

Shaws Consulting Engineers Limited

1 Lower Mallow Street, Limerick.
Tel: (061) 311133 Fax: (061) 314666

Our Ref: IS/JS

Your Ref:

Date: 10th February 2023

An Bord Pleanála
64 Marlborough St,
Rotunda,
Dublin 1,
D01 V902

Re: Appeal of Declaration issued under and in accordance with Section 5 of the Planning and Development Acts, 2000 (as amended) by Kerry County Council - Our Reference Ex1045 Derrynane More, Caherdaniel, Co. Kerry on Behalf of John Cox, Teach Na Gaoithe, Castletroy, Co. Limerick.

Dear Sir / Madam,

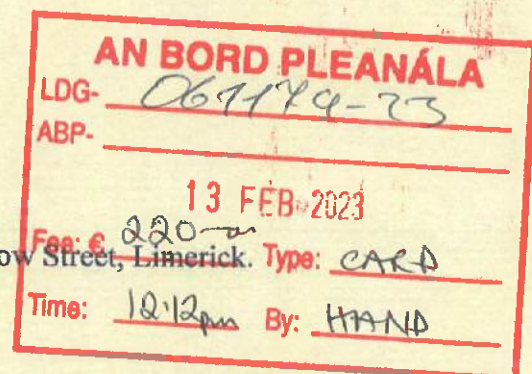
Appellant's details:

Name: John Cox
Address: Teach Na Gaoithe, Castletroy, Co. Limerick.

Agent's details:

Name: Ivan Shaw B.E
Address: Shaw Consulting Engineers Ltd, 1 Lower Mallow Street, Limerick.

Please post all correspondence to agent.



Details of Development:

Planning Authority: Kerry County Council
Reference: Application No: Ex 1045
Development Address: Derrynane More, Caherdaniel, Co. Kerry

Appeal: Application No: Ex 1045

Is the widening and alteration of a gateway Exempt Development?

The pillars were realigned and repaired after storm damage from falling trees, the pillars where the gates were hung were realigned by less than 600mm, and a pedestrian gate was added, there was no material change to the sightlines by these changes, this entrance has been in place over 20 years.

There was no change of sight lines therefore the ruling that the works would endanger public safety by reason of traffic hazard is incorrect, we requested details of the changes to sightlines and traffic report from the Kerry County Council, no traffic report was completed and Kerry County Council advised we were not entitled to their sightline report.

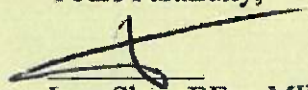
The works did not change the sightlines so the minor nature of the works should be classed as Exempt Development.

Please find enclosed:

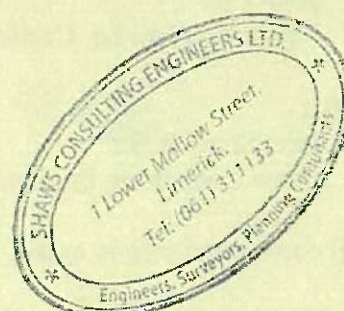
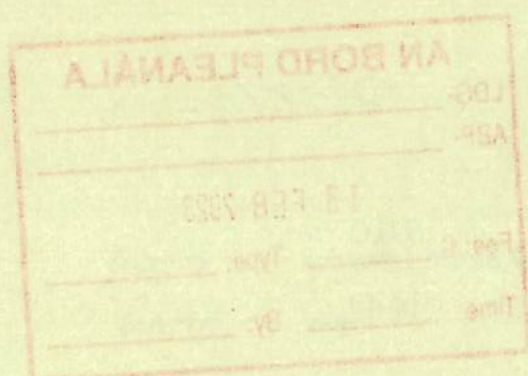
- Declaration from Kerry County Council
- Report Prepared by Michael Lynch SEE
- Location Map 1:2500
- Pictures of Entrance
- Fee €220.00

Thank you in advance for your attention to this matter.

Yours Faithfully,



Ivan Shaw BEng MIEI
Shaws Consulting Engineers Limited.



An Róinn Pleanála

Comhairle Contae Chiarraí,
Áras an Chontae,
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL

Planning Department

Kerry County Council,
County Buildings,
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Rphost | Email plan@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

Application No: EX1045
Decision Date: 16th January 2023 Registration Date: 19th December 2022
Applicant: John Cox, Teach Na Gaoithe, Castletroy, Co Limerick.
Agent: Ivan Shaw B.E, Shaw Consulting Engineers Ltd, 1 Lower Mallow Street, Limerick, V94 W9VO
Development Location: Derrynane More, Caherdaniel, Co Kerry.
Development Description: The widening and alteration of a gateway.

DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE PLANNING AND DEVELOPMENT ACTS, 2000 (as amended)

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated 16th January 2023 authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 (as amended) in accordance with plans and particulars submitted on 19th December 2022, I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5 namely the widening and alteration of a gateway at Derrynane More, Caherdaniel, Co Kerry does not constitute exempted development under the Planning & Development Acts 2000 (as amended) having regard to the considerations inserted hereunder:

Schedule 1

- (a) The widening and alteration works to the gateway in question would constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 (as amended),
- (b) The said works would constitute development that comes within the scope of Section 3(1) of the said Act and
- (c) The works would fall for consideration under exemption provided at Class 9, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) but would contravene the restrictions on exemption set out at Article 9 of the said Regulations as the works would endanger public safety by reason of traffic hazard.

Therefore, the proposed works would constitute development which is not exempted development

An Appeal against the decision of the Planning Authority under Section 5 of the Planning & Development Act 2000 may be made to An Bord Pleanála within four weeks beginning on the date of the issuing of the declaration by the Planning Authority. An Appeal should be addressed to: An Bord Pleanála, 64 Marlborough Street, Dublin and should be accompanied by the appropriate fee.

Signed on behalf of Kerry County Council

Date: 16th January 2023



To: AO Planning
From: SEE Planning
Date: 13/01/2023

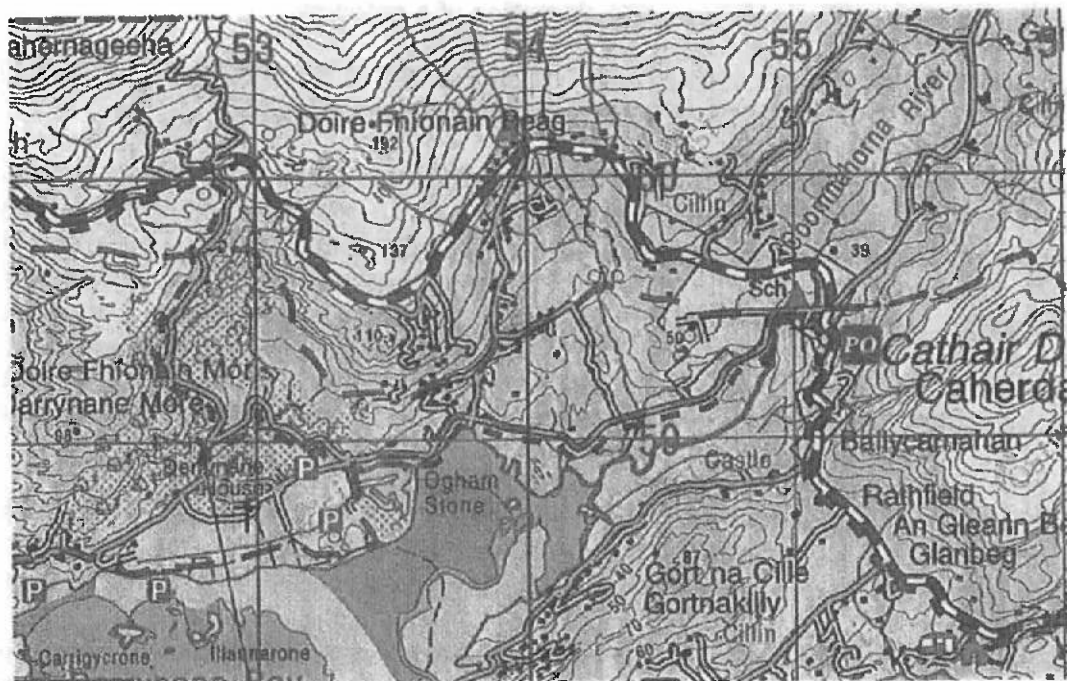
Re: Section 5 Reference EX1045: John Cox, Derrynane More, Caherdaniel

