



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Rebecca Boland
Killinure
Brittas
Boher
Co. Limerick**

29th November 2024

Section 5 referral Reference R24-85 – Rebecca Boland

Is a gate not more than 2 metres in height at rear of property development and if so, is it exempted development?

A Chara,

I refer to your application received on 6th November 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie.

Mise, le meas


Anne O'Gorman
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



CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No:

84558

Reference Number:

R24-85

Date Referral Received:

6th November 2024

Name of Applicant:

Rebecca Boland

Location of works in question:

105 Hermitage, Ennis, Co. Clare

Section 5 referral Reference R24-85 – Rebecca Boland

Is a gate not more than 2 metres in height at rear of property development and if so, is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended);
- (c) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The installation of a gate in place of a door in the curtilage of a dwellinghouse constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said development of a gate in place of a door is exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- (d) The said development of a gate in place of a door which is not more than 2m in height is exempted development having regard to Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the construction of a gate not more than 2m in height and which replaced a previous door at 105 Hermitage, Ennis, Co. Clare is considered development which is exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER



Date:

29th November 2024

**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R24-85



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R24-85

Is a gate not more than 2 metres in height at rear of property development and if so, is it exempted development?

AND WHEREAS, Rebecca Boland has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

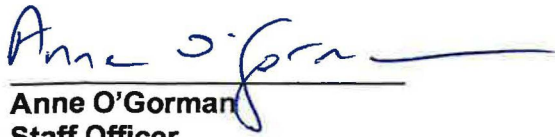
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended);
- (c) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The installation of a gate in place of a door in the curtilage of a dwellinghouse constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said development of a gate in place of a door is exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- (d) The said development of a gate in place of a door which is not more than 2m in height is exempted development having regard to Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the construction of a gate not more than 2m in height and which replaced a previous door at 105 Hermitage, Ennis, Co. Clare **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, reading "Anne O'Gorman", followed by a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

29th November 2024

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF: R24-85
APPLICANT(S): Rebecca Boland
REFERENCE: Is a gate not more than 2 meters in height at rear of property development, and if so, is it exempted development?
LOCATION: 105 Hermitage, Ennis, Co Clare.
DUE DATE: 3rd December 2024

Site Location

The subject site is located in Ennis on lands zoned 'Existing Residential'. The site is located at no. 105 Hermitage, a residential estate to the west of Ennis town centre. The site comprises a semi-detached residential dwelling which is connected to 104 Hermitage via an Archway serving the rear gardens. It is stated that the ownership of the archway belongs to 105 Hermitage, with use available by both units, and the archway serving the rear garden access of no. 104 also. The site is in the settlement boundary of Ennis.

It is not located in or near any Architectural Conservation Area, any Protected Structures or Recorded Monuments, or any European Sites.

Recent Planning History

On-Site:

None.

Background to Referral

This referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by the landowner, Rebecca Boland.

The applicant is seeking a Section 5 Declaration as to whether a gate not more than 2 meters in height at rear of property is development, and if so, is it exempted development?

The applicant stated that the existing archway is under the ownership of 105 Hermitage, however, shared access has been in place between 105 and 104 Hermitage since construction of the development. It is stated that the archway has always been open and that an access gate to 105 Hermitage existed to the rear of the gardens, accessed via a walkway through the garden of 104 Hermitage. This access was closed in Summer 2024, and it is stated that a new gate was erected at the end of the archway by 104 Hermitage following this, which has blocked access for no. 105 to their rear garden and kerosene tank for home heating oil. It is also stated that the gate erected at no. 105 Hermitage, subject of this Section 5 Declaration was installed in place of a door, which led to a kitchen extension which now appears to be demolished.

A site inspection carried out on 04/09/2024 confirmed each of these gates/closures are in place in their stated locations.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

*S.3.(1) In this Act, “development” means, except where the context otherwise requires, **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.*

‘Works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

S.4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Planning and Development Regulations, 2001 (as amended)

Schedule 2, Part 1, 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.

