



**DfI Roads
Southern Division**



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Development Control

Rathkeltair House

Market Street

DOWNPATRICK

BT30 6AJ

Tel: 02844 618185

Your reference: MG/VR/B288-7

Our reference:

3 October 2019

FOR ATTENTION OF [REDACTED]
Campbell & Grant
Solicitors
17 Sugar Island
NEWRY
Co Down
BT35 6HT

Dear [REDACTED]

**PLANNING APPLICATION P/2013/0242/F – WATSONS ROAD, NEWRY – YOUR CLIENT
EDB CONSTRUCTION LTD**

Thank you for your letter dated 13 September 2019 regarding the above.

You suggest that a further site inspection would be illuminating and to this end, upon receipt of your correspondence, I instructed representatives of both my Private Streets and Development Control to once more check the site boundary location.

My staff have as a result raised no issues with the construction by your client of the newly aligned and widened Watsons Road up to where it finishes at the temporary metal barrier. However in terms of the extent of the works they have, in consensus, been unable to identify within the bounds of all reasonable tolerance any variance on the ground in the respective limits of the EDB & MJM determinations. The centre line of the hedge defining these limits has been established as carefully as possible taking account of the historic stone ditch at its base and its position in relation to the existing boundary wall opposite. It is considered that any balanced interpretation of the drawings would conclude that this centre line represents the limit of both determinations.

As you acknowledge DfI Roads cannot become involved in any land disputes pertaining to areas in the vicinity of the [REDACTED] of the determination drawings but I trust these matters are able to be resolved equitably [REDACTED]

Yours sincerely,



REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

*Clears Fulton Rank FOI
due 21.10.19*

OUR REF: MG/VR/B288-7

YOUR REF:

13th September 2019



Campbell & Grant
SOLICITORS

Mr Reynold Nicholson
Department for Infrastructure
Dfi Roads – Southern Division
Development Control
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Dear Mr Nicholson

Re: Planning Application P2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Limited

We thank you for your letter dated 29th ult. received at this office on 4th inst. It is with regret that we are unable to consider your summary of the review of the relevant drawings as being a reasonable and properly balanced approach by DFI Roads.

We note your expert consideration of the PSD Drawings and indeed your further review thereof has failed to identify the following key failings despite our having raised concerns with you:-

The “Hedge Centre line” in the vicinity of the required Tie in point to Watsons Road as drawn on PSD drawing 12-117/C13 (sheet 4 of 4) fails to correctly depict the original Hedge Center line at the locus. Instead of correctly reflecting the original hedge center line as exists in situ, the aforesaid PSD drawing has erroneously detailed the hedge center line as being in accord with the Application site boundary and the applicants actual title boundary when in fact this is not the case. DFI have been placed on notice in this regard and have evidently failed to investigate and verify these facts despite their professional qualifications expertise and experiences.

The end point of the required carriageway works necessary to effect the requisite Tie in point to Watsons Road, as depicted on the PSD drawing 12-117/C13 (sheet 4 of 4) fails to reach

- (i) The true centre line of the original Hedge as positioned on the ground at the locus; and**
- (ii) Extends beyond the site application boundary and to that extent cannot be enforced; and**
- (iii) Falls some 1.2 Meters short of the actual required Tie in point as is currently in situ and duly accepted by DFI Roads as evidenced by the Preliminary Certificate of Adoption issued by you in accord with the statutory provisions; and**

Michael Grant LLB *

Gary Haughey LLB *

Peter Rooney LLB *

NIVAT Reg. No. 690 8117 26

ROVAT Reg. No. IF 587221 (1)

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OF NORTHERN IRELAND



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- (iv) **Requires to cross third party lands not within the ownership or control of either the Applicant or DFI Roads to realise its objectives on the ground and no provision has been made to ensure delivery of same.**

The consequence of the failings numbered (i) to (iv) can only result in the conclusion that the proposed road determined works detailed on the PSD drawing PSD drawing 12-117/C13 (sheet 4 of 4) cannot achieve the purported Tie in. As presently processed the current PSDs can only result in the approval of a development which cannot be delivered on the ground. The required tie in point is in situ. The required tie in point is the end point of the determined works under P/2006/1117/F which was agreed on site with your officials, Dfi formal written approval thereof issued, and your acceptance of the completed works as evidenced by your having issued the Certificate of Preliminary adoption. As now approved the PSD drawings herein are destined for failure as same cannot be delivered on site creating yet another instance, similar to that as has proven to be the case under has already transpired in respect proposed as has been the case in respect the PSD determined works in respect of another residential development in Newry under LA07/2015/0109/F which works, similar to the works detailed on the PSD's under discussion cannot be delivered in situ and accordingly the development as approved is not deliverable.

The Annotations detailed on PSD drawing 12-117/C13 (sheet 4 of 4) are wholly erroneous. Each of the three facts stated thereon are wholly wrong and misleading. This fact is evidenced by inspection of the locus. The Tie in referenced within the Annotation as being illustrated on drawing 867-PL/SL/01 REV J Planning Ref P/2013/0242/F depicts the requisite tie In Point as lying beyond the "Centre Hedge Line" and the site boundary as depicted on PSD drawing 12-117/C13 (sheet 4 of 4), compounding the discrepancies contained within said PSD drawings and reinforcing the necessity to ensure same are rectified to correctly depict the site locus as is and accurately detail the established key points as exist on the ground, to include the required tie in point at the rear of the hard surfaced area as has been completed under the 3(4)C agreement and in respect to which the Preliminary certificate of Adoption was issued by you in your formal capacity as the Principal Roads Engineer for this division.

The required tie is naturally the end point of our clients road improvement works and is now under preliminary certification of adoption. The said works were effected under DFI supervision directed by you. You wrongly state that "the extent of this modified determination coincides with the center line of the hedge bounding the South West extent of the MJM site and the North East extent of our client's site". This is incorrect.

Notably in your synopsis of the review you directed it is noted that **DFI have failed to acknowledge that the hard serviced area of the carriage way works of P/2006/1117/F have** (at the direction of DFI Roads, on the instigation of Mr Simon Richardson Area Divisional Manager, as implemented by Mr Reynold Nicholson Divisional Engineer through his nominated representative Mr Thomas Kelly Engineer,) **been altered, amended, monitored, approved, settled upon and ultimately given there statutory approval through the issue of a Preliminary Certificate of Adoption and are now firmly fixed in situ at the locus. The Tie In as exists in situ, as a matter of fact, lies some distance beyond the position as detailed on the Annotations contained on PSD drawing 12-117/C13 (sheet 4 of 4). DFI have been put on notice in this regard on several previous occasions and yet there is no evidence of there have sought verification or clarification in respect this vital, fatal shortcoming.**

You state that in an effort to satisfactorily resolve the issues we raised, you asked your Development Control staff to again present the relevant PSD drawings to you in order that these could be carefully reviewed. We consider DFI is legally obliged to have reviewed the PSD Drawings with such issues in mind prior to their issuing approval in respect thereof. In the present instance this is clearly not what has occurred.

Despite our submissions to you, PSD drawings were lodged with the Planning Authority on the 14th August 2019 and processed by you to endorsement of approval thereon on the 15th August 2019. This despite the fact DFI have chronicled a number of concerns which have subsequently been dropped as they consider this overruled by the Historic Ministerial Direction of former Minister Kennedy. It is to be noted that the said Ministerial Direction was prefaced on the basis of major infrastructure works realigning the Watsons Road to accommodate any development. The unprecedented speed with which DFI processed same further evidences the prejudice, bias and lack of rigour with which DFI processed the PSD drawings. Despite the size and nature of the development concerned and the several road safety issues requiring to be dealt with therein the PSD drawings were processed within a twenty four hour period of their having first been lodged with the Planning Department. We trust you would agree such speed of processing is indeed unprecedented!

The haste with which said documents were approached and processed is further evidenced by the failure to formally complete the form of certification issued to the Planning Authority on the 15th August 2019 with insertion of the detail of the "Drawing Numbers" and the failure to adhere to standard procedures by endorsing formal consent upon each approved drawing. The only drawing to have been "endorsed accordingly" is Sheet 1 of 4 of drawing number 12-117/C13. We would be grateful if you could explain the basis upon which the said PSD drawings could be received, considered, formally approved and notice of approval issued within a single working day whilst we have been obliged to await in excess of four weeks to receive a response to our correspondence raising serious matters as impact fundamentally on the propriety of approval or otherwise of the said PSD drawings. We await an explanation in this regard.

You state that **MJM Dorans Hill Limited** were notified through the Planning process that they had **extended the proposed determination works beyond their application site boundary**. All parties are, and were then, fully aware that **the required tie in point lies beyond the Applicants site application boundary**. The determination works **must** extend beyond the current site application boundary otherwise the determined works do not reach the tie in point, and therefore the crucial Tie In to the now completed infrastructure works improvement to Watsons Road cannot be achieved. This has the inevitable consequence of resulting major road safety issues which compromise the safety of existing road users, pedestrian and vehicular traffic alike. You advise that this has now been rectified! **The basis of your so concluding is contrary to the applicant's perception and contrary to fact. You concluding that by reducing the extent of the determined works to remaining within the application existing red line boundary, despite it being an established fact that the tie in point is lying beyond the application existing red line boundary, could none the less achieve the required Tie In is entirely illogical, unexplainable, blatantly unreasonable and factually wrong.**

The current applicant, unlike his predecessor, responded to the need to effect tie in works within his site application boundary simply by shortening the requisite determination works to the limit of their application site boundary when clearly what was required was either an extension to the red line boundary or a further planning application. You conclude that the reduction of the determined works to within the existing red line boundary "rectified" the issue! **HOW?**

Your Mr Richardson previously stated on record that in respect this particular application "the PSD Drawings will provide full engineering details of the road layout, alignment and tie in for the purposes of determining acceptability for adoption". We are therefore surprised and baffled by your advises that the current PSD Drawings, comprising the inaccuracies and failings identified previously, satisfies you as establishing the extent of the road determined for adoption within the "spirit of the drawing". We would be grateful if you might clarify for us what is being referenced by the "spirit" of the drawing and further explain how, from an Engineering perspective the "spirit" of a drawing can either reasonably or rationally be relied upon to overcome specific de facto shortcomings in detailed engineering drawings particularly where the represented works detailed cannot in fact be delivered at the locus. We look forward to your clarifying the basis upon which you can interpret the "spirit" of a drawing and give same precedence over the actual detail appearing thereon.

In acknowledging your approval of the said PSD drawings is based on the "spirit" of the drawings we are obliged to conclude that having examined the PSDs you determined to approve said drawings despite their engineering shortcomings being satisfied that the failings identified were secondary to your interpretation of the "spirit of the drawings". We await your clarifying, in engineering terms, how one can rely upon the "spirit of a drawing" for engineering purposes to over reach clear errors inaccuracies and failings in the engineering detail contained therein. The approach is certainly unusual if indeed somewhat novel. We look forward to your further advices in this regard.

Our Clients land ownership extends beyond the actual hedge line as is in situ and extends into the Field comprised within the Applicants site. The Applicants site boundary is along their title boundary lying within their field, north of the said hedge. **The PSD drawings as approved have erroneously identified the Applicants site boundary as being the center hedge line, which it is not.** We have placed you on full notice of these facts and indeed one would expect it reasonable to assume your officers, upon attendance at the actual locus, would have identified the mapping failures contained within said PSD drawings including the fact that **the Hedge line as detailed on the Applicants PSD drawing at the required Tie in point is not in accord with the de facto position on the ground of the original hedge center line.** The Applicants PSD drawing represents their title boundary, their application boundary and appears to have been adopted as being the center point of the original hedge as existed on the ground. We have already placed you on notice that this is not in fact the case and extended the opportunity to you to attend on site and verify these facts with our mapping experts.

Rather than state "The alignment, position and extrapolation of the hedge has been ascertained as accurately and reasonably as possible with consideration given to the relative position of pillars at the existing entrances opposite", please clarify whether or not the proposed PSD Drawings were accessed and compared with the actual detail of the locus? Was the locus viewed and drawings checked for accuracy? We respectfully suggest these are the much more pertinent questions and we are certain that you are obliged to answer in the negative.

The PSD Drawings as submitted by the applicant evidence considerable divergence between the ordinance survey base maps and the site as surveyed for current purposes. The center line of the hedge as detailed on the PSD Drawing does not match the center line of the hedge as was originally existing and accordingly is inaccurate and misleading in that respect. Was this noted? With respect we consider that the concept of "Spirit" of a drawing cannot address these fundamental shortcomings.

Somewhat surprisingly you fail to reference the required tie in point clearly identifiable at locus in relation to the hedge as remains existing at this point and in relation to the "relative position of the pillars at the existing entrance opposite." **A site inspection would fully illuminate the fact that the PSD Drawings as currently submitted cannot achieve the required tie in and most**

fundamentally that the required Tie in cannot be achieved within the current site application boundary and the limiting of determination works to the site application boundary renders the required tie in unachievable.

We are surprised by your continued reference to our clients determination drawing given that you notified this office in writing of your appointing your Mr Kelly to address issues with said determination drawing (subsequently termed by your Department as "misleading and inaccurate") following an approach made on behalf of the applicant under P2013/0242F to your Mr Simon Richardson. Mr Richardson charged you with a review our client's 3(4)C works and you in turn informed this office that you had nominated your Mr Thomas Kelly, Engineer to liaise with this office and attend site inspection to clarify issues raised. DFI Roads formally confirmed in correspondence to this office that alterations were required on site with specific reference to the alignment of the 3(4)C works as the determination drawing for P2006/1117F was considered to be inaccurate and misleading. To remedy the situation, additional works were required and same were effected. Having previously approved the original layout of our client's 3(4)C works, Dfi sought to revise same and attended on site, marked out and approved realignment and additional works. These works were effected under continuing DFI monitoring, were completed to Dfi satisfaction and indeed you personally issued your Certificate of Preliminary Adoption in respect thereto. This clearly fixes your Department with full knowledge that the end point of the 3(4)C works, the required tie in point on the ground, does not extend to the determination point detailed on the current PSD's as submitted under P2013/0242/F. We are unaware of any concept as to the "spirit" of the drawing as can address, explain or excuse this fundamental shortcoming.

The actual required tie in point, being the line marked by the pin kerb to the rear of the works completed to preliminary adoption certification lies a distance further south of the actual center line of the hedge as originally existed on site. Despite your instructions to your Private Streets staff, the center hedge line as detailed on the current PSD at the tie in point is not to the line of the center of the hedge as originally existed on the ground.

Kindly note we rely upon the preliminary Certificate of Adoption in respect our clients the 3(4) C works as issued by you. The Certificate relates to said works in their entirety ie both alignment and extent. There is no statutory basis whatever to go behind the preliminary Certificate of Adoption as has issued. Clearly you will be aware of these facts and fixed with notice of where the adjoining development requires to effect the requisite tie in yet this aspect has been ignored in your synopsis of your review further evidencing a failure to be thorough, balanced, independent and rigorous in your assessment of the drawings in question

A site inspection and proper overlay of the maps furnished on an accurate site survey ought have evidenced that the center line of the original hedge, as depicted on our client's determination drawing is correctly positioned and accords with the center line of the hedge as then existed at the locus. The center line of the hedge as detailed on the current PSD Drawing submitted under P2013/0242/F, at the tie in point does not correctly reflect the locus as same exists on the ground and most crucially does not evidence the determination works achieving the required tie in with the extended carriageway as is now complete to DFI standards at Watsons Road.

We rely upon and concur with your advises that Dfi Roads cannot become involved in disputes of land ownership. You will also be aware Dfi Roads have no role whatever in seeking to oblige a Developer to effect works or otherwise compromise any portion of his lands so as to accommodate a separate development. The PSD works required under P/2006/1117/F were approved at a time before the suggested realignment of Watsons Road at the tie in point was under consideration. Our client

obliged DFI by extending both the width and length of the carriageway improvements at the tie in point and has no obligation whatever (either to Dfi or Planners) to further extend his works to the carriageway so as to enable the adjoining developer to tie in to our client's works without his having first to acquire ownership of third party lands. Both Dfi Roads and the Planning Authority are on full notice in this regard.

