

Sonas,
Cahercalla Wood,
Cahercalla,
Ennis,
Co. Clare V95HW14



Connellan
&
Associates

Architectural,
Planning &
Energy Rating
Consultants

Phone: 00 353 65 68 24520
E-mail: connellanandassociates@gmail.com

Draft Clare County Development Plan 2023-2029,
Planning Department,
Clare County Council,
New Road,
Ennis,
Co. Clare



V95 DXP2

14/3/2022

Dear Sir/Madam,

We act for and on behalf of Margaret Ann Killeen, [redacted] and wish to make a submission on her behalf to the draft Clare County Development Plan 2023-2029 seeking the rezoning of a small section of open space to side of her house.

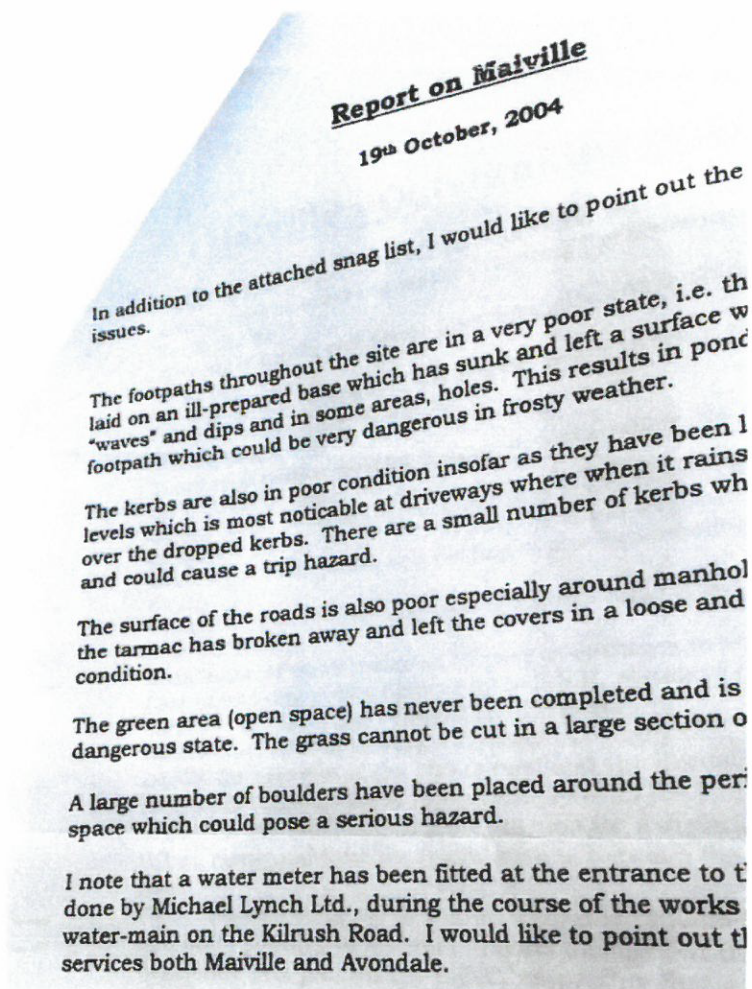
Ms. Killeen owns [redacted] – an extract from the Maiville estate is shown on the map below. The houses are numbered and we have superimposed a red arrow indicating number 18 for ease of reference.



Map 1: Location of number 18 Maiville, Kilrush Road

The Council will be aware that Maiville estate was developed by Barry Construction Ltd approx. 45 years ago. The company ceased trading after being dissolved in the early 90's.

The public areas of the estate were left in poor condition in many instances. A Council report in 2004 indicated that the kerbs were in a very poor state; the surface of the roads were poor and the green area (open space) had never been completed and was in a dangerous state, the grass not capable of being cut in large sections – see section of report below.



Ennis Town Council did some remedial works to the estate roads and footpaths under the bond and the roads were taken in charge by the Council in November 2008.