Subject Works

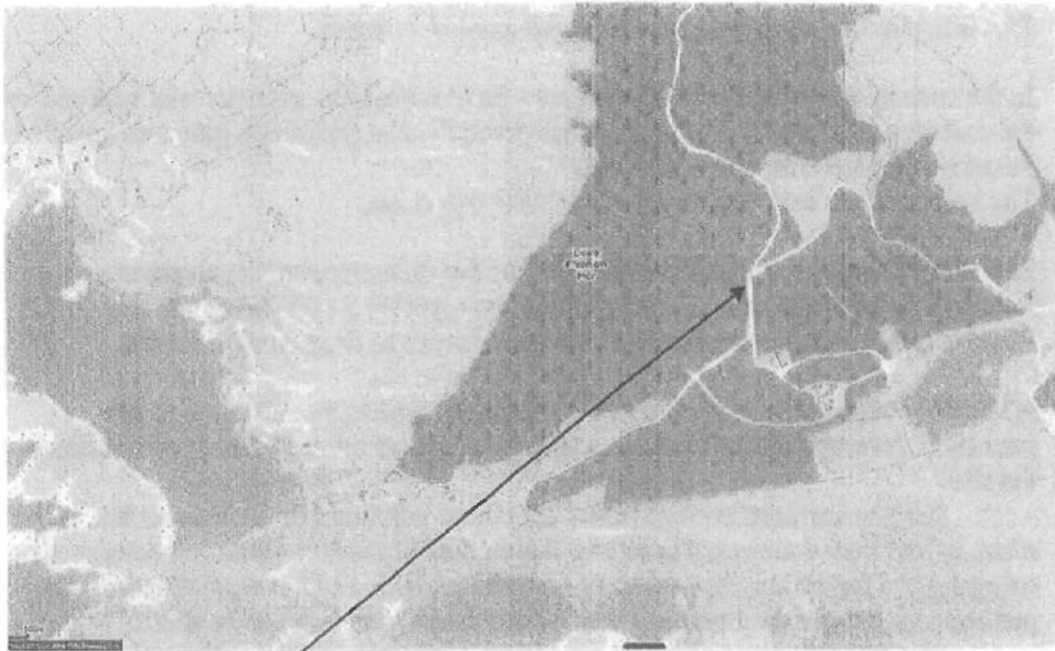
This referral relates to the widening and alteration of a gateway. The works have already been carried out.

Location of site

The gateway subject of this referral is located in a rural location just over 1km to the west of Caherdaniel Village and adjoins a Local Road which leads to Derrynane House. The gateway serves woodland.



Location of site



Location of entrance

Planning History

Planning Register No: 21/1122

Applicant: BRISIN HEALTH AND LEISURE LIMITED

Proposed development: RETAIN 2 MOBILE HOMES, SHIPPING CONTAINER AND THE ASSOCIATED SERVICES AND ALL ANCILLARY SITE WORKS FOR A PERIOD OF THREE YEARS

Incomplete application

Planning Register No: 21/1324

Applicant: BRISIN HEALTH AND LEISURE LIMITED

Proposed development: RETAIN 2 MOBILE HOMES, SHIPPING CONTAINER AND THE ASSOCIATED SERVICES AND ALL ANCILLARY SITE WORKS FOR A PERIOD OF 3 YEARS

Incomplete application

Assessment

Kerry County Council has an open Enforcement File in relation to the lands served by the gateway subject of this referral as two mobile homes were moved on to the land, a well was developed and the entrance to the land was widened and altered – all without the benefit of planning permission. The unauthorised mobile homes have been removed from the land.

It would appear that the former agricultural-type gateway serving the lands at his location was widened and a pedestrian gate developed when the mobile homes were brought on to the land.

The works carried out to the entrance would fall for consideration under exemption provided under Class 9, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as follows:

Class 9, Part 1:

'The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.'
provided that

The height of any such structure shall not exceed 2 metres.

In the case in question, the old farm gate was removed, the gateway was widened on the southern side, a new timber gate was erected and a pedestrian gate was installed in the new southern entrance wing wall.

The height of the new timber gate does not exceed 2m.

Exempted development under Schedule 2 of the Planning and Development Regulations 2001 (as amended) is restricted under Article 9(1)(a) of the said Regulations. The following restrictions are relevant to the proposed works:

9(1)(a) (i) Proposed works would not contravene a condition attached to any permitted development as there is no history of any grant of planning permission on the site.