We are unable to consider your summary of the review of the relevant drawings as being a reasonable and properly balanced approach by Dfi Roads in this instance. Your Department directed the completed works and is fully on notice of the required tie in point and cannot now seek to explain their failings in this matter by reference to having "compared drawings" previously termed misleading and inaccurate rather than acknowledging facts of which they have full notice. The PSD drawings submitted under P2013/0242/F fail to evidence achievement of the requisite tie in. DFI Roads have failed to have proper regard to the material considerations arising in this matter and in referencing "spirit" of drawings to arbitrarily dismiss defects identified and to ignore established facts evidences an entirely irrational approach to this matter, biased in every respect and thereby rendering the entire application process susceptible to ready challenge. The issues raised and identified to you have been fudged not addressed.

We challenge the Dfi appraisal of the PSD drawings and indeed the manner in which same have been processed to approval to date. Use shall be made of all correspondences records and exchanges entered into upon our client's behalf in further addressing any issues as may arise in respect the current drawings.

We await your further clarifications on the matters raised and trust that, given the delays experienced to date in your responding to this office, as compared with the twenty four hour turn around in respect your approval of Sets of PSD Drawings for such significant developments, you may in this instance be in a position to favour us with an early reply.

Yours sincerely

Campbell & Grant


Campbell & Grant Solicitors

**DfI Roads
Southern Division**



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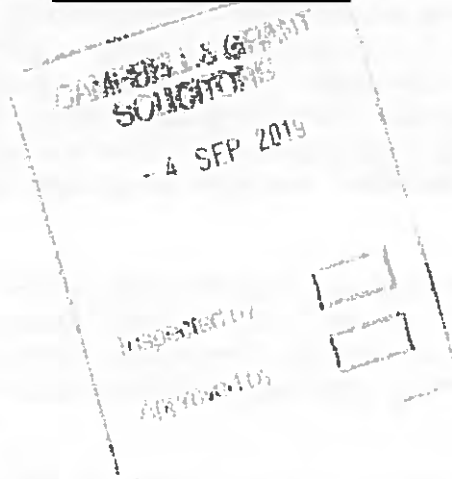
**Development Control
Rathkeltair House
Market Street
DOWNPATRICK
BT30 6AJ
Tel: 02844 618185**

Your reference: MG/VR/B288-7
Our reference:

29 August 2019

FOR ATTENTION OF [REDACTED]

**Campbell & Grant
Solicitors
17 Sugar Island
NEWRY
Co Down
BT35 6HT**



Dear [REDACTED]

**PLANNING APPLICATION P/2013/0242/F – WATSONS ROAD, NEWRY –
YOUR CLIENT EDB CONSTRUCTION LTD**

Thank you for your letters dated 7, 9, 16, 20 and 23 August 2019.

I have noted the points you have raised in your correspondence about the extent of roadworks at Watsons Road required to be carried out by your client EDB Construction Ltd and by MJM Dorans Hill Ltd in association with their respective adjoining housing developments.

In an effort to satisfactorily resolve the issues and bearing in mind the matters of land ownership which you raise, I have consequently asked my Development Control and Private Streets staff to again present the relevant PSD drawings to me in order that these could be carefully reviewed.

The consensus of this examination was that MJM Dorans Hill Ltd had, as you rightly pointed out, extended the determination slightly beyond their application site boundary for P/2013/0242/F. This has been notified to MJM through the planning process and is now rectified. It was also noted that the extent of this modified determination coincides with the centre line of the hedge bounding the South West extent of the MJM site and the North East extent of your client's site. The alignment, position and extrapolation of the hedge has been ascertained as accurately and reasonably as possible with consideration given to the relative position of pillars at the existing entrances opposite. I am satisfied that this establishes the extent of the road determined for adoption within the spirit of the drawings. I have therefore instructed my Private Streets staff to ensure that MJM's road construction is completed accordingly to the line of the centre of the hedge.

I have also noted the correction your client has made to the alignment of his newly constructed carriageway and confirm that in this respect the roadworks are, as previously stated by my Private Streets Engineer, satisfactorily completed. However in terms of defining the actual extent of the roadworks, and having carried out the same examination of your client's determination drawing as with MJM's, I am unable to identify any discrepancy that would contradict the boundary also being the centre line of the above mentioned hedge. I have taken into account the underlying mapping upon which the separate determinations are based. In my view this is a conclusion that any reasonable inspection made in the proper spirit of the drawings put before me would arrive at. Again as a consequence I have instructed my staff to ensure the new road is completed similarly to the extent of the centre line of the hedge.

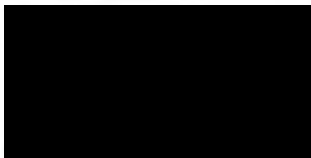
Although DfI Roads cannot become involved in disputes of land ownership I note the issue you raised about the application for rectification by EDB Construction to Land Registry in respect of MJM Dorans Hill Ltd's Folio AR128570 and DOW by MJM Dorans Hill Ltd for the same Folio. This matter would lie outside the scope of the authority of DfI Roads.

In your letter of 20 August 2019 you also make mention of a lack of Issue of a P2A notice to your client in respect of his lands. This would be a matter for Newry Mourne and Down Council to consider in its role as authority for the overall planning application process. I note also your request to the Council of 16 August 2019 seeking information about Private Streets Determination drawings.

I trust you find that the above summary of the review of relevant drawings indicates a reasonable and properly balanced approach by DfI Roads.

I will ensure these issues are brought to the attention of Newry Mourne and Down District Council in its role as planning authority.

Yours sincerely



REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

cc  - Newry Mourne and Down Council

TR2808

Rowan

DfI Roads
Southern Division



Department for

Infrastructure

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Development Control
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Market Street
DOWNPATRICK
BT30 6AJ
Tel: 02844 618185

Your reference:
GMLB/0114297/R00000823
Our reference:

20 September 2019

Dear [REDACTED]

PLANNING APPLICATION P/2013/0242/F FOR HOUSING DEVELOPMENT AT WATSONS ROAD, NEWRY

Thank you for your letter dated 31 August 2019 regarding the above.

I have noted the points you have raised about the extent of roadworks at Watsons Road required to be carried out by your client EDB Construction Ltd and by MJM Dorans Hill Ltd in association with their respective adjoining housing developments.

I recently wrote on 29 August 2019 to your co-representative of EDB, [REDACTED] of Campbell and Grant, in response to similar matters which he raised. [REDACTED] previously had met with my Private Streets Engineer on 8 April 2019 to inspect the boundary of your client's site and that of MGM Doran's Hill Ltd.

In my correspondence with [REDACTED] I advised that after careful review and all reasonable scrutiny of the respective private streets determination drawings no discrepancy could be identified on plan of the mutual boundary. It was noted however that, as [REDACTED] correctly pointed out, the MGM determination did extend marginally beyond the planning application boundary. This has been corrected.

In terms of the application of conditions to any approval this would be a matter for the consideration of Newry Mourne and Down District Council as planning authority. I understand [REDACTED] has been in contact with the Council.

This reply reflects my response to similar representations from [REDACTED] who, as I mention above, has also been in correspondence on behalf of your client EDB Construction Ltd.

Yours sincerely

[REDACTED]

REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

cc [REDACTED] – Newry Mourne and Down Council

ZAL
5.9.19

Mr Reynold Nicholson
DFI Roads
Development Control
Market Street
Downpatrick
BT30 6AJ

Our ref: GMCB/0114297/R00000823

7

Your ref:

31st August 2019

BY EMAIL AND POST

Dear Mr Nicholson,

Re: Planning Application P/2013/0242/F
My client: EDB Construction

Thank you for your letter received on 22nd August 2019.

Before dealing with the issue at hand, We would take the opportunity to express my surprise as to the reference to an unrelated client of our firm. We are unsure as to why you have chosen to reference our client Council in a context where it is not the local planning authority in this matter nor was it referenced in our letter of 29th July 2019. The client concerned did not exist at the time of the application we drew your attention too. The reference demonstrates a lack of adequate inquiry on the part of DFI Roads, proper consideration and proper understanding of the points made.

Turning to the substance of your correspondence, you make efforts to distinguish the application provided by claiming every case is different on its facts. However, that ignores the point of principle made. The letter of 29th July 2019 acknowledged the difference in type of development sought but outlined that was not relevant to the principle evidenced. DFI Roads cannot satisfy itself, in fact, that in recommending approval and endorsing the PSD as tendered (without the requirement for a negative condition) that the road infrastructure would connect into the existing road network. As pointed out previously it cannot. Without this the statutory and public roads authority has failed in its duty to secure a safe and convenient road network in the public interest and has no powers to achieve this, not least because it cannot interfere with private land ownership rights. It instead is permitting development where the road will not be connected to the public road network and no condition attached to secure such connection prior to the commencement of the development.

DFI Roads has repeatedly been put on notice by this office and others that it cannot in fact achieve tie or connection with the existing road network at Watsons Road. This is because neither the applicant or DFI Roads own/control the requisite land. Further, no such planning permission exists or is applied for to achieve connection / tie in. The planning application and PSD drawings related thereto are incomplete in that they stop short of effecting connection / tie in – the reduction of the proposed road infrastructure works within the confines of the red line boundary only exacerbate this flaw. Further, DFI Roads, on foot of enforcement investigations (instigated by the local planning

authority), have certified under a statutory process the location of the end of our client's road infrastructure works. In so doing, it has confirmed a point our client has been making for a number of years - land lies between the edge of his road infrastructure works and the extent of the planning applicant's land ownership (and reduced planning application boundary). This point has been made by our client throughout the 6-year life of this application and the multiple different owners of the land to which this aged planning application relates during that time. DFI Roads have simply ignored this fact and that notwithstanding our client's planning permission, the changing planning applicants, the changes in road works applied for illustrate the now lacking connection over our client's land. Nothing has changed with the transfer of ownership of the planning application site.

We note with surprise and concern that the PSDs as endorsed are incorrect as to the ability to tie in and DFI Roads has, at best, misdirected itself and at worse, wilfully endorsed the error thereon given the clear notice it has been given of the inability to connect / tie in. This error goes to the heart of the issues and goes to the lawfulness of the decision.

Further, we would put you on notice that DFI Roads, if it were so minded, cannot revisit that certification process as issued to our client under the statutory regime and to do so after our reliance upon same would be highly questionable, not least because your officials attended site meetings and agreed same. Such conduct, the timing of it and the motive for same would be highly questionable, and if it arises will be challenged by our client. To use any such statutory powers retrospectively to interfere with our client's private property rights would be an abuse of any such statutory powers and ultra vires.

We note you appear to be justifying DFI Road's position by noting its inability to engage in land ownership issues and by inference that you can simply ignore the fact that land outside of the planning application is required to effect connection / tie in with the road infrastructure as contained in the endorsed PSD. If that is the common position of DFI Roads, why for example attach a negative condition to a planning application for requisite visibility splays to be put in place if the land is owned by a third party given the DFI Roads claimed position? That is a standard condition followed throughout Northern Ireland and the rest of the UK. The roads authority simply do not refuse to impose a condition where questions of land ownership arise but rather secure the required access to standard in the public interest by attaching a condition, leaving any private property law issues to the beneficiary of any such planning permission to resolve - an entirely objective and impartial approach. The present circumstances are more fundamental than visibility splays, however, the same principle applies. The approach adopted by DFI Roads, rather than being in the public interest is in contrast in the interests of the planning applicant by the failing to secure and ensure that the connection / tie in will be effected regardless of land ownership by the imposition of a negative condition. It appears that DFI Roads has acceded to the pressure of a planning applicant in endorsing an incorrect PSD drawing and failing to attach a negative condition in the public interest which regardless of land ownership issues is required.

Finally, we note your officials have, despite your comments, suggested conditions to the local planning authority and fail to propose the required negative condition. Plainly,

that error will infect any decision reached by the local planning authority without such a condition.

To conclude, it is apparent that the approach of DFI Roads is deeply flawed, fails to have regard to material consideration, arbitrarily dismisses material considerations and ultimately irrational. Any decision issued by the local planning authority will be infected by these errors and susceptible to challenge.

We would be obliged to receive a substantive response to the issues raised herein and an explanation as to how DFI Roads intend to secure the connection and tie in with the existing road network within 14 days of the date herein

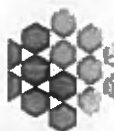
Yours faithfully,

Carson McDowell LLP

@carson-mcdowell.com

CC. Newry and Mourne Planning Department

**DfI Roads
Southern Division**



Department for

Infrastructure

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Your reference: MG/VR/B288-7
Our reference:

29 August 2019

FOR ATTENTION OF [REDACTED]

Campbell & Grant
Solicitors
17 Sugar Island
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BT35 6HT

Dear [REDACTED]

**PLANNING APPLICATION P/2013/0242/F – WATSONS ROAD, NEWRY –
YOUR CLIENT EDB CONSTRUCTION LTD**

Thank you for your letters dated 7, 9, 16, 20 and 23 August 2019.

I have noted the points you have raised in your correspondence about the extent of roadworks at Watsons Road required to be carried out by your client EDB Construction Ltd and by MJM Dorans Hill Ltd in association with their respective adjoining housing developments.

In an effort to satisfactorily resolve the issues and bearing in mind the matters of land ownership which you raise, I have consequently asked my Development Control and Private Streets staff to again present the relevant PSD drawings to me in order that these could be carefully reviewed.

The consensus of this examination was that MJM Dorans Hill Ltd had, as you rightly pointed out, extended the determination slightly beyond their application site boundary for P/2013/0242/F. This has been notified to MJM through the planning process and is now rectified. It was also noted that the extent of this modified determination coincides with the centre line of the hedge bounding the South West extent of the MJM site and the North East extent of your client's site. The alignment, position and extrapolation of the hedge has been ascertained as accurately and reasonably as possible with consideration given to the relative position of pillars at the existing entrances opposite. I am satisfied that this establishes the extent of the road determined for adoption within the spirit of the drawings. I have therefore instructed my Private Streets staff to ensure that MJM's road construction is completed accordingly to the line of the centre of the hedge.

I have also noted the correction your client has made to the alignment of his newly constructed carriageway and confirm that in this respect the roadworks are, as previously stated by my Private Streets Engineer, satisfactorily completed. However in terms of defining the actual extent of the roadworks, and having carried out the same examination of your client's determination drawing as with MJM's, I am unable to identify any discrepancy that would contradict the boundary also being the centre line of the above mentioned hedge. I have taken into account the underlying mapping upon which the separate determinations are based. In my view this is a conclusion that any reasonable inspection made in the proper spirit of the drawings put before me would arrive at. Again as a consequence I have instructed my staff to ensure the new road is completed similarly to the extent of the centre line of the hedge.

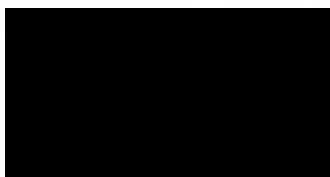
Although DfI Roads cannot become involved in disputes of land ownership I note the issue you raised about the application for rectification by EDB Construction to Land Registry in respect of MJM Dorans Hill Ltd's Folio AR128570 and DOW by MJM Dorans Hill Ltd for the same Folio. This matter would lie outside the scope of the authority of DfI Roads.

In your letter of 20 August 2019 you also make mention of a lack of issue of a P2A notice to your client in respect of his lands. This would be a matter for Newry Mourne and Down Council to consider in its role as authority for the overall planning application process. I note also your request to the Council of 16 August 2019 seeking information about Private Streets Determination drawings.

I trust you find that the above summary of the review of relevant drawings indicates a reasonable and properly balanced approach by DfI Roads.

I will ensure these issues are brought to the attention of Newry Mourne and Down District Council in its role as planning authority.

Yours sincerely



REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

cc  - Newry Mourne and Down Council

TR2808

7/28/19
29.8.19

From: [REDACTED]@campbellandgrant.com>
Sent: 23 August 2019 15:40
To: [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; Richardson, Simon; Nicholson, Reynold; [REDACTED] Laughlin, Rowan; [REDACTED]
Subject: Approval of PSD Drawings in Respect P/2013/0242/F Watsons Road

Our Ref: MG/VR/B288-7

Dear Sir/Madam

Under cover of separate correspondence we have lodged formal objection to Planners concerning misrepresentation made to this Office and the processing of this application in such a manner as we consider clearly evidences demonstratable procedural unfairness as has prejudiced our Client in this matter. In addition it is clearly evident that the PSD Drawings as approved fail to meet the standard declared by Mr Richardson in that they clearly fail :

1. To "provide full engineering details of the road layout, alignment and tie in for the purpose of determining acceptability for adoption".
2. To achieve the required tie in to the approved works to Watsons Road at the requisite tie in point being the point as clearly established and accepted under the preliminary certificate of adoption now issued by Dfi Roads.
3. Furthermore Dfi Roads are either acting upon a mis-direction or have mis-directed themselves as it is abundantly clear that the proposed road tie in to the improvements at Watsons Road do not and cannot connect without additional third party lands being incorporated therein for which no provision has been made.
4. The annotations noted on the approved PSD Drawings are wholly incorrect with particular reference to matters previously specifically directed to the attention of both Dfi Roads and Planners who are now fixed with notice thereof.