Our client's mother, Margaret Killeen (widowed) bought number [redacted] Maiville in 1987 and lived there alone. She built a garage to the right hand side of the house around 1989 as exempted development. The garage was later converted to habitable use and a small utility room was built at the back in 2001 with a Council Disability Grant, all under the auspices of the Health Board.

There was an area of unkept uneven ground beside Mrs Killeen's house. This was part of a much wider area of public open space for the estate but was never properly levelled or used for this purpose. Margaret Ann's mother started to use an approx. 6 metre wide strip of this ground to the side of her new garage from 1989 onwards. The area in question was used to bring in fuel, gas etc. and for off

road car parking. When the garage was converted to habitable use in 2001 (with a Council Disability Grant) a side door was opened directly onto the area, recognising it as the side access to her house. A window to habitable space inside the house was also provided facing directly across this open area.

Margaret Ann's mother had put down bits of gravel on the area since the late 1980's. In 2011 her grandson strengthened this gravelled area for her. A photo taken in 2012 indicates the converted garage, the side window and door and the area to the side of the converted garage being used as an access and parking area.



Photo 1: March 2012 – photo of side of house showing converted garage and use of subject area

The Council wrote to Mrs Killeen at the time with respect to the matter. The grass was subsequently left to grow back over the area but the gravel remained and was never removed. This can be seen in photo 2 above taken a few years ago where the gravelled area is used for car parking. The remainder of the strip is levelled, mown and taken care of as part of the house site. The Council did not pursue the matter after 2012.



Photo 2: Photo taken some years ago showing car parked to side of house and mown area of grass

The Council can see the condition of the open space to the left in photo 2 – basically the same rough, uneven and unmaintained condition noted in the Council report of 2004.

Margaret Ann’s mother died and the house passed to our client. She wanted to secure the property by enclosing it. It had already been the subject of a break in – see Garda report attached. She was aware that her mother had used the area beside the house since 1989 and took legal advice as to whether she could build a wall around this area having regard to this long usage. She was satisfied based on this legal advice that she could proceed with building a wall and a shed, both of which she took to be exempted development.

Clare County Council served a Warning Letter on 23rd. April 2021 – file ref. UD 21-038 refers. Our client stopped the development and applied for permission for retention – planning application reference 21/1127 refers. Photo 3 below shows the development in question.



Photo 3: Wall/shed erected to side of [REDACTED] Maiville, subject of planning application 21/1127

Unfortunately the application only contained the basic site maps, drawings and application form and did not set out the history of the site or the planning merits of the development.

Our client was refused planning permission to retain the development for the following 3 reasons -

- 1. It is considered that the development to be retained would result in the permanent loss of a communal open space area within the Maiville Estate which would materially contravene the onsite 'open space' zoning objective as set out in CDP 19.3 of the Clare County Development Plan, 2017-2023, as varied, which seeks to retain such areas, mainly for passive open space related activities. Furthermore, it is considered that the proposal would set an undesirable precedent for other similar type developments in the area. The proposal would therefore be contrary to the proper planning and development of the area.*
- 2. Having regard to the works which have been undertaken to the public footpath, and the consequent impact on pedestrians/footpath users, the Planning Authority is not satisfied that such works will not result in a hazard to pedestrian safety. It is therefore considered that the development to be retained would endanger public safety by reason of pedestrian hazard.*
- 3. Having regard to the location of public infrastructure which has been enclosed by reason of the development to be retained, the Planning Authority is not satisfied that the subject application would not be prejudicial to public health*

Our client appealed this decision to An Bord Pleanala setting out the history and also now taking the opportunity to set out the planning merits. It is considered that the existing zoning as public open space may possibly be an obstacle to any grant of permission. This is the reason for this submission on the draft plan to seek rezoning of the small section of land from public open space.

Before setting out the case for rezoning we would like to address reasons 2 & 3 of the refusal of planning permission so that they do not linger as issues or impact to any degree the decision on the rezoning request.

