outside of the registered folio, the status of which as mentioned heretofore is unknown. There is no through riverbank walk or seating within this area. As can be seen from Figure 4 the area of land claimed as public land is quite small and is surrounded by private property. The owners contend there is no evidence to substantiate the claim that this route has been habitually used for a period of 10 years prior to the erection of the gate and fence and as such believe Article 9(1) (a) (x) should not be considered.

As stated, there is an alternative access to the river via the car park to the north of the dwelling shown in yellow (figure 4). The owners are allowing informal access across their land on condition that their property is treated respectfully. However, Informal access is not ideal as it raises questions around insurance and liability which is an ongoing concern for the owners. The council could decide to accept liability for those traversing the property and assuage the concerns of my clients in this regard.

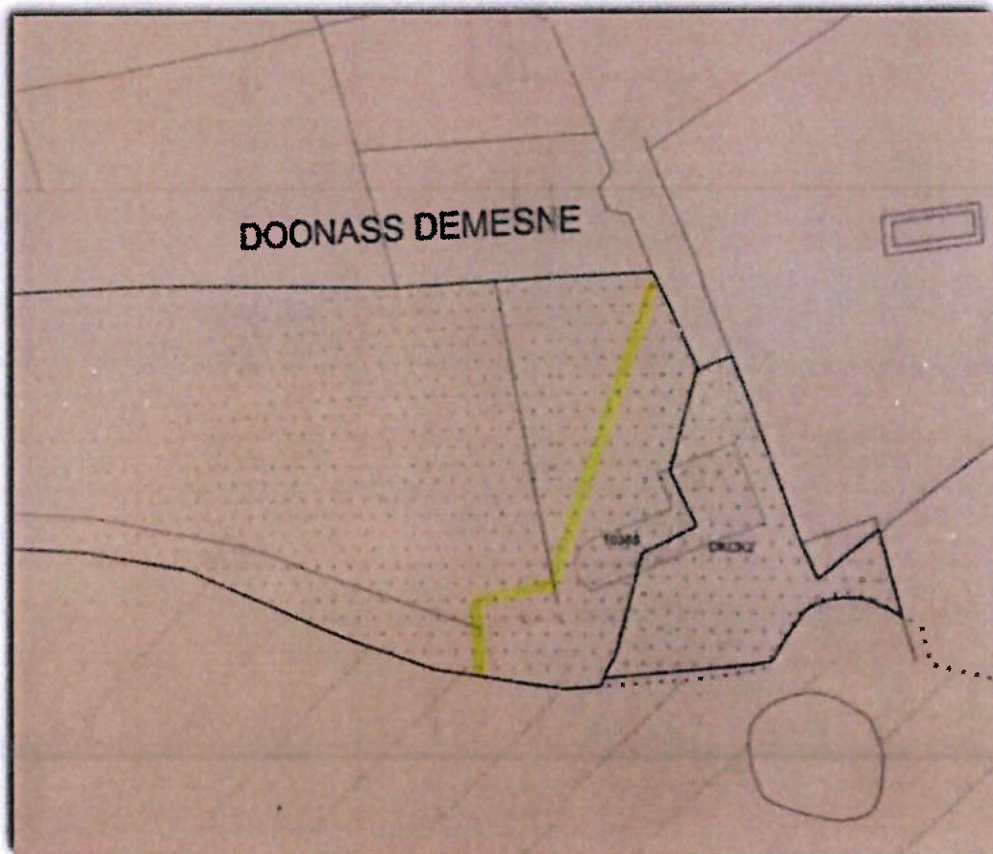


Figure 4 Map showing route to river through the carpark to the north

Should the Local Authority wish to provide a recreational path to the river completely outside of the curtilage of a private dwelling then they have control of the graveyard to the east and could provide a footpath within these lands and negotiate access across 3rd party agricultural land.



Conclusion

In conclusion, a situation whereby any person can walk within the immediate curtilage of a private residential dwelling where other route options exist cannot be allowed to endure. My clients have invested heavily in this property to refurbish from a state of semi-dereliction. The Local Authority have it within their gift to facilitate a path to the river if there is a public requirement. We trust the board will take this response into consideration when deliberating on this referral.

Yours Faithfully,



Adam Kearney BA, MA, MIPI

AK Planning & Development Ltd, Mill Rd, Corbally, Limerick

On behalf of Michelle Caffrey and Derek Cox of ~~Doonass, Clonlara, Co. Clare~~

Appendix 1.0
Personal Statement

Dooness
Clonlara
Co. Clare
V94K735

9th of November 2020

To An Bord Pleanála,

As the owners of the property in question we feel compelled to make a statement in addition to the planning consultant's response in relation to the section 5 referral regarding whether the erection of the fence and gate on our property is or is not exempted development.

This gate and fence have proven an absolute lifeline for our young family in terms of keeping us safe in our own home. The gate and fence were not erected on the boundary of the property, instead they were erected close to the house and approximately 30 metres back from the boundary of the property to give those visiting the graveyard additional space to turn their cars.

We have three young children aged 10, 8 and 4 years old and prior to the gates being put up they witnessed people coming onto the property and past our front door with chainsaws, dangerous breed dogs off leads, horses, people drinking and throwing bottles at the property and groups of youths speeding past the front door on bikes. The gate also prevents our children from getting onto the section of our property that people use to turn their cars.

This gate was put up upon the instruction of our solicitor Tina Hills and was locked following the advice of the Gardaí following a number of events where people purposely came onto the property to intimidate and threaten us, refused to leave and had to be removed by the gardaí. These men and their families have signed this petition to remove the gate. There is no title for the petition, there is no evidence of what people were asked to sign, some signed it having been told that there is no access to the riverbank through our property when there is in fact access through our carpark.

Although many people were invited onto the property for many years when it was a public house, this was not unhindered access and the previous publican had conditions for entry, ie a strict no dogs policy. When the property was abandoned the neighbours erected barriers close to where the gate is now to stop unwanted entry.

At present we have successfully worked with the ESB fisheries to grant permission to permit holding anglers to cross our land to access the river to the east of the property. This route enables the public to access the riverbank across our land and is much less intrusive to us as a family.

Our primary concern must always remain the safety of our children. Removal of the gate in question will put our children and ourselves in a very vulnerable position. It is absolutely vital that the children do not come to any harm outside their own front door.

Kind Regards,
Michelle Caffrey and Derek Cox

10/10/10
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10/10/10

Appendix 2.0
Solicitors Letter Re Right of Way

Tina Hills

SOLICITORS

Our Ref: TH/AR/CAF002CP001
Date: 2 November 2020

PRIVATE & CONFIDENTIAL
Michelle Caffrey and Derek Cox

By email:

~~Michelle.Caffrey@tinahills.com~~

Re: The Anglers Rest Pub, Doonass Clonlara Co.Clare
MPRN 10000056776

Dear Michelle and Derek

You have asked that I advise in respect of rights of way on the property above described and contained within Folio CE58407F. You will note that I have handed the original title deeds to yourselves. I confirm that I have examined Folio CE58407F and confirm that there are no rights of way noted thereon. Further, you will have, with the title deeds, Section 72 Declaration of the Vendor who confirm that there are no third party rights affecting the property.

I acknowledge receipt of the sum of €120.00. Regards.

Yours sincerely


TINA HILLS
SOLICITORS

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Tina Hills
Solicitor

Michelle Cosgrave
Solicitor

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