Yours faithfully

[REDACTED]
Campbell & Grant Solicitors
17 Sugar Island
Newry
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Tel: 028 3026 6660

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Call
20.8.19

Laughlin, Rowan

From: [redacted]rice@campbellandgrant.com>
Sent: 20 August 2019 15:44
To: Nicholson, Reynold; Richardson, Simon; Laughlin, Rowan; [redacted]
[redacted]@nmandd.org; [redacted]@nmandd.org; planning@nmandd.org;
[redacted]@nmandd.org; [redacted]@nmandd.org; Kerr, Angus
Subject: P/2013/0242/F Watsons Road Newry
Attachments: Letter to Reynold Nicholson.pdf

Our Ref: MG/VR/B288-7

Dear Sirs

We await open planning viewing of updated filings in respect P/2013/0242/F and in the meantime enclose our representations in respect of the PSD Drawings as have been shared to date.

Yours faithfully

[redacted]
Campbell & Grant Solicitors
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Tel: 028 3026 6660

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OUR REF: MG/VR/B288-7

YOUR REF:

20th August 2019

Campbell & Grant
SOLICITORS

Mr Reynold Nicholson
Department for Infrastructure
Dfi Roads – Southern Division
Development Control
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Dear Mr Nicholson

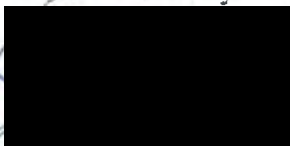
Re: Planning Application P2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Limited

We refer to our prior submissions herein and to the PSD drawings in the above matter. With particular reference to the Tie In required to Watsons Road we note:-

1. The current PSD drawings do not correctly detail the locus.
2. The tie in point is now established, pursuant to the works effected by our Client and in respect to which an adoption certificate has issued from you, lies beyond the red line boundary of the application site works AND requires to be connected into over third party lands in respect to which no P2A notice has issued.
3. The Applicants verge exceeds the width of the adopted works and will require further lands to accommodate requisite forward visibility provisions.

DFI have the responsibility of ensuring the PSDs evidence the works proposed include the now established "tie in" point and are so conditioned to ensure the said works are delivered as a prerequisite to any other development given that said works are both essential to road safety and require to be effected across lands beyond the ownership or control of the Applicant or DFI.

Yours sincerely



Campbell & Grant Solicitors

Michael Grant LLB *

Clara Hughes LLB *

Peter Ronney LLB *

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VR
19.8.19

Laughlin, Rowan

From: Valerie Rice <vrice@campbellandgrant.com>
Sent: 16 August 2019 15:32
To: planning@nmandd.org; [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; [REDACTED]@nmandd.org; Kerr
Angus; Nicholson, Reynold; Laughlin, Rowan; [REDACTED]
Richardson, Simon
Subject: Planning Application P/2013/0242/F Watsons Road Newry
Attachments: Planning Access Letter - Urgent.pdf

Our Ref: MG/VR/B288-7

Dear Sirs

We enclose herewith a formal request that we be provided with copy PSDs, Consultations and Responses made in respect of the ongoing Planning Application P/2013/0242/F which for unexplained reasons is being processed without update to the Epic System and thereby prejudicing public participation in the planning process contrary to Statutory provision.

Yours faithfully

[REDACTED]
Campbell & Grant Solicitors
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Tel: 028 3026 6660

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OUR REF: MG/VR/B288-7

YOUR REF:

16 August 2019

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Dear Sir Madam

Re: Planning Application P2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Limited

We refer to the above referenced matter, our recent attendances in respect the open file viewing and uplifting of copy of the documents in the matter. Upon our attendance today we were advised that your Mr Davidson confirmed there had been nothing further processed on the working file since the 2nd August (being the most recent papers copied to us.) As we are advised that there has in fact been consultations responses received in respect the PSD drawings of 2nd August we requested a further open file viewing of the matter and trust we shall be facilitated in this regard without delay.

The documents received to date evidence Planners advices to the Council's compliance department that this matter remains an ongoing open file planning application to which the public ought have ready access. Planners have been directed to make the documents submitted available to the public through the epic system and yet the working file has not been uploaded to Epic since December 2018. This failure to regularly update the working file on Epic is prejudicing public access to the working file and the updated documents particularly in respect to the ongoing consultation process in respect to PSD submissions and consultations.

We have been obliged to attend upon Planners in person both to review the open file and to access the copy documents requested and in each instance there has been delay and unnecessary expense incurred. We consider the failure to continuously update the ongoing application is contrary to the core principal of transparency to which such applications are subject. We consider that the failure to update the application on Epic, on a continuous basis, is prejudicial to both our client and indeed the public at large and is manifestly unfair.

The most recent PSD Drawing furnished to us (2nd August 2019) as has been provided to us details road works as lie beyond the site outline of the Planning Application and fails to detail the requisite road works necessary to effect a "tie in" to the Watsons Road at the end point of the road improvements already effected. The said PSD Drawing stops short of the necessary tie in point.

Mr Richardson DFI Divisional Manager, has previously advised that the requisite PSD drawings *will provide full engineering details of the road layout, alignment and tie in for the purpose of determining acceptability for adoption.* It is evident that the current PSD drawings will require to



be further revised and we ask that you record our interest, on our client's behalf, in this matter. We formally request that we are notified of any further PSD drawings submitted, consultations issued and responses / submissions made in this application so that we may be afforded the opportunity to consider same and comment thereon. We advise that we would wish to obtain copies of all additional PSD drawings filed in this matter as and when same are received by Planners and we confirm we shall discharge the Planners reasonable costs in providing copies thereof.

Clearly were the matter to be processed in accord with normal practice and updated continuously on Epic, with the consultation process conducted thereon, we would be in a position to monitor the progress of the application directly and so avoid being obliged to ask that you note our interest in the matter and that you facilitate us by notifying us of any additional detail received in the processing of the application.

Kindly advise us of any further filings made in respect application P/2013/02432/F.

Yours Faithfully

Campbell & Grant

Campbell & Grant Solicitors

ZAL
98.19



Campbell & Grant
SOLICITORS

OUR REF: MG/VR/B288-7

YOUR REF:

7 August 2019

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Mr Reynold Nicholson
Department for Infrastructure
Dfi Roads – Southern Division
Development Control, Rathkeltair House
Market Street
Downpatrick BT30 6AJ

Dear Mr Nicholson

Re: Planning Application P/2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Limited

We refer to the above referenced matter and your letter of 29th July enclosing purported disclosure pursuant to the FOI request made and your EIR response. It is evident that said disclosure is not complete. We are aware of communications, meetings and exchanges between DRD and both the Planners and third parties which have not been disclosed and the response is therefore considered incomplete.

We have sight of a PSD Drawing being designated version N, Sheet 3 (date stamped 21 June 2019) purporting to evidence a tie in to the Watsons Road at the end point of the road works effected under P/2006/1117/F. We have had the said PSD Drawing examined by our Client's Mapping Experts and note the following conclusions:

1. The PSD Drawing as submitted details road works as lie beyond the site outline of Planning Application P/2013/0242F.
2. The said PSD Drawing as submitted does not detail the requisite road works necessary to effect a "tie in" to the existing Watsons Road at the end point of the road improvements already effected under P/2006/1117/F in that the PSD Drawing stops short of the necessary tie in point.

We attach hereto a Map prepared by our Mapping Expert evidencing that the tie-in works proposed firstly exceed the red line boundary of the application site (P/2013/0242/F) and secondly fail to reach the requisite tie-in point as denoted on site by the kerb line inserted by our Client at the end of the roadworks effected under P/2006/1117/F.

We require your Department to clarify the validity of each of the above two findings and to advise as to how precisely Dfi Roads, in discharge of their statutory functions in respect Roads intend to address each of these shortcomings. It is noted your Mr Richardson formally confirmed in correspondence of the 14th January 2019 that the "drawings will provide full engineering details of the road layout, alignment and tie in for the purpose of determining acceptability for adoption".

Michael Grant LLB *
Gary Haughey LLB †

Peter Rooney LLB †

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† Authorised to practice in the North of Ireland



Whilst you have formally advised our Client that ownership is not a matter to be addressed by your Department which takes no role in any land dispute we are directed to ensure your Department is placed on notice of the fact that our Client retains ownership and control of lands as lie between the end point of the adopted road works as were effected under P/2006/1117/F and the lands both in the ownership of the Applicant and within the site confines of the application P/2013/0242/F. We have previously placed your Department and Planners on full notice in this regard and enclose, for ease of reference, further copy of our letter of 25 June 2019 whereby we have demonstrated occupation, ownership and control of the area immediately behind our Client's pin kerb, being the requisite tie-in point herein.

The detailed Maps attached to ours of 25th June 2019 and hereto evidence that the red line boundary of this application site (P/2013/0242/F) stops 1.190 metres short of the required tie-in point and location of tie-in works. The red line boundary of the application site falls within the field lying immediately to the north of our Client's hedgerow. The fact is our Client retains ownership and control of the lands now required to effect proposed tie in to the road works completed under P/2006/1117/F.

In respect registration of ownership at Land Registry our Clients title has been registered in excess of thirteen years and as such is now deemed indefeasible. The adjoining development was held under a Registry of Deeds title which has only become subject to compulsory first registration upon its recent acquisition by the Applicant. Upon acquisition of the adjoining development lands the Solicitors then acting for the Developer made application for registration of their Registry of Deeds title at Land Registry lodging a Map which sought to include an area as fronts our Clients lands, which area does not form part of the red line boundary of P/2013/0242/F, and to which area the Applicant does not in fact have any entitlement. We have raised this issue with the Developers Solicitors and have called upon them to agree rectification of the matter or, in the alternative produce for inspection the Registry of Deeds Title upon which they rely. Despite our repeated requests no title whatsoever has been produced.

We have lodged our objection as an Inhibition at Land Registry and the process is ongoing. Upon checking the current position, we are advised the Applicant has made a submission at Land Registry which is with its Solicitors for processing and to which we shall be responding upon our receiving notification of the content thereof. Our Clients Land Registry Boundary includes the area of land as lies between the rear of the pin kerb (denoting the end of the road works effected under P/2006/1117/F) and the red line boundary of the application site (P/2013/0242/F) as detailed on the Map enclosed herewith.

In such circumstances, where lands beyond the red line boundary of the application site and in respect to which a third party makes claim, your Department has the responsibility to ensure that the requisite tie-in is achievable and conditional within the Development approval. We note that your Department acknowledged the shortcomings in relation to the application red line boundary and the extent of the tie-in works in their PSD response of 17 May 2019 and somewhat unusually responded again to the same drawings on 3 June 2019 without referencing this crucial issue.

In all such circumstances we ask you clarify how it is proposed to ensure the required tie in is in fact effected under any approval issued under P/2013/0242/F. It is evident that the tie in works and improvement works proposed for Watsons Road requires to be conditioned as must be implemented prior to commencement of any other development at this locus.

Yours sincerely


Campbell & Grant Solicitors



Watsons Road, Newry, Co Down

Scale 1 : 200 & 1 : 1250

Date: 20-05-2019

MGM

Title boundary & Red line boundary for P/2013/0242/F

Road determination encroachment

Road determination for Ref. P/2013/0242/F as detailed on sheet 3 of 4 date stamped 21/06/2019

Pin Kerb marks endpoint of 34C/article 32 works of P/2006/1117/F

EDB

OUR REF: MG/VR/B288-7
YOUR REF: 92661-19, 92662-19 & 92891-19

25 June 2019



Campbell & Grant
SOLICITORS

Mr Reynold Nicholson
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Dear Sir

Re: **Planning Application P2013/0242/F – Watsons Road, Newry**
Our Client: EDB Construction Limited

We refer to prior correspondence and note despite our requests we have not received updated copies of the PSD Drawings presently submitted and under consideration in respect of the above-mentioned application. As per our correspondence of 8th April 2019 and the subsequent works effected on site the roadworks determined to be completed under Article 3(4)(C) in respect of our Client's development have since been completed to the Department's satisfaction.

We now enclose a Map upon which the determination point of the roadworks effected to the Northern end of our Client's development is denoted by the pin kerb marked green on the attached Map. You will note that this point lies some 1.190 metres distant from our Client's title boundary being the Land Registry boundary marked by a hatched red line.

Having completed the works our Client has demarked the relevant area as lies within his ownership by surrounding same with red and white reflective gating as detailed in the Map attached hereto. Both the Map and Photograph attached clearly identify our Client's lands as lie between the end of the 3(4)(C) works required under P2006/1117F and the site boundary as currently detailed under P2013/0242/F. It is clearly evident that the proposed tie in to the extended Watsons Road as depicted on the PSD Drawings submitted in respect to P2013/0242/F cannot in fact be effected as to do so would require works beyond the current site boundary of that application, beyond the area of lands within the ownership of the Applicant and will require incorporation of our Client's lands in respect of which no application or agreement has been made.

A previous owner did seek an accommodation over our Client's lands and correctly extended the boundary of their Planning Application to incorporate these additional lands and provided the requisite P2 Notice. The current Applicant however reverted to the defining of his site boundary in accord with his land ownership excluding the area of our Client's lands as depicted as lie between the red and green lines on the enclosed Map. The current application does not extend across our Client's lands and accordingly therefore does not extend to the current end point of the extent of Watsons Road thereby rendering proper tie in as proposed unachievable.

Michael Carr LLB *
Gary Harghey LLB *
Peter Rooney LLB *

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In effect to process the current PSD Drawings with both the Department and Planners on full notice that the Planning Application boundary and indeed the Applicant's land ownership falls short of the tie in point to the widened Watsons Road and thereby render such tie in unachievable perpetuates the failings and processing errors in this Application to date and fails to recognise the inherent dangers as will arise from the creation of a bottle neck on the Watsons Road at this point compromising safety and convenience of all road users (vehicular and pedestrian) at this locality.

The detail of our Client's retained land at the tie in point is now clearly visible and has been definitively marked on the ground plan thereof hereto attached and visually demonstrated on the photographs attached hereto. It is evident that no tie in point can be agreed at this locus without the incorporation of our Client's lands and indeed the extending of the Applicant's site boundary. To the extent that the PSD Drawings incorporate works across our Client's lands same are presently unachievable. To seek to approve PSD Drawings without first securing our Client's agreement to incorporation of his lands within the required works can only result in the creation of a significant danger along the Watsons Road and would be in clear breach of PPS3 and 7.