Works to public footpath

Reason 2 for refusal states –

Having regard to the works which have been undertaken to the public footpath, and the consequent impact on pedestrians/footpath users, the Planning Authority is not satisfied that such works will not result in a hazard to pedestrian safety. It is therefore considered that the development to be retained would endanger public safety by reason of pedestrian hazard.

It is not intended that the footpath would be left in this condition. Margaret-Ann ceased works when the Council issued a Warning Letter on 23rd April and then applied for planning permission.

It is proposed to tarmac and made good all disturbed areas adjacent to [REDACTED] as soon as possible once the planning issue is resolved. This will be done irrespective of the decision. We attach map showing

scale 1/500 showing area to be tarmacked. Our client has already planted a small area adjacent to the turning area to improve its appearance.

Public Infrastructure:

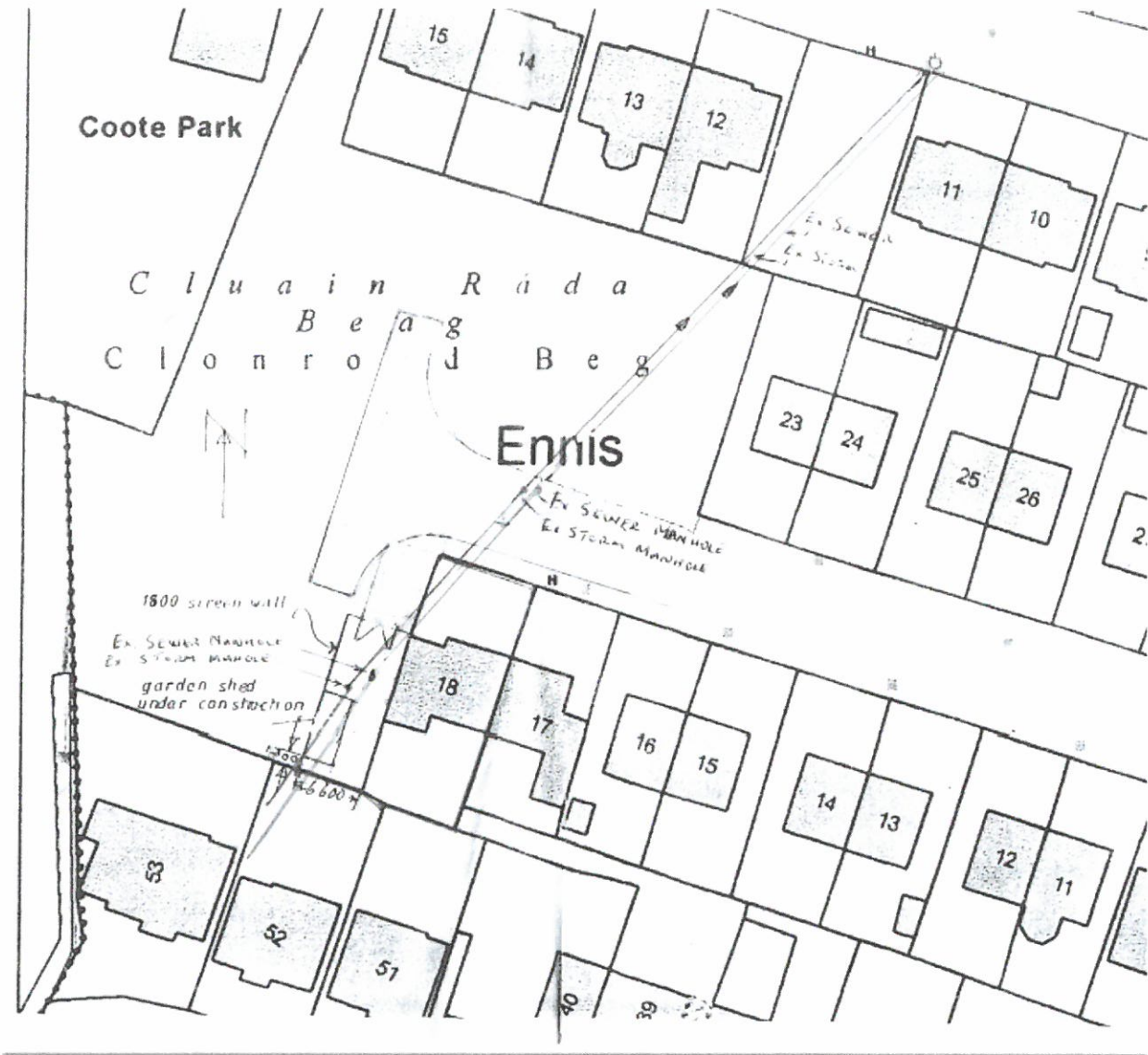
Reason 3 for refusal states -

Having regard to the location of public infrastructure which has been enclosed by reason of the development to be retained, the Planning Authority is not satisfied that the subject application would not be prejudicial to public health