(ii) The surfaced width of the public road adjoining the site varies but, in the main, is less than 4 metres. Therefore, the works in question would not consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width.

(iii) The gateway is located on a bend on the adjoining public road and is in close proximity to a junction. Adequate sightlines are not available at the entrance. In particular, the forward visibility for a vehicle turning right off the public road is extremely restricted.

(iv) The works would not infringe any building line.

(v) This sub-article does not apply to the proposed development.

(vi) The works only cause a minor and local visual impact.

(vii) The works to the entrance did not consist or comprise the excavation, alteration or demolition of any places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.

(viiA) The works would not impact on an archaeological monument.

(viiB) The works would not require Appropriate Assessment.

(viiC) The works would not impact on any NHA or pNHA.

(viii) The works would not consist or comprise the extension of an unauthorised structure.

(ix) This sub-article does not apply to the development as the demolition or alteration of a structure was not carried out.

(x) This sub-article does not apply as no new fencing of land was carried out.

(xi) This sub-article does not apply as no obstruction of any public right-of-way was carried out.

(xii) This sub-article does not apply as the development is not located within an Architectural Conservation Area.

9(1)(b) The works are not located in an area where a special amenity order relates.

9(1)(c) It is considered that EIA is not required for works.

9(1)(d) This sub-article does not apply to the works.

Therefore, it is considered that the works do not comply with all Article 9 Restrictions on Exemption.

Appropriate Assessment and Environmental Impact Assessment Screening

Having regard to the location of the site and the minor nature of the works, EIA is not required in this case. In addition, notwithstanding the location of the site within Kenmare River cSAC, having regard to the minor nature of the works, AA is not required.

Recommendation

Therefore, having regard to the following:

- (a) The widening and alteration works to the gateway in question would constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 (as amended),
- (b) The said works would constitute development that comes within the scope of Section 3(1) of the said Act and
- (c) The works would fall for consideration under exemption provided at Class 9, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) but would contravene the restrictions on exemption set out at Article 9 of the said Regulations as the works would endanger public safety by reason of traffic hazard.

The works would constitute development which is not exempted development.



Signed: Michael Lynch SEE

Date: 13/01/2023



Image from Google Instant Streetview of previous farm gate at entrance to the lands from the public road



Image from Google Instant Streetview of previous farm gate at entrance to the lands from the public road



Image of new wider entrance and timber gate, 06/01/2023



Sightlines to north and south from entrance



Images showing restricted forward sightlines for vehicles turning right into the widened entrance subject of this referral.