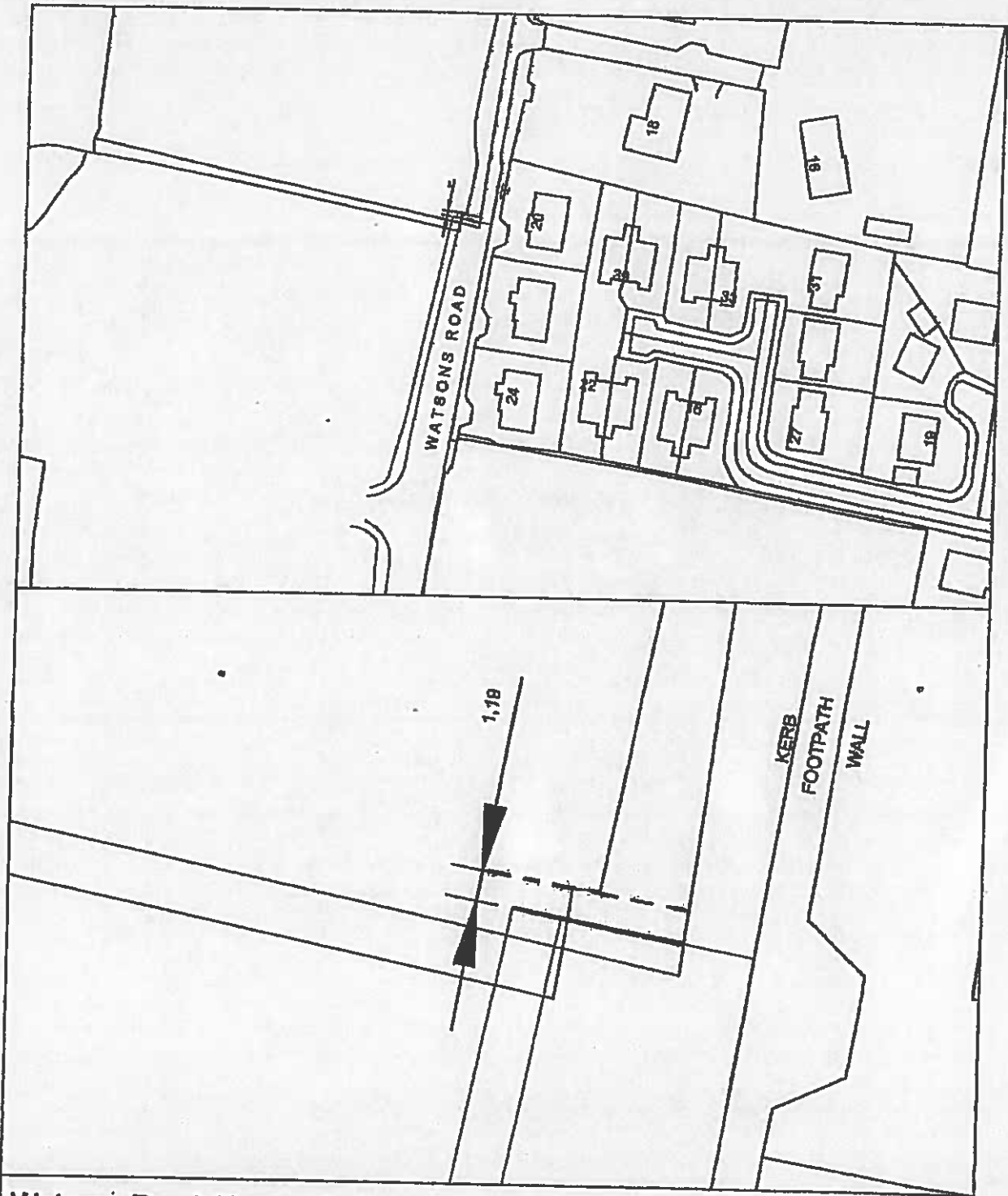
We trust you will note accordingly.



We again repeat our request to be furnished with full copies of the current PSD Drawings in respect of this development.

Yours faithfully

Campbell & Grant


Campbell & Grant Solicitors



Watson's Road, Newry, Co Down
Scale 1 : 500 & 1 : 1250
Date: 20-05-2019
Land Registry 
Pin Kerb 







[Handwritten signature]
30.7.19

Mr Reynold Nicholson
DFI Roads
Rathkeltair House
Market Street
Downpatrick
BT30 6AJ

DFI ROADS
SOUTHERN DIVISION
6 JUL 2019
DEVELOPMENT
CONTROL

Our ref. GMCB/0114297/R00000823
Your ref. 7

29th July 2019

Dear Sir,

Re: Planning Application Reference: P/2013/0242/F
Our client: EDB Construction

We refer to the above and to previous correspondence on this matter.

After protracted requests, the Planning Authority has disclosed some information with regard to the closed-door negotiations that have been going on between the planning applicant, the planning authority and DFI Roads (the public roads authority).

Within the disclosures provided, a series of meetings and submissions have been disclosed with regard to the negotiation of private streets determination drawings which are regulated under Article 3 and Article 4 of the Private Streets (Northern Ireland) Order 1980 ("the 1980 Order"). We do not need to remind DFI Roads of their statutory functions and duties under the aforementioned provisions of the 1980 Order. The present closed-door negotiations run contrary to the legislative requirements and prejudice our client and any other third party wishing to participate in the planning application process.

In any event, we have been provided with copy correspondence between DFI Roads and the Planning Authority on 17th May 2019 and 3rd June 2019. Following our review of same, we have noted the following issues of concern below:

In the correspondence of 17th May 2019, DFI Roads raise, *inter alia*, the following issue:

"Sheet 4 of 4:Confirmation would be required that the tie in with the adjacent development is achieved within the red line defining the application."

The subsequent letter of 3rd June 2019 fails to repeat this request. Plainly, this is an essential requirement as DFI Roads would, in essence, be approving a road which cannot connect to the existing network and would thus prejudice road safety and the convenience of road users.

For the avoidance of any doubt, and further to previous correspondence from this office dated 4th June 2019 and 1st July 2019, and to the letter issued by Michael Grant Solicitor on 25th June 2019, the following important facts must not be misunderstood or misrepresented to you, particularly given your concerns outlined on 17th May 2019:

1. The red line site boundary of the planning application does not connect with the adjacent development on Watsons Road. There is a gap and this we are instructed was acknowledged by your own DFI Roads Officials in April 2019 during the misplaced enforcement investigations which found that there was in fact a gap between the boundary of the current proposal and the end point of the determined works of the adjacent development.
2. The land required for the requisite tie in not only sits outside the application red line boundary, but is in the ownership and control of our client.
3. The planning application cannot provide the requisite tie in with the adjacent development.
4. The PSD depicting the 'tie in' as disclosed through the aforementioned FOI request currently purports to effect works:-
 - a. Beyond the current planning application site boundary;
 - b. Beyond the area of lands within the Applicants ownership and or control and that of DFI Roads;
 - c. Will necessitate trespass upon our clients lands; and
 - d. will even on the present unauthorised drawing beyond the red line planning application boundary, fail to reach the required 'tie in' point to the adjacent development notwithstanding the errors of (a)-(c) above.

Importantly, DFI Roads are fixed with notice of the aforementioned unmerited investigations pursued against our client and the instructed conclusion from those investigations that the connection with the adjacent development cannot be achieved. The fact remains that a gap exists between that development and the end point of the determined works of the adjacent development being an area of private land in the ownership and control of our client. DFI Roads are fixed with the conclusions of these investigations triggered by the Planning Authority and referred to DFI Roads for investigation.

As such, the current PSD drawing does not provide the requisite connection and thus a safe and convenient road network is incapable of delivery within the current application site boundary. If planning permission is granted in accordance with the current PSD drawings then this will require works on lands beyond the planning application boundary, the Applicants control and will continue to fall short of the requisite tie in point.

All of the aforementioned issues of concern have been outlined to the Planning Authority and they have chosen to repeatedly ignore same. The planning application and the current PSD drawing before DFI Roads and the Planning Authority cannot provide the requisite tie in to the road network. The only viable solution is a negative condition being included in the grant of any permission, requiring the delivery of a connection prior to the commencement of development. That is the position recognised by the Courts and adopted throughout the UK and Northern Ireland. A failure to do so will result in the necessary road connection required to deliver the proposed development being unable to be provided with the consequent failure to ensure a safe and convenient road system available to all road users in the area.

If there were any doubt as to the correct approach, we would remind DFI Roads of planning application X/2010/0819/F in Newtownards. Your Mr Laughlin was involved in that application, as was this office as an objector. In that, application the planning applicant erroneously failed to provide the necessary road infrastructure required by the development proposal within the red line planning boundary. As a consequence the Department and Roads Service required a second planning application X/2012/0010/F be submitted for the necessary road infrastructure improvements that lay outside the planning application boundary. The development proposal was described as:

"Engineering works to the existing highway and other land pursuant to Application Reference X/2010/0819/F. "redevelopment of site to provide a food store (4077 sqm net), petrol filling station, ancillary non-food retail floor space, associated car parking, a park and ride facility, landscaping and associated works."

Your Mr Laughlin in a consultation of 6th November 2013 responded to the Department requiring a negative condition which read:

"Development of any building hereby permitted shall not commence until the roadworks associated with the development as proposed under application X/12/0010/F have been approved by Planning Service and completed to the satisfaction of Roads Service."

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out."

A copy of the consultation response is attached for ease of reference.

Subsequent to this response your Mr Laughlin gave evidence to the Planning Appeals Commission during a public hearing into the aforementioned planning applications and advocated that condition.

In that case, Roads Service (now DFI Roads) required the second application to be submitted and Roads Service through Mr Laughlin required the imposition of a negative condition to ensure the requisite works outside the planning application were secured. That is the correct approach yet DFI Roads are now ignoring that approach and indeed the expressed reasoning behind same. The principles in the present case are the same. A development requires works outside the planning application boundary. Those works are required for the safety and convenience of road users and must be delivered prior to the commencement of development. The type of development, retail versus housing is irrelevant.

The current approach of DFI Roads is deeply flawed.

We would ask for confirmation by return that given all of the above and the correct approach as previously followed by DFI Roads and the same officials it will do so now and put an end to the current closed door approach and erroneous decision making. The planning application is simply unacceptable and contrary to policy.

Yours faithfully

Carson McDowell LLP

Carson McDowell LLP



@carson-mcdowell.com
@carson-mcdowell.com

Enc.

Planning Application Reference Number: X/2010/0819

Date Plans/Documents Received by Planning Service:

Date Plans/Documents Received by Roads Service:

Drawing/Document Ref: NW90094/147 Rev C.

ROADS SERVICE – DEVELOPMENT CONTROL SECTION**CONDITIONS FOR X/10/0819/F****ASDA STORE, FORMER SCRABO HIGH SCHOOL SITE, SCRABO ROAD, NEWTOWNARDS****No objections see conditions below:**

1. Development of any building hereby permitted shall not commence until the roadworks associated with the development as proposed under application X/12/0010/F have been approved by Planning Service and completed to the satisfaction of Roads Service.

REASON: *To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out.*

2. No retailing or other operation in or from any building hereby permitted shall commence until hard surfaced areas have been constructed within the site and permanently marked to provide:
 - i. public car parking spaces which shall include facilities for disabled people and staff which are generally in accordance with Drawing No: NW90094/147 Rev C; and
 - ii. Separate facilities for the operational parking, loading and unloading of delivery and other service vehicles and for the turning of such vehicles so that they can enter and leave the site in forward gear as generally indicated on Drawing No: NW90094/147 Rev C.

REASON: *To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.*

3. No retailing or other operation in or from any building hereby permitted shall commence until hard surfaced areas have been constructed in accordance with the approved drawings to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

REASON: *To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.*

4. No part of the development hereby permitted shall be occupied until the applicant has entered into an agreement with Translink to facilitate the provision of improved local public transport services.

REASON: *To ensure that there is a convenient means of access to the development for non-car users.*

5. The gradient of the accesses shall not exceed 4% (1 in 25) over the first 10 m outside the road boundary. Where vehicular access crosses the footway the access gradient shall be between 4% (1 in 25) and 2.5% (1 in 40) and shall be formed so that there are no abrupt changes of slope along the footway.

REASON: *To ensure that there is a satisfactory means of access in the interest of road safety and the convenience of road users.*

6. The vehicular access, including visibility splays, shall be provided in accordance with plans associated with the road works planning application X/12/0010/F prior to the occupation of any works or other development hereby permitted.

REASON: *To ensure there is a satisfactory means of access in the interest of road safety and the convenience of road users.*

7. The area within the visibility splays shall be cleared to provide a level surface no higher than 250 mm above the level of the adjoining carriageway before the development hereby permitted is occupied and shall be retained and kept clear thereafter.

REASON: *To ensure there is a satisfactory means of access in the interest of road safety and the convenience of road users.*

8. Details of any retaining walls required adjacent to any public roads shall be submitted to and approved in writing by DRD Roads Service in accordance with BD2 Technical Approval of Highways Structures: Vol: 1 DMRB prior to any construction work being undertaken.

REASON: *To ensure road safety and convenience of road users.*

STREET LIGHTING CONDITIONS

9. The development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted and approved by the Department for Regional Development Street Lighting Section.

REASON: *To ensure road safety and convenience of traffic and pedestrians.*

10. The Street Lighting scheme including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Regional Development Street Lighting Section and shall be in conformity with current national standards and codes of practice for lighting in the vicinity of aerodromes.

REASON: *To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians, taking into account safety of aircraft.*

ZLK

31.7.19

**DfI Roads
Southern Division**



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

Campbell & Grant Solicitors
17 Sugar Island
NEWRY
BT35 6HT

Development Control
Rathkeltair House
Market Street
DOWNPATRICK
BT30 6AJ
Tel: 02844 618185

FOR ATTENTION OF [REDACTED]

Your reference:
Our reference:

31 July 2019

Dear [REDACTED]

**PLANNING APPLICATION: P/2013/0242/F – WATSONS ROAD, NEWRY
YOUR CLIENT – EDB CONSTRUCTION**

Thank you for your letter of 25 June 2019 regarding your client's lands at
Watsons Road.

I have noted the comments you have made in respect of the planning application
boundaries, land ownership and possible repercussions in terms of tie in of the new
Watsons Road alignment.

All documentation, including Private Streets Determination Drawings, associated with
the relevant planning applications, can be obtained upon request from Newry Mourn
and Down Council in its role as planning authority.

Thank you for drawing attention to the lands issues which you have concerns about
at the boundary of your client's development site.

Yours sincerely

[REDACTED SIGNATURE]
REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager



OUR REF: MG/VR/B288-7
YOUR REF: 92661-19, 92662-19 & 92891-19

25 June 2019

Campbell & Grant
SOLICITORS

Mr Reynold Nicholson
 Department for Infrastructure
 Dfi Roads – Southern Division
 Development Control
 Rathkeltair House
 Market Street
 Downpatrick BT30 6AJ

ZSK
 1.7.19

17 Sugar Island, Newry
 County Down BT35 6HT
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 Tel: (028) 3025 1518 (2 lines)
 Fax: (028) 3026 5080
 DX 2065 NR NEWRY
 e-mail: law@campbellandgrant.com
 www.campbellandgrantni.co.uk

Dear Sir

Re: Planning Application P2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Limited

We refer to prior correspondence and note despite our requests we have not received updated copies of the PSD Drawings presently submitted and under consideration in respect of the above-mentioned application. As per our correspondence of 8th April 2019 and the subsequent works effected on site the roadworks determined to be completed under Article 3(4)(C) in respect of our Client's development have since been completed to the Department's satisfaction.

We now enclose a Map upon which the determination point of the roadworks effected to the Northern end of our Client's development is denoted by the pin kerb marked green on the attached Map. You will note that this point lies some 1.190 metres distant from our Client's title boundary being the Land Registry boundary marked by a hatched red line.

Having completed the works our Client has demarked the relevant area as lies within his ownership by surrounding same with red and white reflective gating as detailed in the Map attached hereto. Both the Map and Photograph attached clearly identify our Client's lands as lie between the end of the 3(4)(C) works required under P2006/1117F and the site boundary as currently detailed under P2013/0242/F. It is clearly evident that the proposed tie in to the extended Watsons Road as depicted on the PSD Drawings submitted in respect to P2013/0242/F cannot in fact be effected as to do so would require works beyond the current site boundary of that application, beyond the area of lands within the ownership of the Applicant and will require incorporation of our Client's lands in respect of which no application or agreement has been made.

A previous owner did seek an accommodation over our Client's lands and correctly extended the boundary of their Planning Application to incorporate these additional lands and provided the requisite P2 Notice. The current Applicant however reverted to the defining of his site boundary in accord with his land ownership excluding the area of our Client's lands as depicted as lie between the red and green lines on the enclosed Map. The current application does not extend across our Client's lands and accordingly therefore does not extend to the current end point of the extent of Watsons Road thereby rendering proper tie in as proposed unachievable.

Michael Grant LL.B. *
 Gary Haughey LL.B. †
 Peter Rooney LL.B. †

NIVAI Reg. No. 690 B115 26
 ROI VAI Reg. No. IE 585221 01



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 † Authorised to practice in the North of Ireland

In effect to process the current PSD Drawings with both the Department and Planners on full notice that the Planning Application boundary and indeed the Applicant's land ownership falls short of the tie in point to the widened Watsons Road and thereby render such tie in unachievable perpetuates the failings and processing errors in this Application to date and fails to recognise the inherent dangers as will arise from the creation of a bottle neck on the Watsons Road at this point compromising safety and convenience of all road users (vehicular and pedestrian) at this locality.