The development of this estate dates back to the mid 80's. At that stage infrastructural services were run through private property as well as under public roads and open spaces. This is not allowed in new estates today.

Maiville is an estate where services ran through individual sites. Part of the line of the surface water sewer and foul sewer ran through Mrs Killeen's front garden with other sections running through the section of open space beside the house. From there the services ran under the houses (houses 52 and 53) that are located behind her back garden.

The map set out below shows the route of the services in question – see map below. This map was supplied to our client's then technical consultant by the Council and shows the general line of the services.



Map 3: Surveyed line of services

The services in question have been functioning for 30 years without incident.

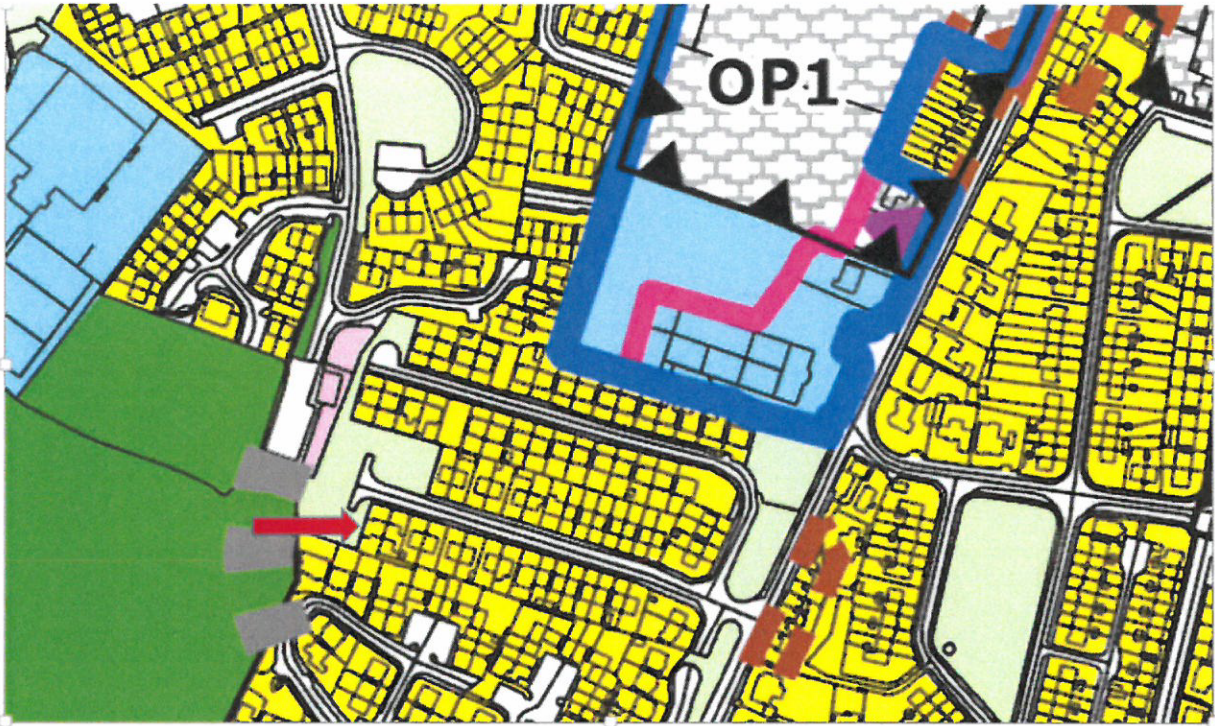
There is no way-leave over these services but our client is prepared to provide such a public way-leave. She has exposed the sewer and surface water manholes within the application/appeal area and they are both accessible. She will adjust the covers height if required to ground level. The 3.5 metre wide access gate to the walled area will give access to the services in question. We attach map to scale 1/500 showing proposed right of way.