Conditions and Limitations

- 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.*

Assessment

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether a gate not more than 2 meters in height at rear of property is development, and if so, is it exempted development?

Planning and Development Act, 2000 (as amended)

In accordance with Sections 2 and 3(1) of the Planning and Development Act 2000 (as amended) (hereafter referred to as 'the Act'), the items listed above do fall under the definition of 'works' as they are alterations to a structure and are, resultingly, characterised as 'development'.

S.4(1) of the Act states that development consisting of works for the alteration of any structure, which affects only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures would be exempted development.

While I note that the erection of a gate which opens directly into the rear garden of a separate property would materially affect the character, including amenity, of the neighbouring structure (104 Hermitage), I also note the evidence provided by the applicant that this gate was erected to replace an existing door, and further note the long established use of the existing archway for access to the rear of both gardens. Therefore, I do not consider that the installation of this gate which replaced a door from the same property would materially affect the neighbouring structure, and therefore, would be exempted under this section of the Act.

Planning and Development Regulations, 2000 (as amended)

In accordance with Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended), the construction of a gate within the curtilage of a house is exempted development, providing it meets the requirements of the conditions and limitations. I note that this gate is stated to be less than 2m in height and, therefore, would be exempted under this Class within the Regulations.

Recommendation

The following questions have been referred to the Planning Authority:

Whether a gate not more than 2 meters in height at rear of property is considered development, and if so, is it exempted development?

The Planning Authority in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended);
- (c) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) The installation of a gate in place of a door in the curtilage of a dwellinghouse constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said development of a gate in place of a door is exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- (d) The said development of a gate in place of a door which is not more than 2m in height is exempted development having regard to Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).

Now therefore Clare County Council (Planning Authority), hereby decides that:

The construction of a gate not ~~more~~ than 2m in height and which replaced a previous door, is considered development and is exempted development.



Áine Bourke
Executive Planner
Date: 28/11/2024



Gareth Ruane
Senior Executive Planner
Date: 29/11/24.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Rebecca Boland
Killinure
Brittas
Boher
Co. Limerick

06/11/2024

Section 5 referral Reference R24-85 – Rebecca Boland

Is a gate not more than 2 metres in height at rear of property development and if so, is it exempted development?

A Chara,

I refer to your application received on 6th November 2024 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


Brian Fahy
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúirthóireacht 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



AN CHLÁIR

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

06/11/2024 11:05:15

Receipt No. : L1CASH/0/371540
***** REPRINT *****

REBECCA BOLAND
KILLINURE
BRITTAS
BOHER, CO. LIMERICK
R24-85



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

Total : 80.00-EUR

Tendered	
CREDIT CARDS	80.00

Change : 0.00

Issued By : L1CASH - Noelette Barry
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E



P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
T93DAP2

Telephone No. (065) 6821618
Fax No. (065) 6892071
Email: planning@clarecc.ie
Website: www.clarecc.ie



R24-85

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority.

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	REBECCA BOLAND KILLINURE BRITTAS BOHER CO LIMERICK
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	N/A

2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?

WHETHER A GATE NOT MORE THAN 2 METRES IN HEIGHT
 AT REAR OF PROPERTY IS OR IS NOT EXEMPTED DEVELOPMENT
 AND IS OR IS NOT DEVELOPMENT

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

A GATE TO THE REAR OF THE PROPERTY TO ACCESS
 KEROSENE TANK, GATE IS NOT VISIBLE FROM ROAD
 AND IS ERECTED TO REPLACE GATE AT END OF
 WALKWAY, GATE IS ACCESSED VIA ARCHWAY WHICH IS
 SOLELY WITHIN FOLIO OF 105 HERMITAGE, THERE
 WERE PREVIOUSLY 2 ACCESS POINTS FROM 105 HERMITAGE
 ONTO THE WALKWAY WHICH WERE RECENTLY CLOSED AND
 REPLACED WITH SINGLE ACCESS POINT, WHICH IS SUBJECT
 OF REQUEST UNDER DECLARATION (SECTIONS)

- (c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

PLEASE FIND ATTACHED

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	105 Hermitage Ennis Co. Clare V95 CP37
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Owner
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	No
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details.	
(g) Were there previous planning application/s on this site? If so please supply details:	No
(h) Date on which 'works' in question were completed/are likely to take place:	

SIGNED: R. Bled

DATE: 25/10/2024

GUIDANCE NOTES

The following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chláir,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought.