The detail of our Client's retained land at the tie in point is now clearly visible and has been definitively marked on the ground plan thereof hereto attached and visually demonstrated on the photographs attached hereto. It is evident that no tie in point can be agreed at this locus without the incorporation of our Client's lands and indeed the extending of the Applicant's site boundary. To the extent that the PSD Drawings incorporate works across our Client's lands same are presently unachievable. To seek to approve PSD Drawings without first securing our Client's agreement to incorporation of his lands within the required works can only result in the creation of a significant danger along the Watsons Road and would be in clear breach of PPS3 and 7.

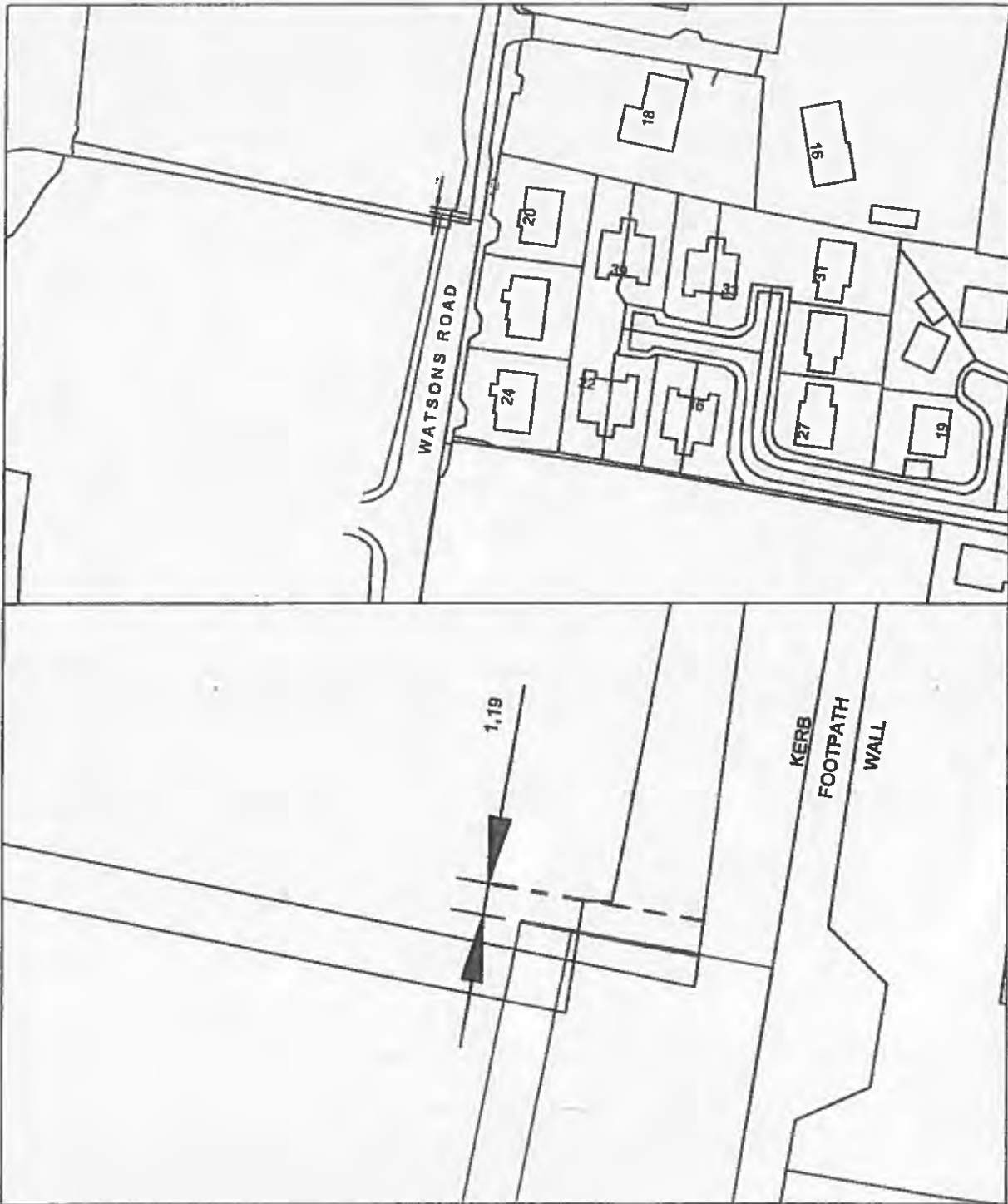
We trust you will note accordingly.

We again repeat our request to be furnished with full copies of the current PSD Drawings in respect of this development.

Yours faithfully

Campbell & Grant


Campbell & Grant Solicitors



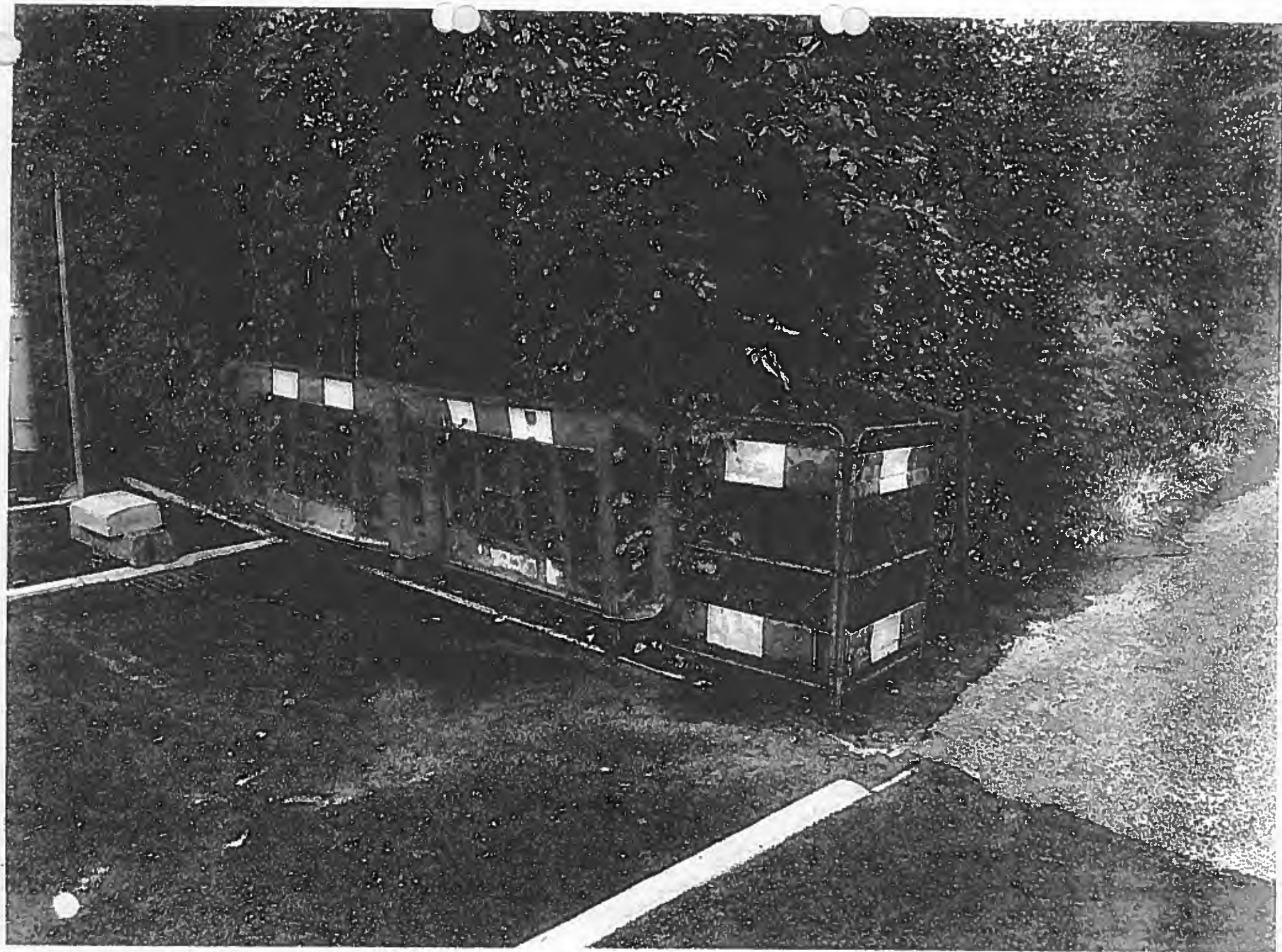
Watsons Road, Newry, Co Down

Scale 1 : 500 & 1 : 1250

Date: 20-05-2019

Land Registry 

Pin Kerb 





Laughlin, Rowan

From: [REDACTED]@campbellandgrant.com>
Sent: 25 June 2019 15:44
To: Nicholson, Reynold; Richardson, Simon; Laughlin, Rowan; Kelly, Thomas; [REDACTED]
[REDACTED]@nmandd.org; [REDACTED]@nmandd.org;
[REDACTED]@nmandd.org; Kerr, Angus
Subject: PSD Drawings for P/2013/0242/F
Attachments: Letter to Dfi.pdf

Our Ref: MG/VR/B288-7

Dear Sirs/Madam

Please see attached correspondence.

Regards

[REDACTED]
Campbell & Grant Solicitors
17 Sugar Island
Newry
Co. Down BT35 6HT

Tel: 028 3026 6660

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DfI Roads
Southern Division



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Tel: 02844 618185

[Handwritten signature]
30.4.19

Campbell & Grant Solicitors
17 Sugar Island
NEWRY
BT35 6HT

FOR ATTENTION OF [REDACTED]

Your reference: MG/VR/B288-17
Our reference: 93686-19
93690-19

29 April 2019

Dear [REDACTED]

**PLANNING APPLICATION – P/2013/0242/F – WATSONS ROAD, NEWRY
YOUR CLIENT – EDB CONSTRUCTION LTD
FREEDOM OF INFORMATION REQUEST**

I refer to your letters of 5 and 8 April 2019 regarding the above.

Thank you for taking the time to attend the site meeting on Monday, 8 April 2019 with Mr Thomas Kelly. I apologise for the delay in its commencement due to the protracted deliberations of my staff on site related to attempting to accurately mark setting out points. Those present were all members of my DfI Roads team and no third parties were involved. I had instructed my staff to make every effort to clarify the layout on site and also to make themselves available to measure, mark and set out any indicators on the ground as you, your client and his builder might have required and directed. This preparation reflected your notification of 8 March 2019 that a professional mapper would be in attendance.

The objective of DfI Roads is to assist in resolving any problems in delivering the new overall Watsons Road alignment which I believe can be readily achieved without impact upon any house building.

In terms of the extent of the road construction I can confirm that the Department has no role in any land dispute between your client and the adjacent developer, has no wish to become embroiled in land boundary issues between developers and certainly has no prejudice or bias towards either party in this case. The correspondence you refer to with Cleaver Fulton Rankin mentioned by my staff was not solicited by DfI Roads but it was pertinent to make known to yourself the Department's receipt,



TR2775

knowledge and sight of the document which had some relevance to discussions on site.

I understand the ambiguity in terms of road alignment may have arisen due to the new kerblineline on the drawing being interpreted as the line of that existing and I hope my site staff have been helpful in trying to resolve this aspect of the layout. On the basis that the kerb edge indicated on your client's PSD drawing does not concur with that in situ the conclusion was that footway width dimensions should be measured from the longstanding boundary walls in order to avoid ambiguity.

DfI Roads supervisory staff will continue to be available on the ground in order to avoid unnecessary delay to the overall progress of development and associated infrastructure and I appreciate the steps your client is taking to deliver the requirements of the determined road layout.

In considering your request for copies of correspondence with Cleaver Fulton Rankin I have determined on behalf of the Department that the information requested falls under the Environmental Information Regulations 2004 (EIR), as opposed to Freedom of Information (FoI). Section 39 of the Freedom of Information Act specifically excludes from consideration under that Act requests for what is deemed to be environmental information. EIR gives right of public access to environmental information held by public authorities.

A guide explaining the Environmental Information Regulations can be found at <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>.

Copies of the information you have requested are attached.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Paul McGrory
Department Information Manager
Room 4.16
Clarence Court
10-18 Adelaide Street
BELFAST, BT2 8GB

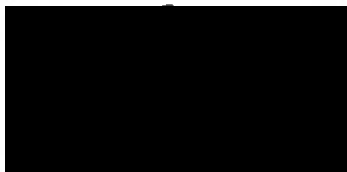
If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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I trust the information will be helpful and once again I apologise for the late start to the meeting with yourself. I have spoken to my staff about the inconvenience caused to yourself and your client.

Yours sincerely



REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

cc Mr Simon Richardson DRM

**DfI Roads
Southern Division**



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

**Development Control
Rathkeltair House
Market Street
DOWNPATRICK
BT30 6AJ
Tel: 02844 618185**

Cleaver Fulton Rankin
50 Bedford Street
BELFAST
BT2 7FW

Your reference:
Our reference: 92888-19

28 March 2019

Dear Sirs

**MJM DORAN'S HILL LTD – DEVELOPMENT AT WATSON'S ROAD, NEWRY
PLANNING APPLICATION P/2013/0242 –
YOUR CLIENT MJM DORAN'S HILL LTD**

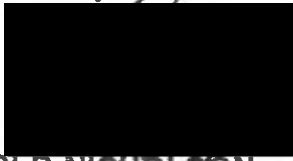
Thank you for your letter dated 19 March 2019 to Mr Simon Richardson regarding the above. As this relates to an area of work for which I am responsible, I have been asked to reply on Mr Richardson's behalf.

I am aware of the ongoing matters which have arisen in relation to the linkage of roads associated with your client's development and the neighbouring housing site.

Your observations in respect of the roadworks carried out by EDB Construction Limited have been noted as has the associated correspondence on the latter's behalf from Campbell & Grant Solicitors and Carson McDowell LLP. As a consequence I have instructed my Private Streets supervisory staff to review the situation on the ground and to ascertain whether the setting out of the extent and alignment of the road works is fully compliant with the relevant Determination drawings.

I have advised the representatives of EDB Construction of this intention and hope that it will prove beneficial to both developers in removing any confusion about their respective road works.

Yours faithfully



REYNOLD NICHOLSON
Principal Chartered Engineer
Network Planning Manager

TR2760

FAO Simon Richardson
Divisional Roads Manager
Marlborough House
Central Way
Craigavon
BT64 1AD

Our Ref: MBK\RAM\cdr\52481-2
Your Ref:
Date: 19 March 2019

By Post and Email to [REDACTED]@infrastructure-ni.gov.uk

Dear Sirs

Our Client: MJM Doran's Hill Limited
Re: Development at Watson's Road, Newry
Planning Reference- P/2013/02421F

We are instructed by MJM Doran's Hill Limited in respect of matters arising out of the development of its site at Watson's Road, Newry. At the Council's Planning Committee on 19 December 2018 planning permission was granted to our client subject to receipt of Private Streets Determination Drawings showing the road improvements to be carried out by our client and how they were linked to the Private Streets Determination Drawings contained within the planning permission of EDB Construction Limited (hereinafter referred to as EDB), the adjoining developer. It is our understanding a decision notice has not yet been issued to our Client.

Substantial matters have arisen at the neighbouring development site concerning the linkage of the roads that are necessary to support the developments. We enclose for your perusal at appendix 1 copy letter dated 26 February 2019 from Campbell & Grant Solicitors acting on behalf of EDB to our offices. This letter pertains to the ongoing construction at this site under EDB's planning reference P/2006/1117/F.

For ease of reference, we also enclose planning approval notice at appendix 2. We draw your attention to paragraph 4 on the first page of the letter from Campbell and Grant it is stated that EDB has "affected the insertion of the kerbing required to the most northerly point of the works conditions to be affected on site" by it. "The said kerbing line has been provided, inspected and formally acknowledged by Transport NI as denoting the northern end point of all roads required to be affected under their development approval." It goes on to state that this ties in with its legal title and is some distance from our Client's true land boundary as exists on the site. For ease of reference we enclose at appendix 3 the latest version of the PSD drawing obtained from the planning portal. Evidently, EDB is required to carry out road widening works up to the northern boundary of their site. This does not appear to have occurred on the ground.