We do not consider that reason 3 should in any way influence the decision on rezoning given the way the way that the original services were provided on the housing estate; their existing configuration and the fact that the service already run through the Killeen's front garden and under other houses. It is also considered that the provision of a legal way-leave through the Killeen property would significantly improve rather than be prejudicial to the public health situation.

Request to Council to rezone area of land to side of house from open space

The purpose of this submission is to request the Council to rezone a section of land along the western side of number [redacted] Maiville from public to private open space.

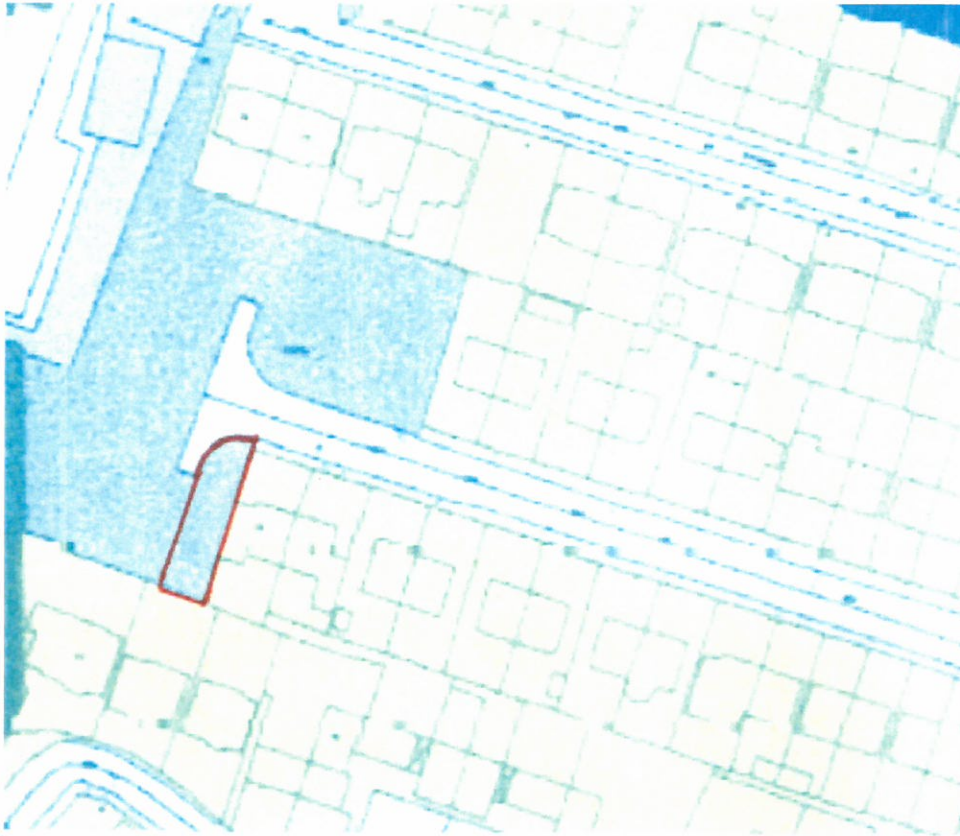
Map 4 below shows a section of the Ennis zoning map from volume 3 a (Ennis Municipal District) of the draft County Development Plan 2023-2029. We have superimposed a red arrow on the map showing the location [redacted] for ease of reference.