CENTRE COORDINATES:
ITM 452769,558998

PUBLISHED:
16/07/2021

ORDER NO.:
50207365_1

MAP SERIES:
1:2,500

MAP SHEETS:
6519-C

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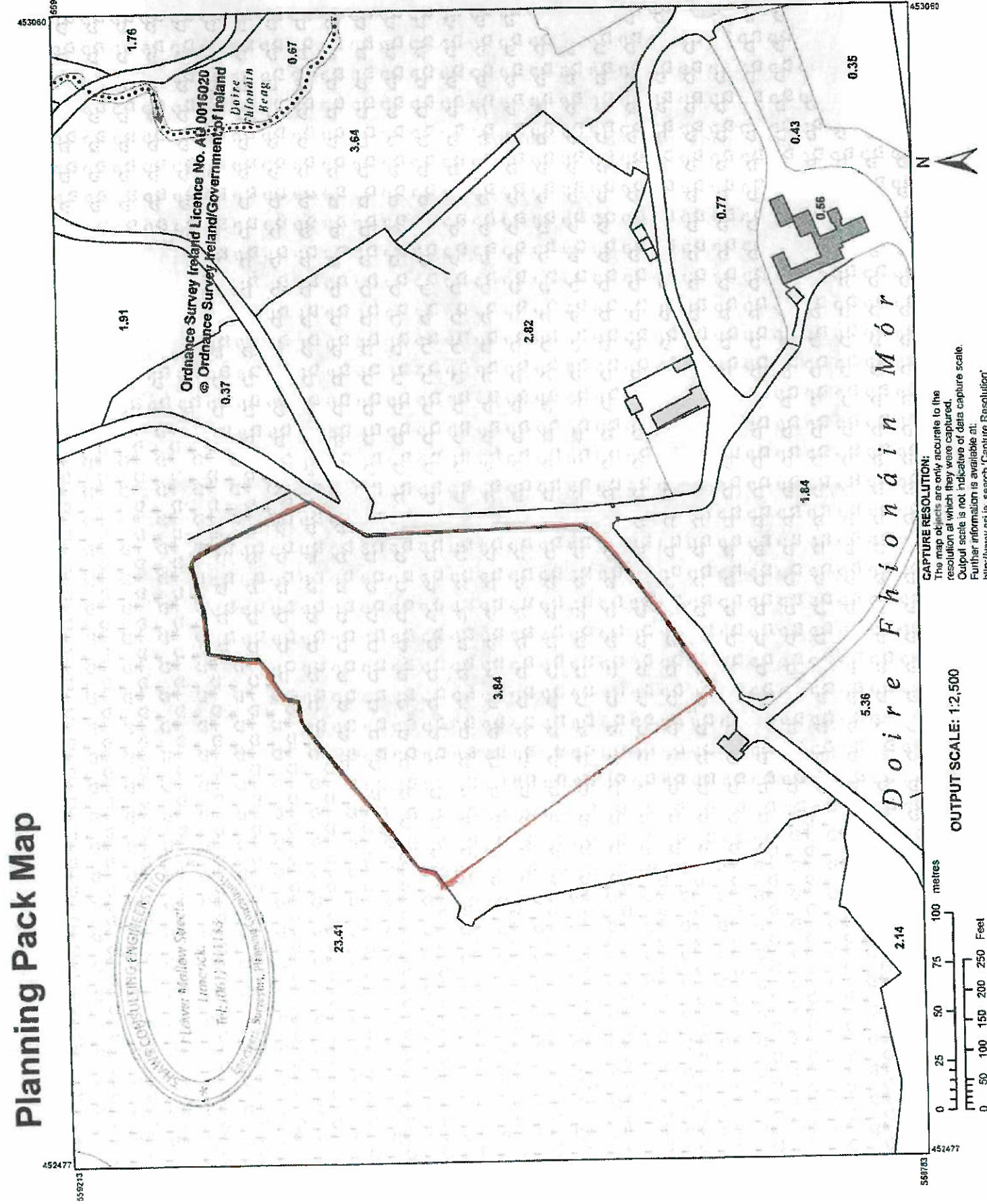
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Planning Pack Map