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Further, we enclose the Land Registry map for EDB title, Folio AR105490 at appendix 4. In addition at appendix 4, we also enclose evidence to our Client's title at Folio AR128570, showing the kerbing required up to the red line. There is an ongoing dispute concerning the title that has been registered on behalf of our client and the laneway that straddles both parcels of land. This does not impact on the road works required to the red line. Our client reserves its rights in respect of the disputed lands. The red line delineations clearly show the most northern part of the land ownership, that has not been developed up to the red line of its ownership. The kerb lines that have been laid do not accord with the relevant planning and title documentation.

It is alleged that EDB has secured confirmation from Transport NI that the said kerbing at the northerly boundary satisfies in full with delivery of roadworks determined under the planning approval P/2006/117/F. This must be incorrect, and we would welcome your views on the issue. If this was the case, effectively there is a strip of land that is denoted by incorrect kerbing, that will make it almost impossible for the two roads to join and will inhibit future development of the land to the north.

Further inaccuracies occur which would impact our clients development potential. For ease of reference, we also enclose the following:-

1. Appendix 5- Proposed Road Layout Drawing FB1016-0203 Rev B with Dimensions are extracts of the latest drawing available on the planning portal with dimensions added using the online measuring tool. We draw your attention to the footpath running along the front of the properties 20 and 22 Watson's Road. Both this Road Layout Drawing and the Proposed Road Determination drawing FB1016-202-F indicate that the footpath should be widened to a width of over 2.7m. Given the current width of the footpath is 1.7m the entire Watson's Road carriageway should be moved 1100mm to the west.
2. Appendix 6 includes photographs of the ongoing widening works along Watson's Road along the front of EDB development which was taken on 11 March 2019. The dimensions added were also taken on 11 March 2019. These dimensions show that when measurements are taken from the drop kerb at number 20 Watson's Road entrance, the entire Watson's Road carriageway is misaligned by over one metre to the east.

As you will appreciate, this matter is causing our Client significant concern owing to its obligations to link in to the road in the development of EDB Construction Limited. We understand that there is a significant housing need in the Newry area and that the relevant authorities have a duty to ensure that they protect the future development which addresses this need. We also understand that you are obliged to stop "piecemeal development" which would prevent the development of land set out in the Banbridge/Newry and Mourne area plan 2015.

Our Clients is considering its legal options to rectify this matter. However, this is not in the interests of either party.



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OUR CLIENT: DORNAN'S HILL LIMITED

RE: BOUNDARY DISPUTE AT DORNAN'S HILL WATSONS ROAD

APPENDIX 1

OUR REF: MG/VR/B288-7

YOUR REF: MBK/RAM/DK/52481-2

26 February 2019



Campbell & Grant
SOLICITORS

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Fax: (028) 3026 5080
DX 2065 NR NEWRY
e-mail: law@campbellandgrant.com
www.campbellandgrantni.co.uk

Dear Sirs

Re: **Our Client: EDB Construction Limited**
Your Client: MJM Dorans Hill Ltd

We reference our correspondence of the 29th ult. and 7th inst. to which no response has been received.

Given that our correspondence issued in direct response to yours of the 22nd ult. where under wholly unfounded allegations of encroachment were levelled against our client together with clear statements of intention to issue and serve upon our client High court proceedings seeking injunctive relief one would have considered that the matter would have been formally responded to as a matter of urgency rather than the abject failure to respond which has in fact occurred. In effect our Client has entirely dismissed all allegations of encroachment and has identified considerable failings as are evidenced in your client's application for compulsory first registration of title to lands at Watsons Road. The matter has been referred to the Registrar of titles. Your client has failed to respond to the detailed failings evidenced in its application for first registration. In addition your client has singularly failed to furnish the copies of the historic registry of deeds documents of title as would clearly evidence the precise location of their land boundary. Our Client relies upon its registered title which evidences our Client as having an Absolute fee simple title for more than twelve years and accordingly is now indefeasible.

Our Client is entirely satisfied as to its ownership, title and control of all lands within which it is affecting works at this locus. Our Client is further fully satisfied that it retains ownership title and control of lands as lie between the most northerly end point of our clients works (as now demarked by a kerbing line on site) and our clients actual title boundary, being our clients land boundary with the true boundary of the land acquired by your client under Deed of Conveyance and Release of 21st October 2016. The area in question is clearly identifiable on site.

Having previously secured formal confirmation from Transport NI that the required road works "between the southern and northern boundaries of the existing lane" to the North of the site shall be adopted subject to them being completed to the appropriate standards, together with the further confirmation from Transport NI that "This will satisfy in full the delivery of road works determined under Planning Approval P/2006/1117F" our Client has affected the insertion of the kerbing required to the most northerly point of the works conditioned to be effected on site by our client. The said kerbing line has been provided, inspected and formally acknowledged by Transport NI as denoting the northern end point of all road works required to be effected under our clients

Michael Grant LLB *
Liam O'Shea LLB *
Liam O'Shea LLB *
NI VAT Reg. No. 690 8115 26
ROI VAT Reg. No. IE 585221 OI



development approval whether it be P/2006/1117/F and / or LA07/2017/0967/F. Transport NI have inspected the works and have approved the fact that the kerb line properly demarks the most northerly end point of all required road works. It is to be noted that the said kerb line lies well within the legal title boundary of our client's land and is some distance from your client's true land boundary as exists on site and as is evidenced on the registry of deeds title which your client has failed to evidence to date.

As is evident, from perusal of you clients planning site map, historic title maps and clearly identifiable on site our Client owns additional lands running northerly from the aforesaid laneway and specifically from the rear of said kerb line to your client's legal land boundary. Effectively and entirely contrary to the submissions made by your Clients representatives at the December 2018 Newry Mourne and Down Planning Committee, (being no doubt reflective of those previously advanced by their representative Mr Eamon Larkin at the Planning meeting on 14th November 2018) your client's PSD roads and street layout cannot achieve a tie in to the Watsons Road at the said kerb line without first securing our clients consent to the use of his retained lands.

As a consequence of our Clients land ownership to the rear of the afore-referenced kerb line our client's authority and approval are pre-requisites to your client being legally entitled to affect a tie in to the road works as are presently being affected by our client. Clearly the said tie in works cannot be affected within the red line of your client's application as same does not extend to encapsulate the kerb line. Transport NI have consistently and collectively stated and recorded (in writing and at minuted meetings) that it is a legislative requirement that all works (including the tie in) need to be carried out within the red line. This is clearly impossibility in the present instance as the kerb line, being situate within our Clients lands is considerably beyond the boundary of your client's lands. It is to be noted that the Ministerial direction of the former Regional Development Minister was issued in reliance upon a "widened Watsons Road being constructed along a new alignment adjacent to the new housing". In the event your client seeks to continue to rely upon this ministerial direction it is evident your client is obliged to acquire our clients title to our it's lands as lie between the end of his kerb line and your client's legal boundary.

Mr Simon Richardson, Divisional Roads Manager, has recently affirmed the required PSD drawings will provide full engineering details of the road layout, alignment and tie in for purpose of determining acceptability for adoption. Clearly the inability to affect the tie in re opens the entire issue as to the potential prejudice to the safety and convenience of road users. This matter is further heightened by the recorded fact that "in line with the general approach taken since the abeyance of a devolved local administration there has been no revocation of the opinion of the former Dfi Minister for infrastructure given on the 19th January 2015" to the effect "based on the adequacy of the infrastructure improvements intended to be carried out on Watsons Road itself" Transport NI were to cease with their previous objection based on the potential prejudice to the safety and convenience of road users. Clearly were the tie in not to be achievable the issue of adequacy of infrastructure improvements on Watsons road requires to be revisited, (currently without the input of a Dfi Minister) and the entire issue of the potential prejudice to the safety and convenience of road users, not simply on Watsons Road but also on Dorans Hill, the bridge and traffic line to the mini roundabout and indeed the issue of linked footway provision reawakens.

In the overall circumstances we consider it is incumbent upon your Client to realistically address the issues at hand. Our Client retains ownership of lands as lie between the end of the kerb line and your clients land boundary and accordingly said lands now represent key land for your client's purposes of achieving the required Tie In on Watsons Road required to facilitate "adequate

infrastructure improvements on Watsons Road" as was advanced to and accepted by the former Dfi Minister in 2015 as the basis to abandon the objections then otherwise held.

We have previously detailed to you our client's outright rejection of your client's allegations of encroachment. From the outset of your client's involvement with the neighbouring lands our client placed your client on full notice of the boundary limits and the issues associated with same and the ongoing planning application P/2013/0242/E. Our Client considers the unfounded allegations contained in your correspondence of the 22nd ult to have been entirely manufactured and wholly unsustainable. As matters stand our client retains an Absolute fee simple title estate and interest in the lands as lie to the rear of the afore mentioned kerb line and your clients land boundary and does not consent to the effecting of any works thereon or from any third party entering upon same. We are instructed to formally advise both Transport NI and Planners of our client's position.

We continue to await your client's full response to the outstanding issues raised in our previous correspondence of the 29th ult and 7th inst and in particular to full copies of the unregistered title documents upon which your client's title is based.

Yours faithfully

Campbell & Grant


Campbell & Grant Solicitors

OUR CLIENT: DORNAN'S HILL LIMITED

RE: BOUNDARY DISPUTE AT DORNAN'S HILL WATSONS ROAD

APPENDIX 2

APPROVAL OF PLANNING PERMISSION

Planning (Northern Ireland) Order 1991

Application No: **P/2006/1117/F**

Date of Application: **24th May 2006**

Site of Proposed Development: **Land opposite Nos. 20-24 Watsons Road
Newry**

Description of Proposal: **Construction of new housing development consisting of 77
dwellings and associated access, roads, parking and landscaping.**

Applicant: **EBD Construction**
Address: **2A Seavers Road
Newry
BT35 8HA**

Agent: **Milligan Reside Larkin Architects
Ltd**
Address: **56 Armagh Road
Newry
BT35 6DN**

Drawing Ref: **01 (REV 4), 02 (REV 9), 03 (REV 3), 04 (REV 2), 08 (REV 2), 10 (REV 2),
11 (REV 2), 12 (REV 2), 13 (REV 2), 18, 19,**

The Department of the Environment in pursuance of its powers under the above-mentioned
Order hereby

GRANTS PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to
compliance with the following conditions which are imposed for the reasons stated:

1. As required by Article 34 of the Planning (Northern Ireland) Order 1991, the
development hereby permitted shall be begun before the expiration of 5 years from
the date of this permission.

Reason: **Time Limit.**

2. All hard and soft landscape works shall be carried out in accordance with the
approved details and the appropriate British Standard or other recognised Codes of
Practice.

Reason: **To ensure the provision, establishment and maintenance of a high standard of**



landscape.

3. No development activity shall commence on site until a Badger Fencing Method Statement is submitted to the Department and agreed in writing and all badger fencing on site shall conform to this. This shall include a drawing showing the location of all badger fencing to be erected on the site and shall provide details of the type of fencing and the construction method to be used, including timing of works.

Reason: To protect badgers and their setts.

4. There shall be no construction works, vegetation clearance, disturbance by machinery, dumping or storage of materials within the badger sett exclusion zones, wildlife corridors or wetland area as shown on Drawing No. 02 (Rev 9), date stamped 27th February 2013 by the Planning Office.

Reason: To protect badgers and their setts and newt breeding habitat.

5. Existing trees and hedgerows, as shown on Drawing No. 02 (Rev 9), date stamped 27th February 2013 by the Planning Office, shall be retained and protected in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery, including ivy removal, take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Department.

Reason: To minimise the impact of the proposal on the biodiversity of the site, including protected species.

6. No development activity shall commence on site until a lighting scheme is submitted to the Department and agreed in writing. The lighting scheme shall show the use of low level street lighting throughout the site and shall show no illumination of the badger sett exclusion zones, wildlife corridors, wetland area or retained trees and hedgerows.

Reason: To minimise the impact of the proposal on the biodiversity of the site, including protected species.

7. The Private Streets (Northern Ireland) Order 1980. The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No FB1016-202 REV F bearing the date stamp 14th March 2013.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

8. Notwithstanding the provisions of the Planning (General Development) Order (NI) 1993 no garages shall be sited closer than 5.6 metres from the back of the footway or



service strip.

Reason: To ensure that there is space for a parked vehicle without encroaching onto the footway or service strip.

9. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992

No part of the development hereby permitted shall be occupied until the works necessary for the improvement of a public road have been completed in accordance with details outlined blue on Drawing No.FB1016-202 REV F bearing the date stamp 14th March 2013.

The Department hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out.

10. The visibility splays as indicated on drawing No FB1016-202 REV F bearing the date stamp 14th March 2013 at the junction of the proposed housing access road with the public road, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development.

Reason: No ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

11. No dwellings shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of each phase.

Reason: To ensure the orderly development of the site and the road works necessary to provide satisfactory access to each dwelling.

12. Notwithstanding the provisions of the Planning (General Development) (Northern Ireland) Order 1993, no buildings, walls or fences shall be erected, nor shall boundaries be defined by the formal planting of hedges or rows of trees, between the shared surface road (as defined in the Departments Creating Places) and any building having a frontage to it.

Reason: To ensure an informal plan layout in accordance with the Department of the Environment's and Department for Regional Development's design guidance for achieving quality in residential developments.

13. Notwithstanding the provisions of the Planning (General Development) (Northern Ireland) Order 1993, no buildings, walls or fences shall be erected, nor hedges nor formal rows of trees grown, (in verges / service strips) determined for adoption.





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Reason: To ensure adequate visibility in the interests of road safety and the convenience of road users and to prevent damage or obstruction to services.

14. No dwelling shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of private cars at the rate of 2 spaces per dwelling.

Reason: To ensure adequate (in -curtilage) parking in the interests of road safety and the convenience of road users.

15. Prior to the commencement of any development hereby approved, the developer shall have written consent of Northern Ireland Water to connect into existing foul and storm water systems or obtain the written consent of the Department for alternative means of disposal of storm and foul water from this development.

Reason: To ensure drainage and run off from the application site are adequately dealt with.

16. The Private Streets (Northern Ireland) Order 1980 The development shall be in accordance with the requirements of the Department's Layout of Housing Roads Design Guide 1980 and, for the purpose of adopting private streets as public roads, the Department shall determine the width, position and arrangement of the streets associated with the development and the land to be regarded as comprised in those streets.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Street (Northern Ireland) Order 1980.

17. No part of the development hereby permitted shall be occupied until the works necessary for the provision of the footway adjacent to Watsons Road/Liska Road has been completed in accordance with the approved layout on drawing No EB1016-202 REV F bearing the date stamp 14th March 2013.

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out.

18. The development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted and approved by the Department for Regional Development Street Lighting Section.

Reason: Road safety and convenience of traffic and pedestrians.

19. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Regional Development Street Lighting Section.

Reason: To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians.



20. All appropriate road markings and associated signage within the development and on the public road shall be provided by the developer in accordance with the Department's specification (Design Manual for Roads & Bridges) and as directed by Roads Service Traffic Management Section prior to the development becoming occupied by residents.

Reason: In the interest of road safety and traffic progression.

21. The gradient of a private access should not exceed 8% for the first 5m outside the public road boundary and a maximum gradient of 10% thereafter.

Reason: In the interest of Road Safety.

22. The developer prior to the commencement of any road works shall provide a detailed programme of works and associated traffic management proposals to the Department of Regional Development Roads Service for agreement in writing.

Reason: To facilitate the free movement of roads users and the orderly progress of work in the interests of road safety.

23. The developer will contact Roads Service Traffic Management prior to commencement of works on site to agree a suitable position for any existing road signage that will require being relocated as a result of this proposal.

Reason: In the interests of road safety and traffic progression.

24. Upon the occupation of any 26 of the dwellings, the developer shall provide the proposed public open space and all peripheral planting as indicated on the approved plan, drawing no.02 (REV 9) date stamped 27th February 2013.

Reason: To ensure that the public open space provision is completed prior to the occupation of certain phases of the development for the benefit of the occupiers and to aid the integration of the development into the local landscape as quickly as possible and to assist in the provision of a quality residential environment in accordance with PPS7 Quality Residential Development and PPS8 Open Space, Sport and Outdoor Recreation.