Map 4: Extract from Ennis draft zoning map. Red arrow superimposed showing location of number 18 Maiville

It will be noted that the houses on the estate are coloured yellow indicating ‘existing residential’ and the green area to the west and north of the house is coloured in light green and zoned ‘open space’.

The area of land which forms the basis of this submission is a small section of the area shown zoned open space and lies immediately to the west of number 18. The area in question is shown outlined in red on map 5 below and corresponds with the area of land involving the wall and shed which formed the basis of planning application 21/1127.



Map 5: Section of open space outlined in red the subject of the rezoning request

The merits of the case and the basis for the request is as follows –

1. The area of land involved has been occupied and used by our client's mother since the late 80's as set out in the background information outlined earlier in this submission.

Mrs Killeen was one of the first residents on the estate and she was faced with an uneven, unmaintained and dangerous area to the west of her house, left totally undeveloped when the builder vacated the site.

Condition 10 of the original planning permission granted for the estate (P27/1381) stated that *'all open spaces shall be graded, surfaced with topsoil and sown with grass seed to a standard suitable for use as a recreational area'*.

This was never done. The report extract from the Council file dated 2004 quoted in the earlier part of this submission (20 years after the estate was developed) is testimony to this, as is the condition of the open space even to this day. The Council will note the existing condition of the open space at the cul de sac adjacent to number 18. It is rough and incapable of being cut in any normal way with a mower. It has never been levelled or landscaped. The neglect of the open space has contributed to the devaluation of all of the property in the vicinity, including our client's house. It is not maintained by the Council and only done intermittently by the local

resident's association – see photos 3 earlier in this submission and photo 4 below taken 3/3/2022.



Photo 4: open space in Maiville 3/3/2022

Faced with an unfinished housing estate, our client's mother took a section of the open area adjacent to her house into her care as far back as the late 80's as mentioned earlier. She tended to this space as part of her wider garden area. She levelled and cleared it making it visually and functionally separate from the remainder of the open space since that date. When her garage was built in 1989 she used the area for a side access to her property bringing in coal etc and also used it for parking her car clear of the cul de sac turning area. Gravel was put down intermittently to facilitate the car parking as can be seen in the photo lodged with this submission. In 2001 she converted her garage to habitable use (with a Council disability grant) and in doing this opened a door and window onto the area at the side, borrowing light into a habitable room across the area in question.

The area involved has thus been effectively part of the area occupied by the resident of number 18 since the late 80's, a period of approx. 33 years. This was why our client was given to understand by her legal adviser that she could build the wall and shed as she was in possession of the land for such a long period of time.

2. The area involved is very small as can be seen from map 5 above - the space occupies about 5% of the overall open area of 0.23 ha.
3. The strip involved is at the boundary of the major open space area. Including this area in the house garden 'squares' off the open space at this location by putting a wall at the side of the turning space. The small area involved would not make a useable piece of active public open space due to its configuration. In addition, it makes no difference to the use of the remainder of the area as a piece of passive visual open space.
4. The Council in reason 3 of its refusal of planning permission stated that what is involved would '*set an undesirable precedent for other similar type developments in the area*'. We would like to make the following comments in relation to this point –

- Each application has to be assessed on its own merits. Unfortunately, the planning application that was lodged did not set out the merits in this case such that the Council was not in possession of the full facts
- The fact that the owners of the property have been using the space involved and in effective possession of it for about 33 years would distinguish it from any other likely case and ensure that it would not be used as a run of the mill or standard precedent.
- I attach map 6, scale 1-1000 showing the layout of the area to be rezoned, *edged. RED.*

We request the Council to accede to this request for rezoning having regard to the particular merits of the case as outlined above.