FOR OFFICE USE ONLY

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:	.....	

To whom it may concern,

I was advised to attach a cover letter to a Declaration (Section 5) with regards to the erection of a gate to the rear of 105 Hermitage.

1. I would like to make it known that the majority of the houses in Hermitage have always had use of an archway access lane. (Photos attached)
2. While the archway is technically registered to my land registry folio, I was and continue to be happy to share the use to suit my neighbour and myself.
3. However, the original rear gate has been removed recently as access through the entirety of the walkway has been contentious of late, even though this access has been in place since construction. Access was recently restricted by 104 Hermitage erecting a gate across the boundary line and blocking my access from the end point of the archway to the gate at the end of walkway shown on map (1.500). (Photo attached)
4. Therefore, the original gate was removed, and replaced with a side gate, as close to the archway as possible to try to mitigate the situation. (Shown on map)
5. The new gate is only there to replace the previous one, is no more than 2m high, opens inward to my folio/backyard and is not visible from the street and does not project beyond the boundaries of my folio. (Photos attached)
6. There was previously a door from the kitchen extension onto the shared walkway outside the archway. (photo of construction/sealing off door attached)
7. The home heating oil is delivered via the archway route and there is no other route for heating oil to be delivered if gate is to be removed, other than bringing the hose from the truck through the house to the rear of the property (hall, sitting room and kitchen).

I received an email from enforcement citing Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

On the basis of the fact there was a gate at the end of the garden up until the end of summer, also taking into account there was previously a door from the extension opening onto the same walkway. I have amalgamated the two entrance points onto the walkway to one. I believe it to be incorrect in that the character of the neighbouring structure is not affected.

Thank you for your time and consideration.

Please do not hesitate to contact me should you require further information.

Kindest regards,

Rebecca Boland

Land Registry Compliant Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 533068,677498

PUBLISHED: 15/01/2024
ORDER NO.: 50377187_1

MAP SERIES: 1:1,000
MAP SHEETS: 4322-02
1:1,000 4322-07

COMPILED AND PUBLISHED BY:
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

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The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

This topographic map
does not show
legal property boundaries,
nor does it show
ownership of physical features.

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SITE BOUNDARY DELINEATED IN SOLID RED LINE

Site Location Map

Showing the location of site, with site boundaries edged in Red.

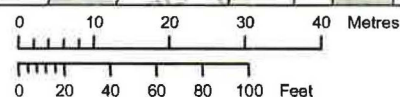
For: Rebecca Garam

At: 105 Hermitage, Cloghleagh, Ennis, Co. Clare

Scale: 1 / 1000.