Informatives

1. The applicant's attention is drawn to The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European protected species included in Schedule II of these Regulations, which includes all species of bat. It is also an offence;
- (a) Deliberately to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - (b) Deliberately to disturb such an animal in such a way as to be likely to;



- (i) Affect the local distribution or abundance of the species to which it belongs;
- (ii) Impair its ability to survive, breed or reproduce, or rear or care for its young; or
- (iii) Impair its ability to hibernate or migrate;
- (c) Deliberately to obstruct access to a breeding site or resting place of such an animal; or
- (d) To damage or destroy a breeding site or resting place of such an animal.

Mature trees on site have bat roost potential. If there is evidence of bat activity or roosts on the site, all works must cease immediately and further advice must be sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT72JA. Tel. 028 905 69605

2. The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 of this Order, which includes the badger (*Meles meles*). It is also an offence to intentionally or recklessly: damage or destroy, or obstruct access to, any structure or place which badgers use for shelter or protection; damage or destroy anything which conceals or protects any such structure; disturb a badger while it is occupying a structure or place which it uses for shelter or protection.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

If there is evidence of badger on the construction site, all works must cease immediately and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 905 69605

3. The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 of this Order, which includes the smooth or common newt (*Lissotriton vulgaris*, formerly *Triturus vulgaris*). It is also an offence to intentionally or recklessly: damage or destroy, or obstruct access to, any structure or place which newts use for shelter or protection; damage or destroy anything which conceals or protects any such structure; disturb a newt while it is occupying a structure or place which it uses for shelter or protection.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

If there is evidence of newts on the site, all works must cease immediately and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 905 69605

4. The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland)



Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild bird. It is also an offence to intentionally or recklessly take, damage or destroy the nest of any wild bird while that nest is in use or being built; or take or destroy an egg of any wild bird. If any person intentionally or recklessly disturbs any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or disturbs dependent young of such a bird they shall be guilty of an offence.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

It is therefore advised that tree and hedge loss should be kept to a minimum and removal should not be carried out during the bird breeding season between 1st March and 31st August.

5. The applicant's attention is drawn to the Welfare of Animals Act (Northern Ireland) 2011 which indicates that it is an offence to cause unnecessary suffering to any animal. There are wild animals such as foxes and rabbits present on site. To avoid any breach of the Act through entombment or injury to animals on site the applicant should ensure that best practice techniques are applied during construction works. Advice on working with wildlife is available from the CIRIA online knowledge base at www.ciria.org
6. Water Management Unit recommends the following measures be incorporated:
In order to decrease the risk of the incorrect diversion of 'foul' sewage to drains carrying rain/surface water each building shall be provided with such sanitary pipework, foul drainage and rainwater drainage as may be necessary for the hygienic and adequate disposal of foul water and rainwater separately from that building. The drainage system should also be designed to minimise the risk of wrongly connecting the 'foul' sewage system to the rainwater drainage system, once the buildings are occupied.

The buildings associated with this planning application should not be occupied unless the necessary sewerage infrastructure is in place to transfer foul sewage to a Northern Ireland Water Limited (NIW) sewer in an acceptable manner or a private wastewater treatment facility consented by WMU. It should be noted that WMU does not favour existing sewerage infrastructure being utilised in such a way as to act as a temporary 'cesspit'.

Any oil tanks serving the development should be bunded. Pollution Prevention Guideline (PPG2).

The applicant should comply with all the relevant Pollution Prevention Guidelines in order to minimise the impact of the project on the environment, paying particular attention to:

- PPG 01 - General guide to pollution prevention
- PPG 02 - Above ground oil storage
- PPG 05 - Works and maintenance in or near water



PPG 06 - Working at demolition and construction sites

These PPGs can be accessed by visiting the netregs website at:
http://www.netregs.org.uk/library_of_topics/pollution_prevention_guides/construction_ppgs.aspx

Hard copies are available from NIEA WMU upon request.

Should a sewage pumping station be required for this development then the applicant must apply to NIEA WMU for Water Order (1999) consent for an 'emergency overflow'.

The applicant should be informed that it is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment.

The applicant should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter.

7. Private Streets Order (Northern Ireland) 1980 Under the above Order the applicant is advised that before any work shall be undertaken for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads and sewers in accordance with the Private Streets Construction Regulations.
8. Separate approval must be received from Roads Service in respect of detailed standards required for the construction of streets in accordance with the Private Streets Construction Regulation.
9. In order to ensure that the laying of ducts and the erection of columns for street lighting is coordinated with the construction of the streets, the applicant should contact the Roads Service Street Lighting section at Carn Depo, Portadown before any construction work commences.
10. The service strips coloured green with black hatching on the approved plan have been determined as lands to be adopted by the DRD. It is, therefore, essential that vendors inform house purchasers of their limited rights within such strips. It is strongly recommended that the developer does not sell or lease the land from the service strips as parts of housing plots. If land for service strip is to be sold or leased to house purchasers the vendor must insert in the deeds the following clause or covenant:-

"The purchaser hereby covenants with the vendor that he/she, the purchaser, and his successors in title will not at any time hereafter erect or construct any building wall or





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fence or plant any tree or shrub on the strip of land shown cross hatched green on the plan annexed hereto, nor do or suffer to be done therein or thereon any act, matter or thing whereby the cover of soil over or the support of the pipes, wires and/or cables laid in the said strip of land shall be altered or which may render access thereto more difficult or expensive and shall understand that the road authority and statutory undertakers have unencumbered right of access to the said strip of land.

11. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Any mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.
12. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
13. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to [REDACTED] development.

Dated: 8th May 2013

Authorised Office [REDACTED]



OUR CLIENT: DORNAN'S HILL LIMITED

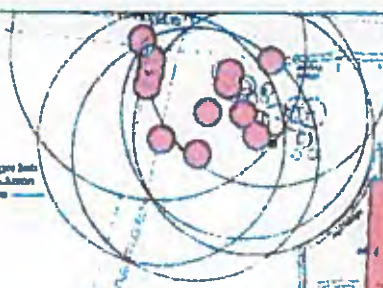
RE: BOUNDARY DISPUTE AT DORNAN'S HILL/WATSONS ROAD

APPENDIX 3

- Legend
- House type and no.
- House Number and level
- Proposed level
- Change circle
- Proposed gutter
- Existing gutter



Bridge 2nd & Exchange
Lanes



- Notes:**
1. New gutters provided on Waters Road Drive side opposite to the existing gutter & vehicle set lines based on your planning approval (W020/0127) Range & Borough
 2. New gutters crossing party to drive stoppage lines and levels. Level and location to be agreed with Home Services P's via EDB's agreement

- KEY**
- 0.5m to 1.8m SERVICE STRIP
 - ROADWAY & FOOTPATH

Symbol	Description
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]
[Symbol]	[Description]

Waters Road to be widened on our approval. Planning consent

Planning (W020/0127) Range & Borough

STATUS OF DRAWING

No.	Description	Date
1	Issue for planning consent	08/12/12
2	Issue for construction	08/12/12
3	Issue for completion	08/12/12



EDB Construction

Proposed Housing Development of Waters Road, Newry

Proposed Road Distribution

1500

FB 1018-803

08/12/12

CM ETL

OUR CLIENT: DORNAN'S HILL LIMITED

RE: BOUNDARY DISPUTE AT DORNAN'S HILLWATSONS ROAD

APPENDIX 4

E.D.B Construction - E Bayla



Land & Property Services

THE LAND REGISTRY

Date: 23 Aug 2010
County: Armagh
Folio: AR105490
Scale: 1:2500
Our Ref: 2010/570020
Your Ref: NMCC/0530-0
Map Ref(s): 20010NE

Sheet 1 of 1

Key to folio labels

a - AR105490

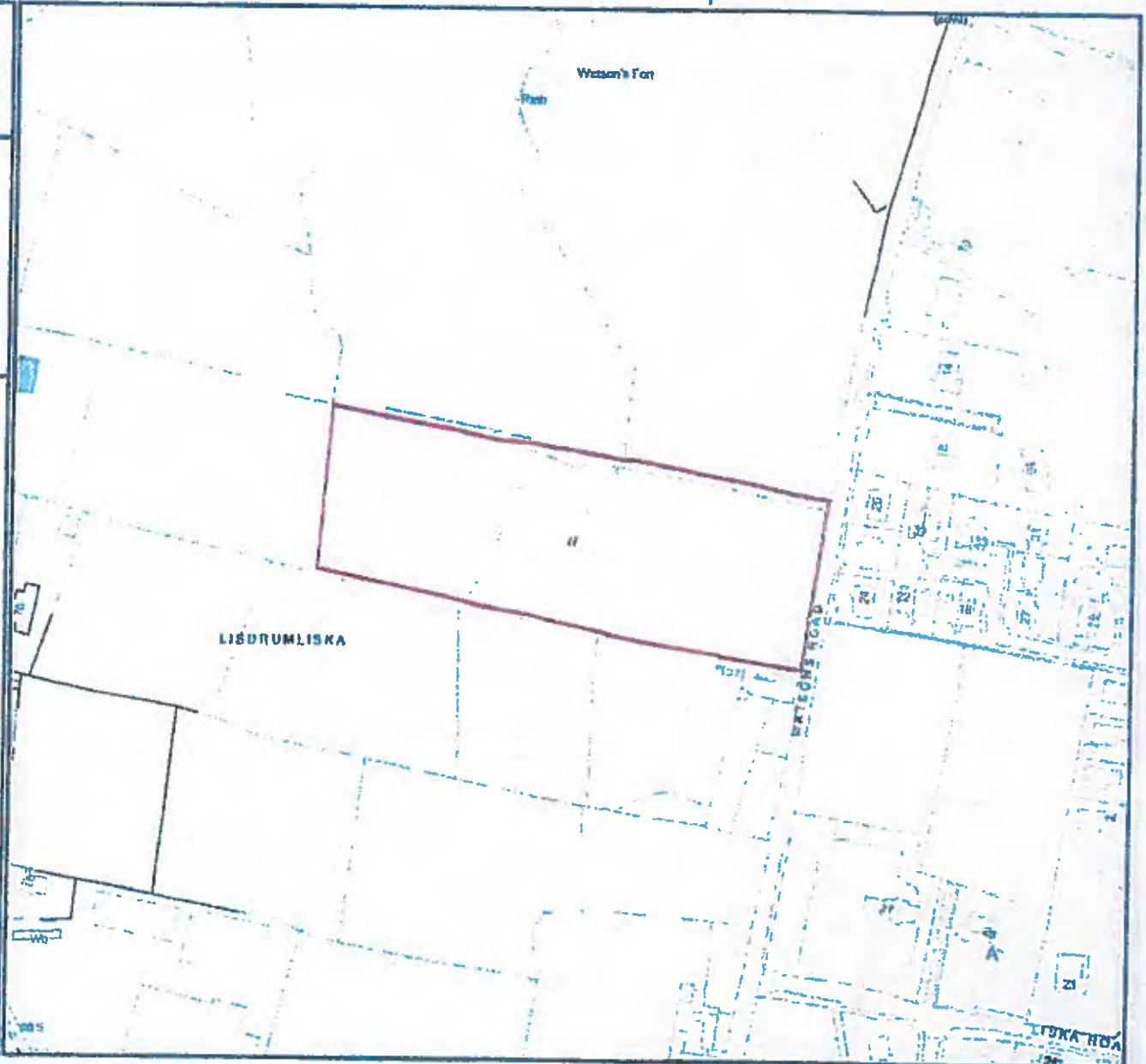
This sheet is a 2D aerial photograph with a 1:2500 scale. It is a reproduction of the original aerial photograph and does not show any changes to the land since the date of the original photograph. It is not a plan of the land and should not be used for any purpose other than as a reference to the land shown on the original photograph.

This sheet is a 2D aerial photograph with a 1:2500 scale. It is a reproduction of the original aerial photograph and does not show any changes to the land since the date of the original photograph. It is not a plan of the land and should not be used for any purpose other than as a reference to the land shown on the original photograph.

For more information please see the notes on the back of this sheet.

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Land & Property Services.
THE LAND REGISTRY

Date: 13 Mar 2017
 County: Armagh
 Fofo: AR128570
 Scale: 1:2500
 Our Ref: 2017/188875
 Your Ref: NMCC/8530-9
 Map Ref(s): 268889E4,26810NE

Sheet 1 of 1

Key to fofo labels:

■ 11128570

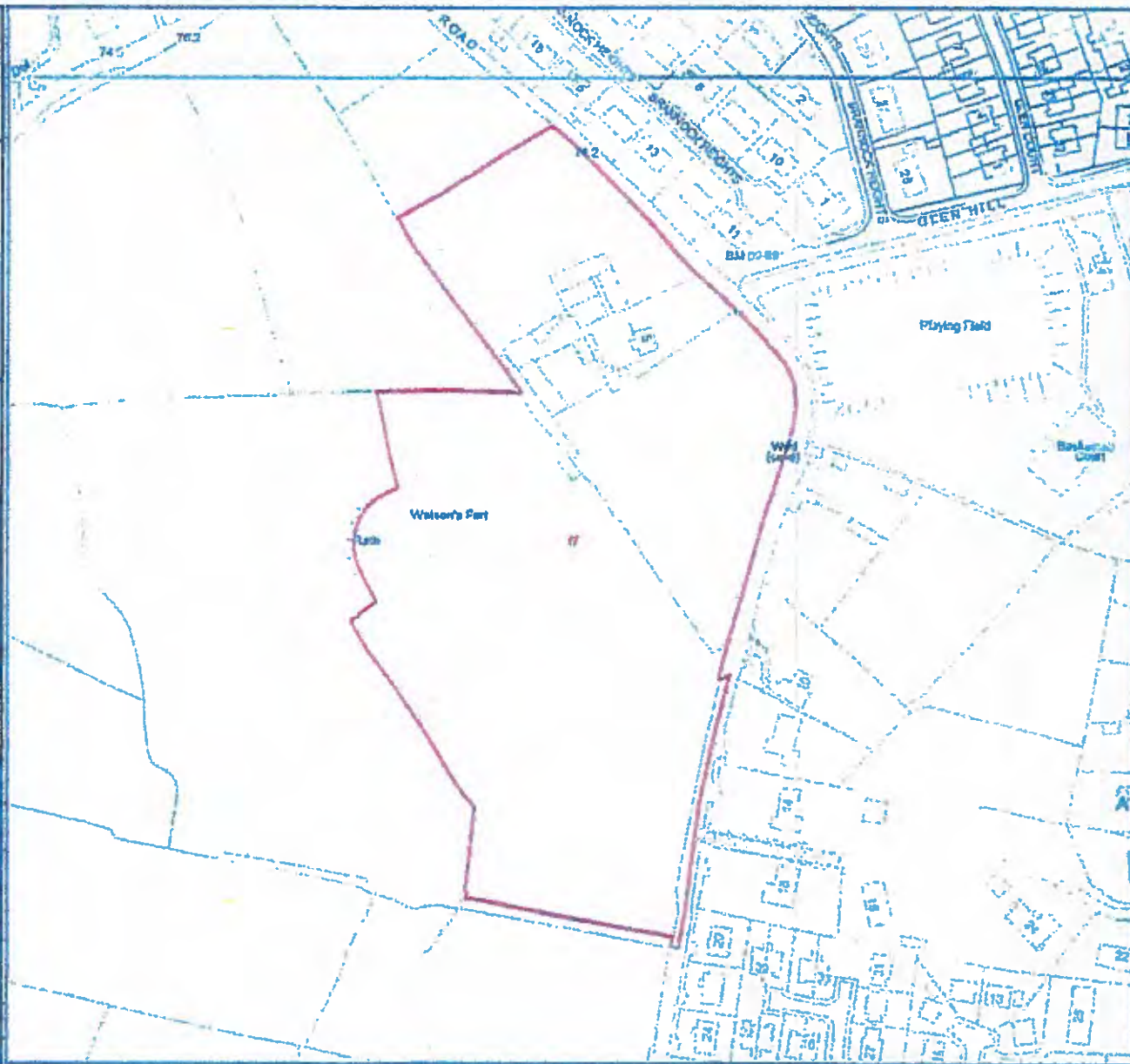
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OUR CLIENT: DORNAN'S HILL LIMITED