Yours sincerely,

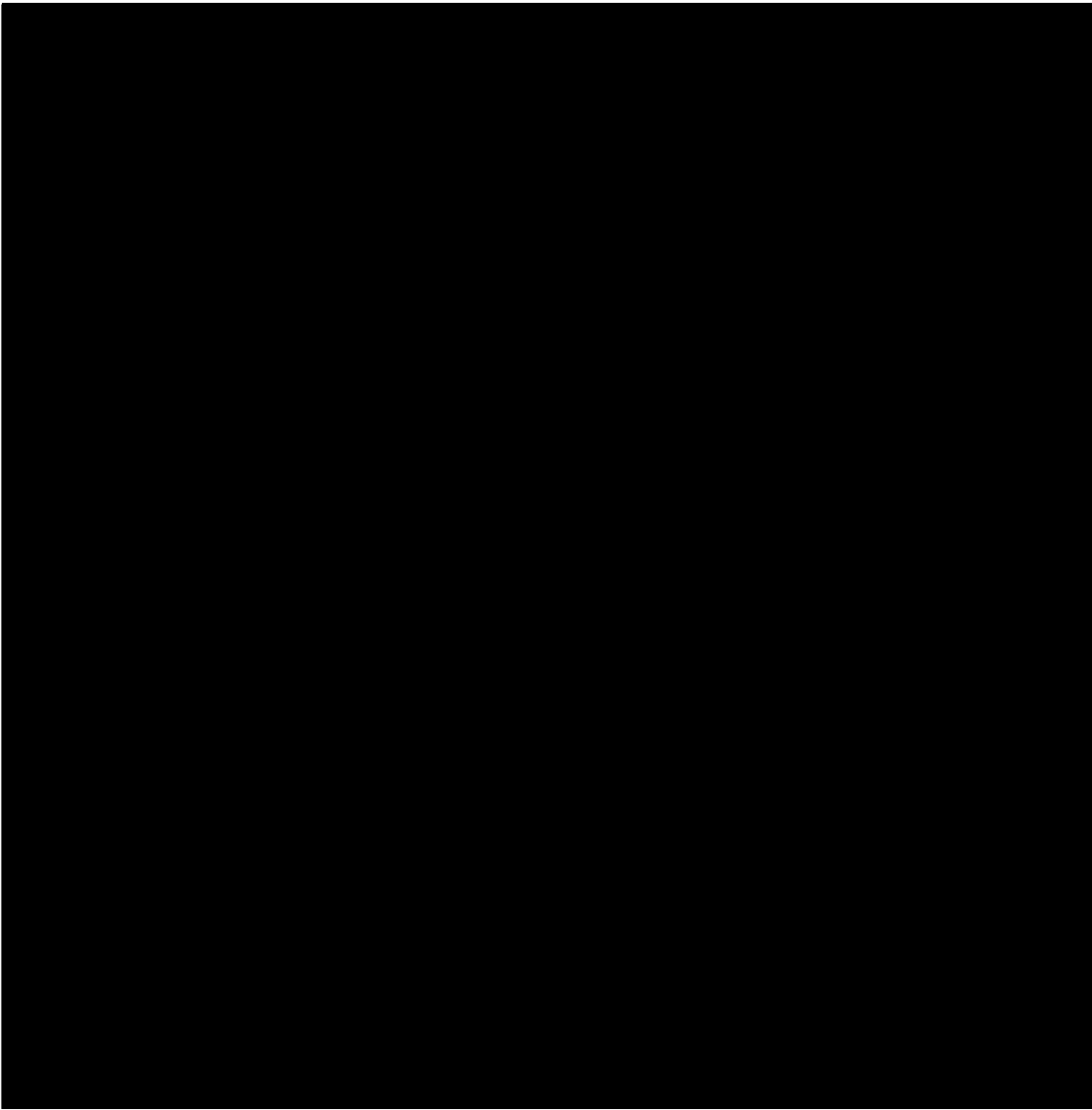


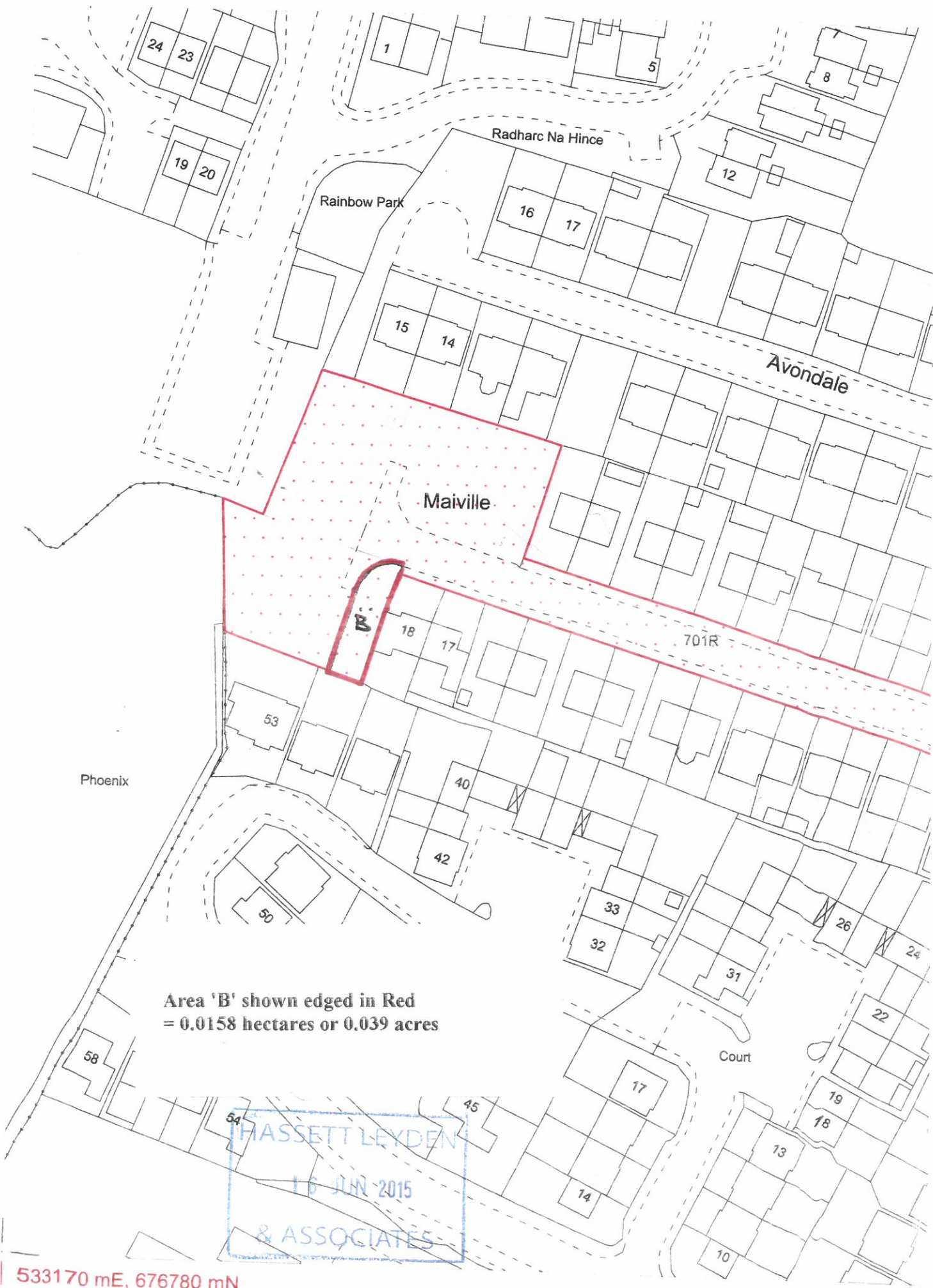
Mary Lynch B.A., Dip. T.P., MIPI
Connellan & Associates

Enclosures:



2. Copy of map scale 1/500 showing area to be tarmacked
3. Map to scale showing lines of sewer and surface water
4. Map showing right of way to services





Area 'B' shown edged in Red
 = 0.0158 hectares or 0.039 acres

HASSETT LEYDEN
 16 JUN 2015
 & ASSOCIATES