From: Digital Map 4322-07

© Ordnance Survey Ireland/Government of Ireland



OUTPUT SCALE: 1:1,000

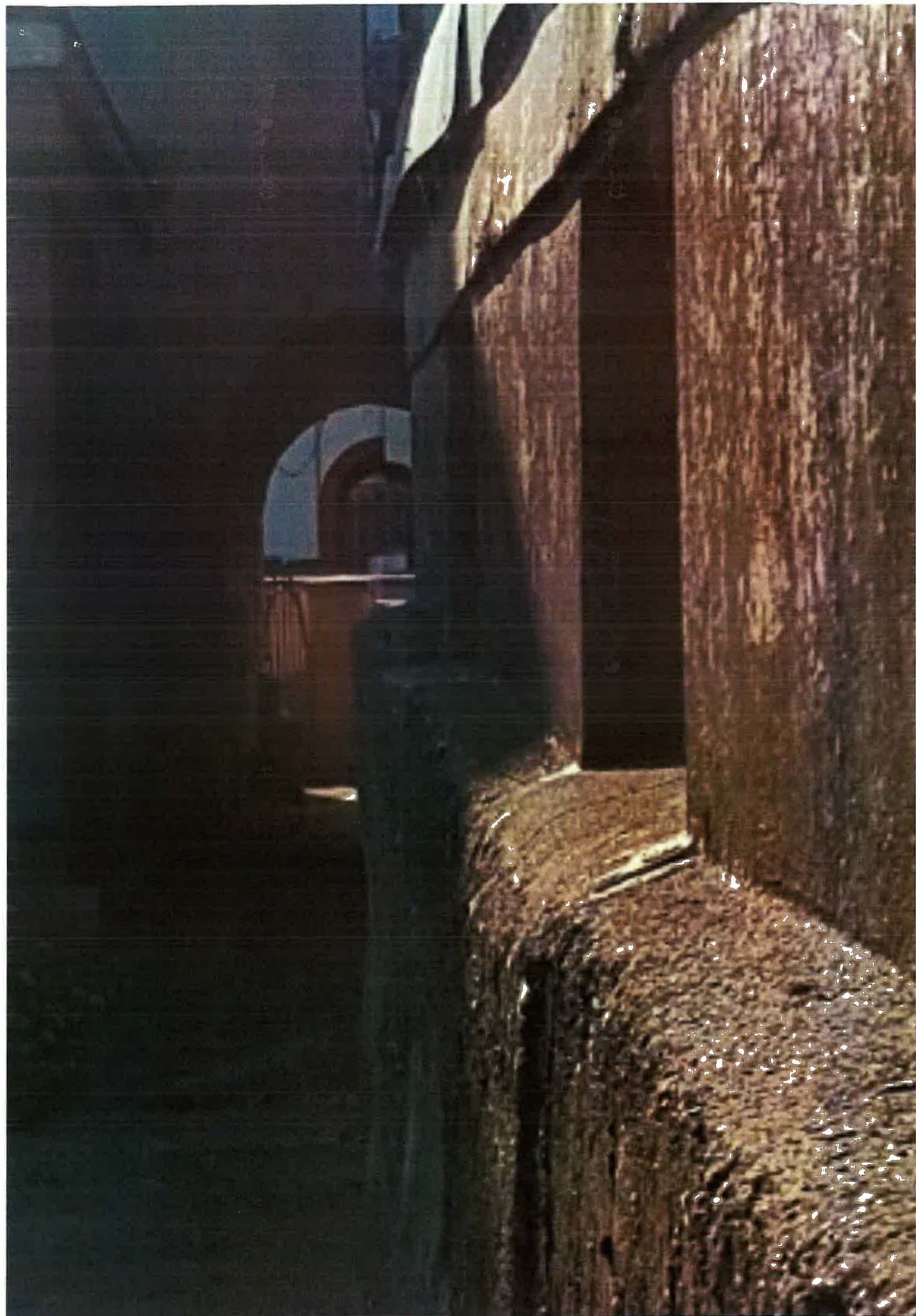