National Mapping Agency

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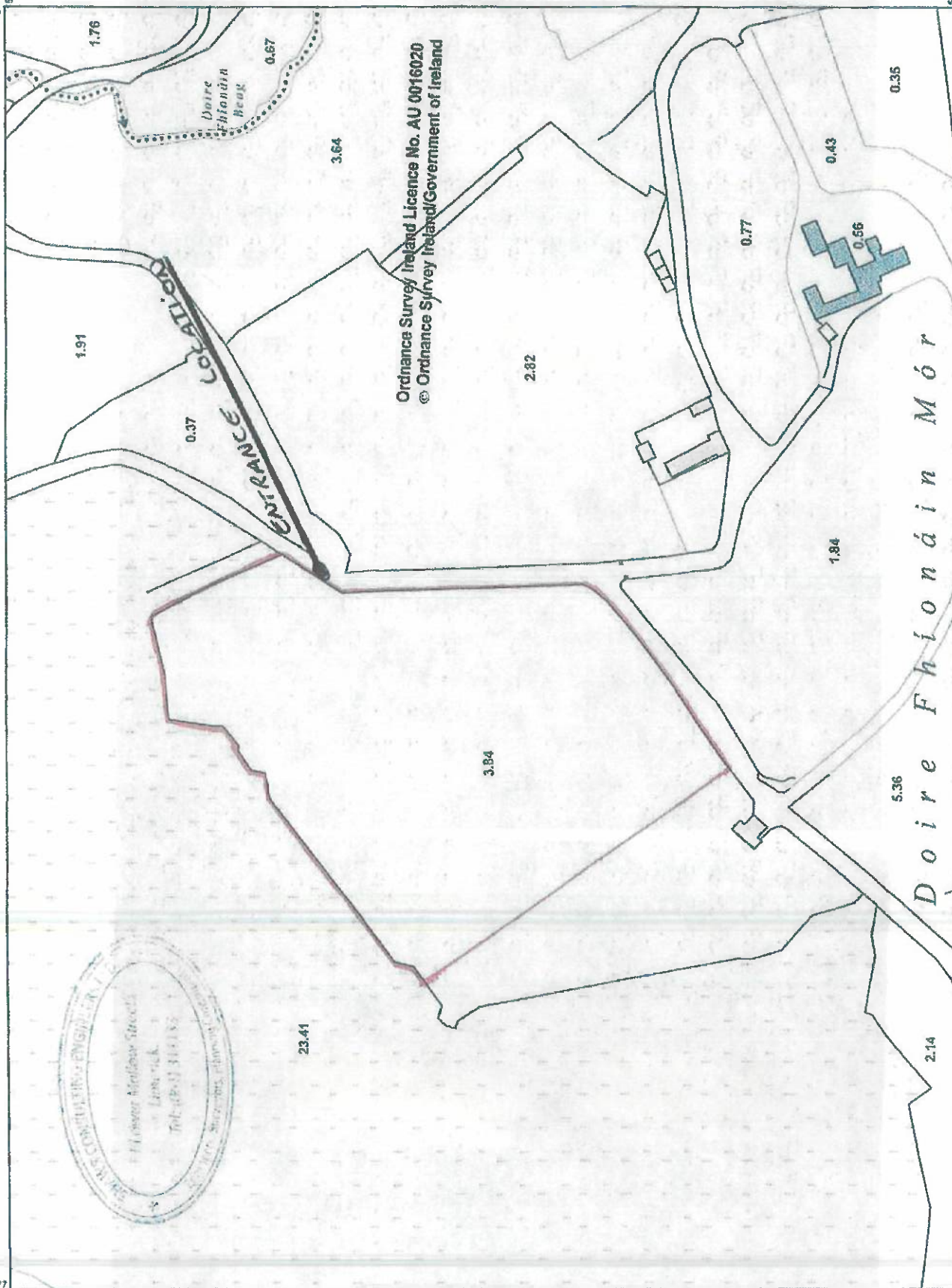
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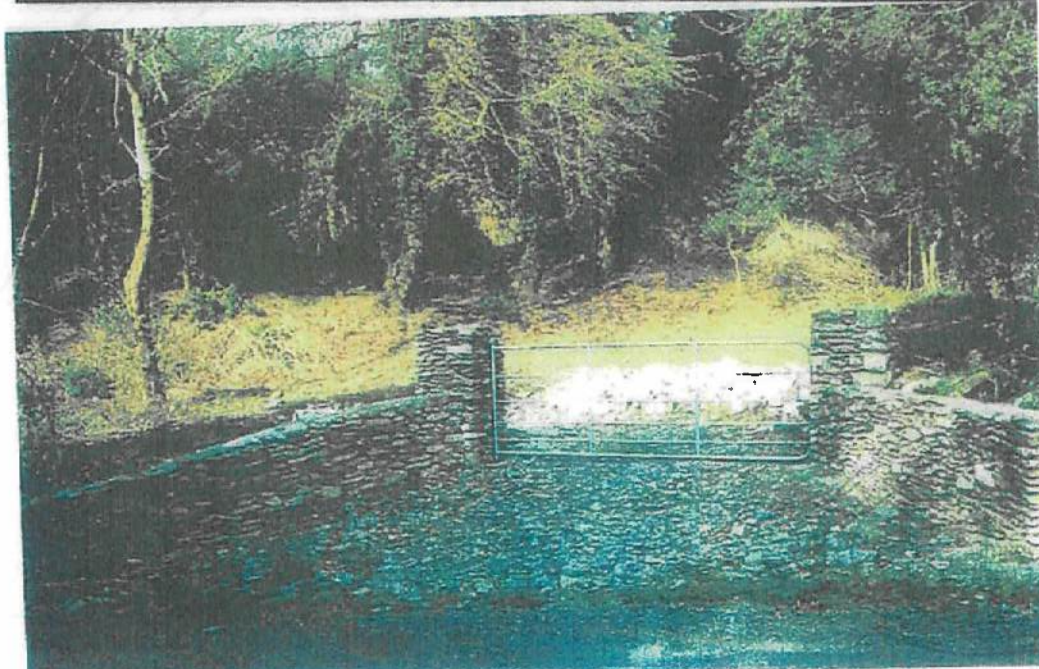
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ENTRANCE
BEFORE
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DAMAGE



REPAIRED ENTRANCE AFTER STORM DAMAGE