RE: BOUNDARY DISPUTE AT DORNAN'S HILL WATSONS ROAD

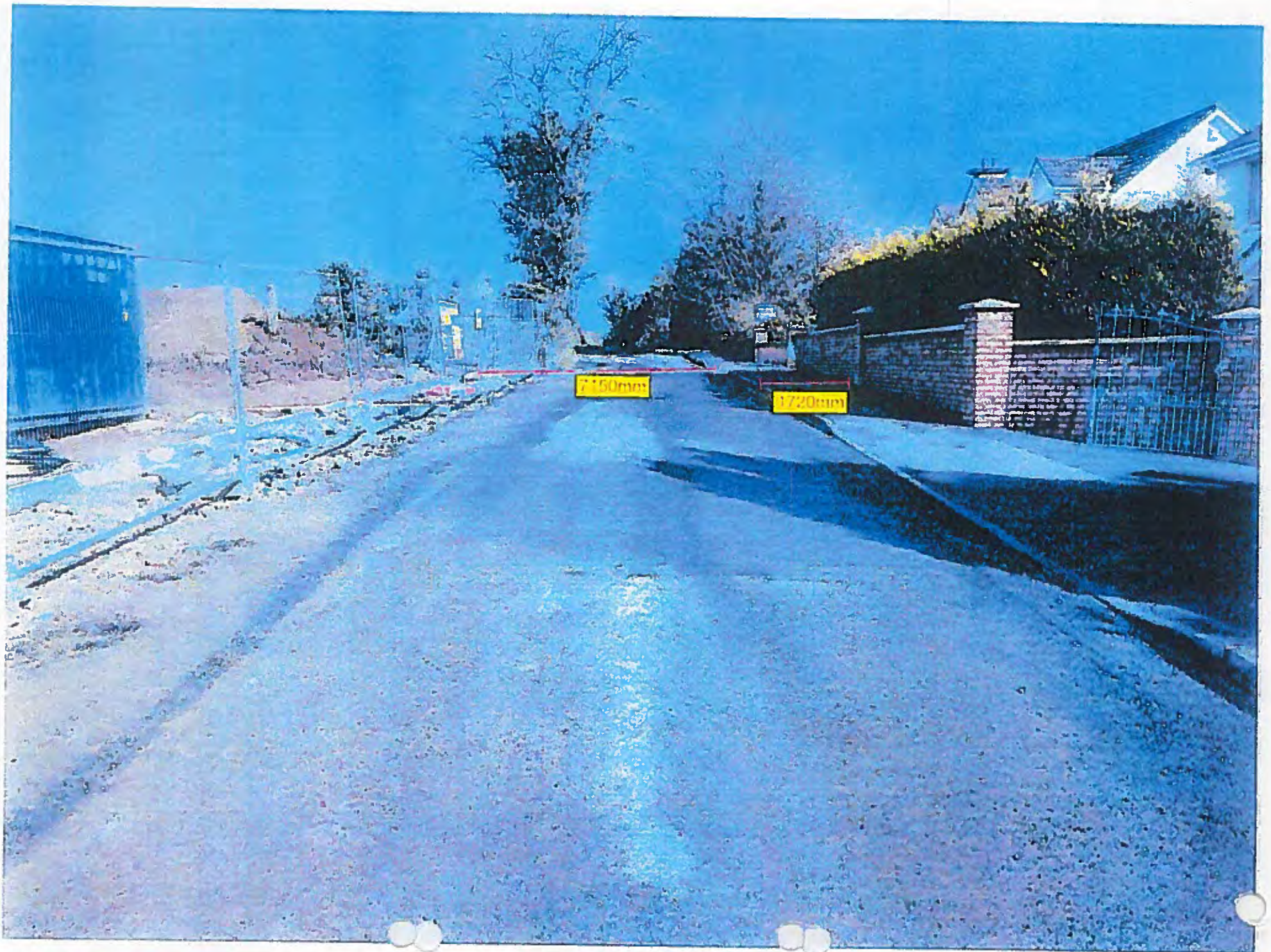
APPENDIX 5



OUR CLIENT: DORNAN'S HILL LIMITED

RE: BOUNDARY DISPUTE AT DORNAN'S HILLWATSONS ROAD

APPENDIX 6



09 APR 2019

Mail track ref: 93690-19
Reply By: 02/5/19

DEVELOPMENT
CONTROL



OUR REF: MG/VR/B288-7

YOUR REF: 92661-19, 92662-19 & 92891-19

08 April 2019

TKL
9.4.19
Campbell & Grant
SOLICITORS

Reynold Nicholson
Department for Infrastructure – Southern Division

17 Sugar Island, Newry
County Down BT35 6HT
Tel: (028) 3026 6660 (4 lines)
Tel: (028) 3025 1518 (2 lines)
Fax: (028) 3026 5060
DX 2065 NR NEWRY

Dear Sirs

e-mail: law@campbellandgrant.com
www.campbellandgrantni.co.uk

Re: Planning Application P/2013/0242F – Watsons Road, Newry
Our Client: EDB Construction Ltd

We refer to the above matter, your correspondence of 28th ult. received here on 4th inst. and our subsequent response and e-mails of 5th April 2019. Having received notice of a proposed meeting with your Senior Engineer Mr Kelly we immediately liaised by e-mail and were notified of proposed meeting at 10.45 yesterday morning which we accepted and attended. On arrival on site at 10.45 there were several representatives of Dfi Infrastructure on site who were engaged in a meeting having advised our Client's Contractor on site that they were not yet available. We remained on site until 11.15 am and having not received any approach from Dfi representatives we approached the group seeking to identify Mr Kelly. We identified ourselves and the purpose of our attendance and explained that as our meeting with Mr Kelly had been scheduled for 10.45 we were under time restraint and would shortly be departing. Shortly thereafter Mr Kelly and the entire group of Dfi Infrastructure representatives approached our Client and representative. As the meeting organised through this Office pursuant to your letter 28th March 2019 was with your Senior Engineer Mr Thomas Kelly for the purposes of confirming the setting out of the alignment of Watsons Road was fully in accordance with the Determination Drawing we objected to involvement of third parties without prior notice and whilst we had no difficulty with their presence our meeting was scheduled with Mr Kelly.

The meeting was conducted on site and it was explained that Dfi Infrastructure now consider the Drawing as determined may be misleading as it was now sought to depart from the standard procedure of measuring the roadway from the kerb edge and rather to measure from a position entirely removed from the kerb edge. For our part we referred to the earlier Determination Drawing as approved under P/2006/2037F and which works have long since been completed and adopted. The current Determination Drawing, being that related to P/2006/1117/F, has an overlap with the earlier works and it is quite clear that the measurement of the roadworks required has at all times been taken from the kerb line and not an undefined position a further 0.8 of a metre into the roadway. In addition the site as defined under the requisite 3(4C) Agreement clearly defines the site as being 181 linear meters of the "entire road known as Watsons Road, Newry". It is our Client's position that the works on site have been set out and aligned in compliance with the Determination drawing and the related Article 3(4C) Agreement.

Michael Grant LLB *

Cory Haughey LLB *

Peter Rooney LLB *

NIVAT Reg No. 690 8115 26

ROIVNI Reg No. IF 585221 OI



Matters progressed to consider markings effected by Dfi Officials on the ground at their earlier meeting which, to be accommodate, would require the re-alignment of a portion of a kerbing from the northern radius at the access to the new development to the Northerly end of the Determination Drawing. This work requires moving the northerly end point of the kerb line some 0.8 metres further into our Client's land from the original road edge. This divergence arises entirely from the novel concept of seeking to effect measurements from a position 0.8 of a metre off the road kerb. Our Client's position is satisfied that the road works effected have been carried out in accord with the Determination Drawing and pursuant to the Article 3(4C) Agreement and indeed have been supervised and set out by your Private Street Supervisory Staff at all times, a fact acknowledged by your representative. In an effort to reach an accommodation with Transport NI we consulted with our Client on site and our Client would be prepared to carry out the works necessary to extend the width of Watsons Road at the points marked by your Engineer, as an addition to the works required under the Determination Drawing.

Having attended to the Transport NI concerns as to width, we progressed to your Mr Kelly seeking to re-visit the issue of the Northerly end point of the works. This is a matter of considerable concern given the care and consideration as has been afforded the fixing of this end point at the existing hedge line in accord with the Determination Drawing and which fixing was inspected and agreed on site and subsequent written approval thereof was received by this Office from your Department. Mr Kelly, upon consulting with his colleagues on site then produced correspondence, issued on the 26th February 2019, by this office to Cleaver Fulton Rankin Solicitors for the adjoining land owner. The correspondence Mr Kelly produced issued as a direct response to legal correspondence issued at the direction of the adjoining developer whereunder it was alleged that our Client was encroaching upon the lands of the adjoining developer and furnishing photographs of the end kerbs as being the detail of the encroachment. Mr Kelly sought to advance the issues raised therein as a source of justification for Transport NI's purported review of the positioning of the kerb line at the most northerly end of the road works.

We immediately objected to Mr Kelly, [in his capacity as a Senior Engineer of Dfi, present to determine the compliance or otherwise of works with a Determination Drawing], seeking to raise matters of dispute between two adjoining Landowners! The matter was compounded when it became evident that his colleagues on site were there to address the issues raised in said correspondence and were in a position to produce to us a copy of our correspondence with a Third Party in respect of a contentious matter within which they sought to become embroiled in asking that we detail on site our title boundaries. We make objection in the strongest of terms to the evident involvement of Dfi and in particular Transport NI in the matter of land boundary issues. Our Client's position is that the setting out of the kerbing line at the Northern point of the roadworks to be effected under our Client's Determination Drawing are in full compliance with the said Determination Drawing, in line with the existing hedge denoted on the Determination Drawing and were set out and aligned in accordance with the direction of your Private Street Supervisory Staff and subsequently inspected and formally approved by your Engineer. When setting out said kerb line our client was wrongfully accused of trespass and damage by the adjoining owner and threatened with injunctive proceedings. The correspondence which your personnel carried to site was infact issued in the course of responding to the legal correspondence issued on behalf of the adjoining owner.

In an effort to explain the Department's concern as to our land boundary your Senior Engineer advised that the concern was to ensure tie in with the adjoining development was achieved.

detailed on the Determination Drawing shall be set out today Tuesday 9th April 2019 and we invite your Mr McArdle to inspect and approve same. It is intended that all the determined works will be effected imminently and any delay attributable to third party interference will be actioned.

Yours faithfully

A handwritten signature in black ink, appearing to be 'C.G.', written over a black rectangular redaction box.

Campbell & Grant Solicitors

Laughlin, Rowan

From: Nicholson, Reynold
Sent: 09 April 2019 16:34
To: Kelly, Thomas; Laughlin, Rowan
Subject: FW: Planning Application - P/2013/0242/F - Watsons Road, Newry - EDB Construction Limited
Attachments: MX-5070V_20190409_154517.pdf

Sent with BlackBerry Work
(www.blackberry.com)

From: [REDACTED] <[\[REDACTED\]@campbellandgrant.com](mailto:[REDACTED]@campbellandgrant.com)>
Date: Tuesday, 09 Apr 2019, 3:44 pm
To: Nicholson, Reynold <[\[REDACTED\]@infrastructure-ni.gov.uk](mailto:[REDACTED]@infrastructure-ni.gov.uk)>
Cc: EDB Developments <info@edbdevelopments.com>
Subject: Planning Application - P/2013/0242/F - Watsons Road, Newry - EDB Construction Limited

Dear Sir

Please see attached.

Kind Regards

Bernie

Mail track REF: 93686-19

Reply By: 03/may/19



YOUR REF: MG/VR/B288-7

YOUR REF: 92661-19, 92662-19 & 92891-19

9.4.19

05 April 2019

Campbell & Grant
SOLICITORS

F.A.O. *Reynold Nicholson*
Department for Infrastructure
Dfi Roads – Southern Division
Development Control
Rathkeltair House
Market Street
Downpatrick BT30 6AJ

DFI ROADS
SOUTHERN DIVISION

10 APR 2019

DEVELOPMENT
CONTROL

17 Sugar Island, Newry
County Down BT35 6HT
Tel: (028) 3026 6660 (4 lines)
Tel: (028) 3025 1518 (2 lines)
Fax: (028) 3026 5080
DX 2065 NR NEWRY
e-mail: law@campbellandgrant.com
www.campbellandgrantni.co.uk

Dear Sirs

Re: Planning Application P/2013/0242/F – Watsons Road, Newry
Our Client: EDB Construction Ltd

We acknowledge receipt of yours dated 28th March received 4th April 2019. We confirm receipt of PSD Drawing Revision K revised 7th February 2019 and Revision L dated 28th February 2019 which are presently being reviewed. In the event that there are further revised PSD Drawing furnished in this matter we would be obliged if you could kindly note our interest in the matter and ensure copies thereof are forwarded without delay.

We note, with some surprise, that you refer to our being in correspondence with Cleaver Fulton Rankin as Solicitors for MJM Dorans Hill Limited. With respect we fail to see the relevance of our correspondence with Cleaver Fulton Rankin to the matters now raised with Dfi Roads and to which you refer. We can advise that our Client having received correspondence from Cleaver Fulton Rankin Solicitors, acting on behalf of their Client MJM Dorans Hill Limited, the matters therein raised were brought to the attention of this Office and referred to Counsel. All issues raised by Cleaver Fulton Rankin have been roundly rebutted and are now subject to further Applications made on our Client's behalf at Counsel's Direction. We do not consider the matters raised by Cleaver Fulton Rankin with our Client to be matters in which your Department would be properly embroiled.

In the circumstances we would ask you immediately disclose to us all correspondence received in this matter from Cleaver Fulton Rankin and any response made thereto. In the event you are unable or unwilling to immediately provide copies of said correspondence to us please note that we make this request under the Freedom of Information Provisions and require copies of such correspondence and specifics on the basis relied upon to refuse to furnish same.

We note your advices that in order to eliminate confusion about proper road linkage between the two sites you have instructed your Private Streets supervisory staff to review the situation on the ground for the purpose of confirming the setting out of the alignment is fully in accordance with the Determination Drawing. We are quite prepared to facilitate an on site inspection of works by your Senior Engineer to review the works and their accord with the Determination Drawing. In this regard we are e-mailing Mr Kelly a copy of your correspondence and a copy of this response.

Michael Grant LLB *
Gary Haughey LLB *
Peter Rooney LLB *

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You will appreciate our primary concern is to ensure our Clients development works accord and comply with the requisite Determination Drawing. Your Private Street staff have in fact performed a supervisory role whilst the works were being effected on site with particular reference to the alignment and setting out of same. In addition your Private Street staff have effected regular inspection and given direction on site to which all works accord.

We note your reference to both developers and alluding to enforcement provisions. We must advise that we act on behalf of our Client EDB Construction which has no difficulty in complying with the Determination Drawing as issued in respect of our Client's development. Any question of linkage between the two sites is clearly a matter beyond the scope of the Determination Drawing and Article 3(4)C Works to which our Client is committed and in respect of which a formal agreement is in place supported with the appropriate bond. It is further noted that the linkage required to the proposed adjoining development is a much more recent matter than the Determination Drawing to which our Client's development is subject.

We would suggest Mr Kelly contact this Office to confirm availability for proposed site viewing of works as constructed vis a vis the Determination Drawings in respect of our Clients development. Mr Kelly may contact the Writer directly by e-mail on Michael@campbellandgrant.com with details of his availability and we will endeavour to arrange a mutually convenient appointment to accommodate your Senior Engineer on site.

Yours faithfully

Campbell & Grant


Campbell & Grant Solicitors

cc. Thomas Kelly
Senior Engineer

MALI track REF: 93688-19

Reply By: 03/05/19

DFI ROADS
SOUTHERN DIVISION

10 APR 2019

DEVELOPMENT
CONTROL

9.4.19
**Cleaver
Fulton
Rankin**

For the attention of Reynold Nicholson
Department for Infrastructure
Development Control
Rathkeltair House
Market Street
DOWNPATRICK
Co Down BT30 6AJ

Our Ref: RAM\MAB\52481-1
Your Ref: 92888-19
Date: 03 April 2019

Dear Sirs

MJM Doran's Hill Ltd – Development at Watson's Road, Newry
Planning Application: P/201380242
Our Client: MJM Doran's Hill Ltd

We refer to the above matter and to your letter dated 28 March 2019.

We should be grateful if you could kindly arrange to furnish us with the referenced correspondence from Carson McDowell LLP.

We look forward to receiving an update from you as soon as possible. Thank you for your kind assistance in this matter.

Yours faithfully


Cleaver Fulton Rankin

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