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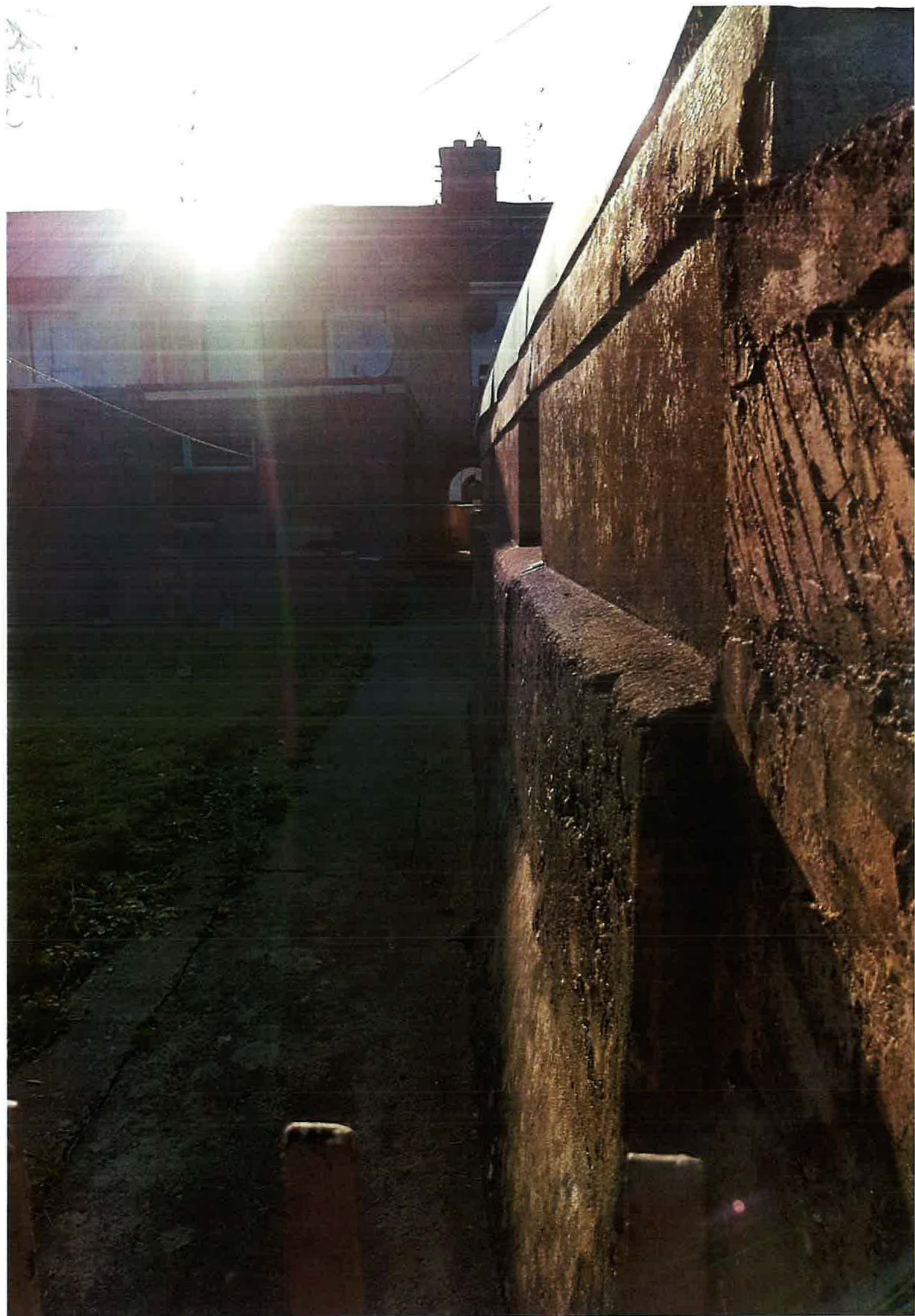
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
www.tailte.ie search 'Capture Resolution'

LEGEND:

To view the legend visit
www.tailte.ie and search for
'Large Scale Legend'

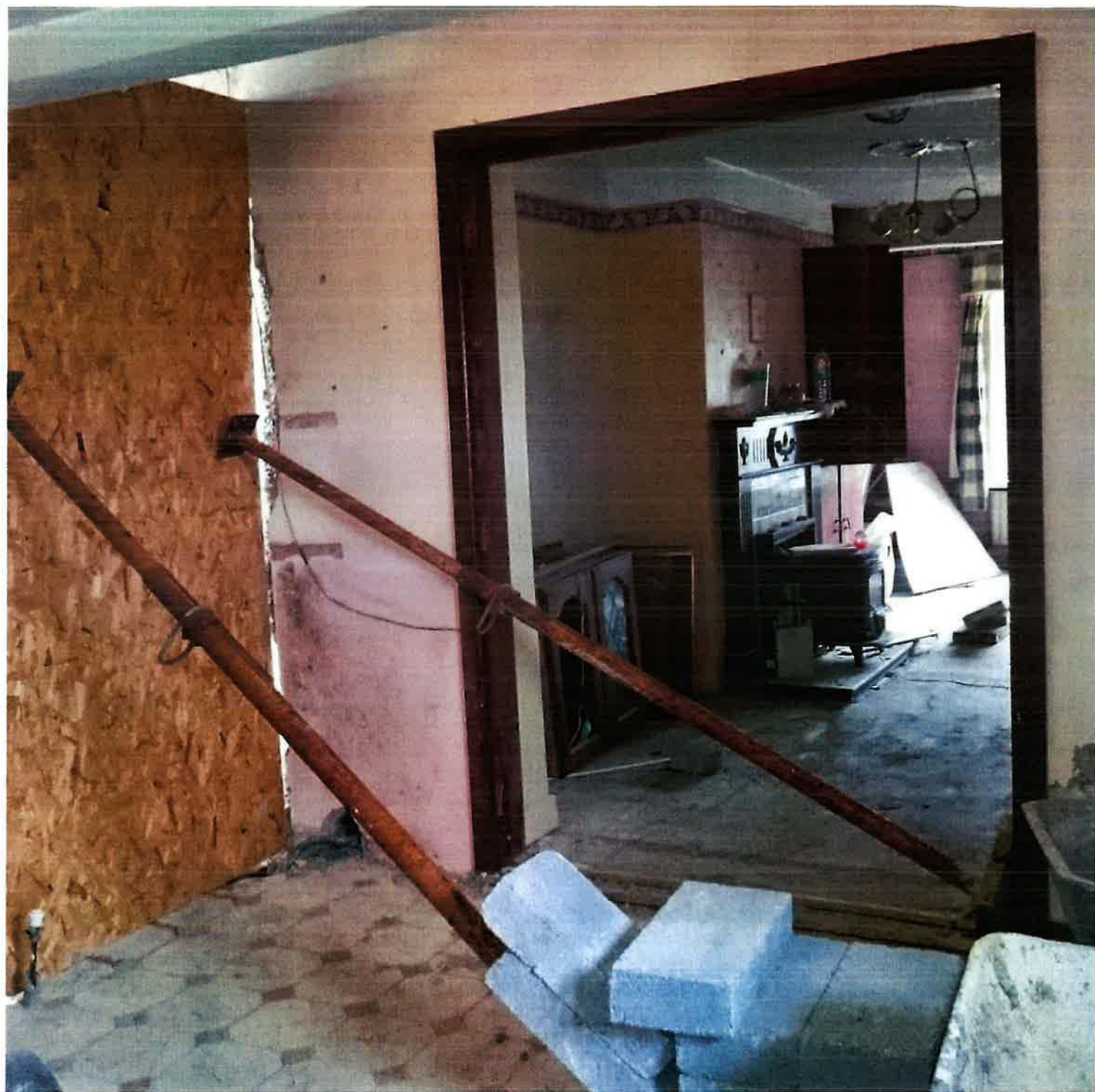


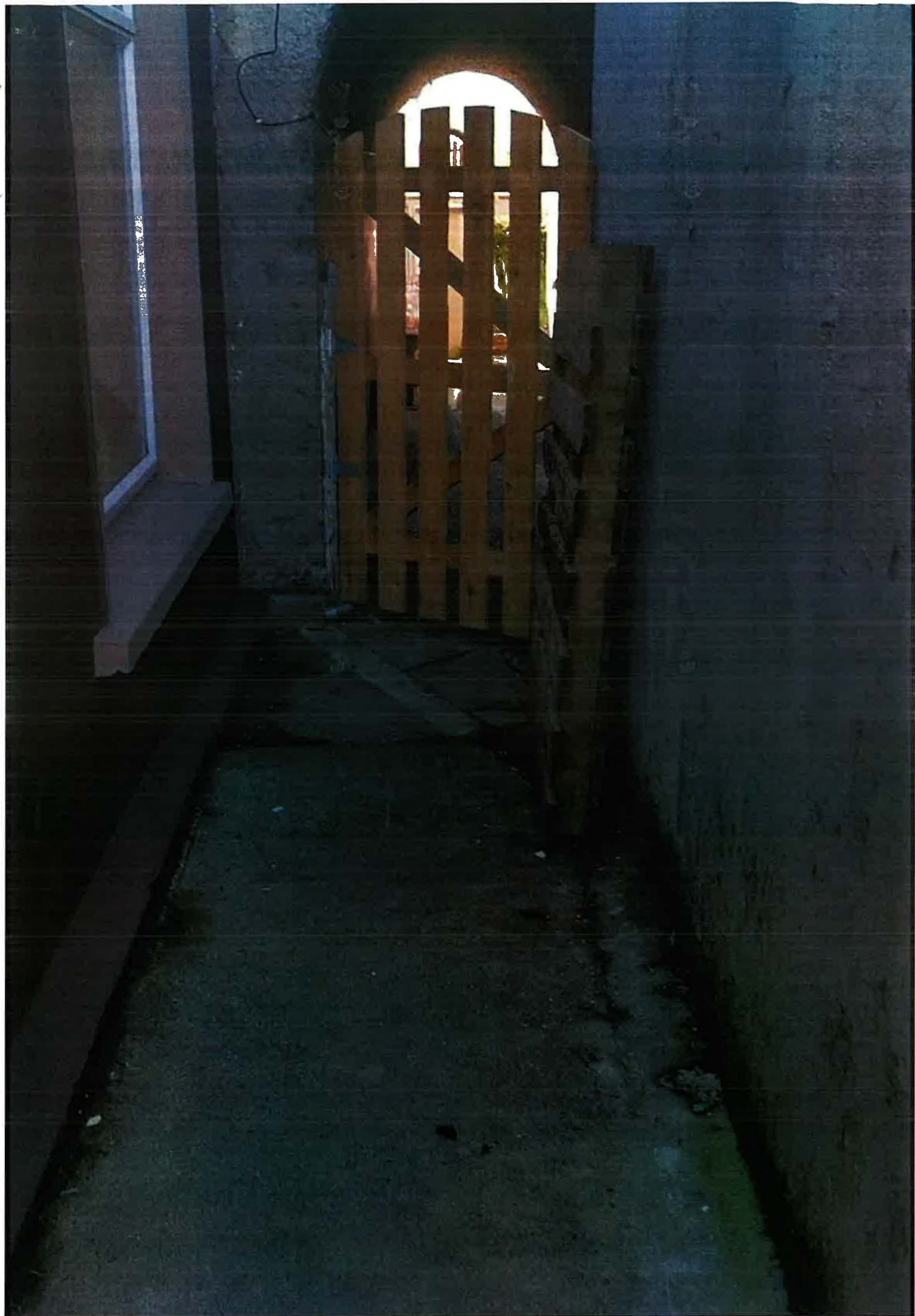


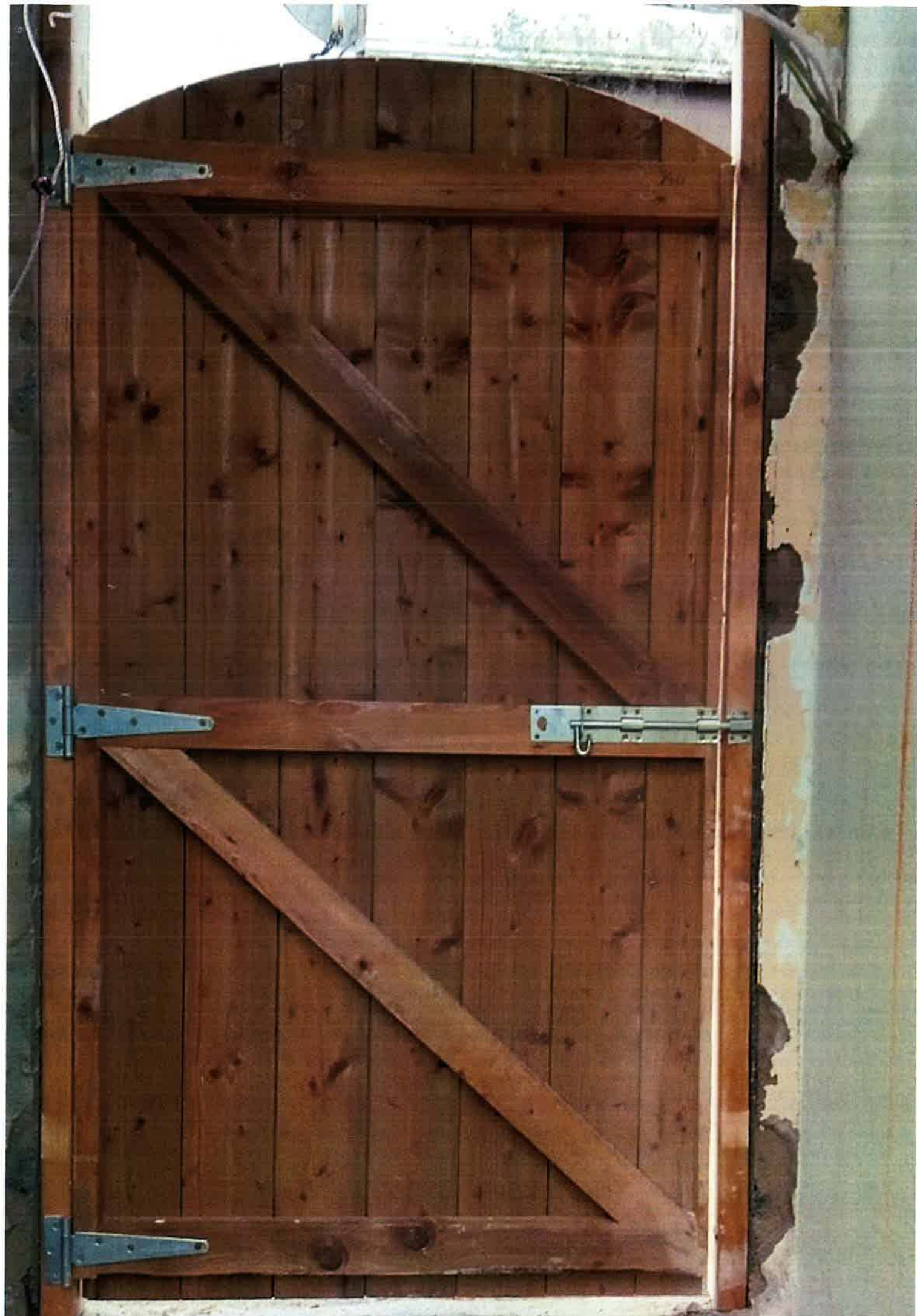




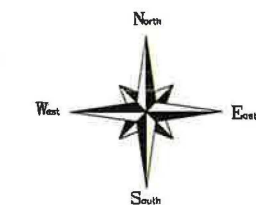












SITE BOUNDARY DELINEATED IN SOLID RED LINE
Total Site Area = 411.363m² = 0.041ha

SHARED ACCESS LANE

CURRENT LOCATION OF ACCESS GATE

ORIGINAL LOCATION OF REAR ACCESS GATE
(NOW BLOCKED)

SITE LAYOUT PLAN

01

SCALE 1:500

Project:
105 Hermitage, Cloghlea, Ennis, Co. Clare

Client:
Rebecca Garam

Project Stage:
Section 5 Declaration

Drawing:
Site Layout Plan

Date: 04/11/2024

Scale: 1:500 @ A3

Drawing No.:
Site Layout Plan A