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	Delivered:	26/06/2026

**IN THE COUNTY COURT FOR NORTHERN IRELAND
SITTING AT COLERAINE BY THE COUNTY COURT JUDGE**

BETWEEN:

**(1) MEGAN SWEENEY
(2) ROSS SWEENEY**

Plaintiffs

and

JOYCE MICHELE FERDER AND TODD ALAN COPILEVITZ

Defendants

and (2023/067761 only)

CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

Defendant to Counterclaim

Mr Shaw KC and Ms McMullan (instructed DWF Solicitors) for the Plaintiffs
Mr Gowdy KC and Mr Fletcher (instructed by King & Gowdy Solicitors) for the
Defendants

Mr Good KC and Ms Maguire (instructed by Causeway Coast and Glens Borough
Council) for the Defendant to Counterclaim

DEPUTY COUNTY COURT JUDGE LOGUE

Introduction

[1] At the outset I wish to thank all legal representatives for the manner in which the case was presented. The case papers were voluminous but I commend all concerned for the compilation of trial bundles including the bundles of authorities. I am very grateful to counsel for the extensive written and oral submissions received and I have taken all of their submissions into account even if not expressly referred to in this judgment.

[2] The actions concern lands found at Seaport Avenue, Portballintrae, County Antrim. Latterly, there are, in fact, two Seaport Avenues in Portballintrae, one is an adopted road running parallel to the subject Seaport Avenue. The Seaport Avenue

with which these cases are concerned is a coastal lane situate on the western side of the bay in Portballintrae, overlooking the bay. It is accessed from Bayhead Road, which is a public road, and runs northwards to Seaport Lodge and Seaport Jetty.

[3] The plaintiffs in these related actions are brother and sister. Megan Sweeney is the registered owner of Seaport Lodge, 40 Seaport Avenue, Portballintrae, County Antrim, comprised within Folios AN186952 and AN18861. Ross Sweeney is the registered owner of lands at Seaport Jetty, Seaport Avenue comprised within Folio AN199186.

[4] Ross Sweeney is also the registered owner of a portion of Seaport Avenue where it abuts the County Road in Portballintrae. This portion of lands is comprised within Folio AN231595 and to access the remainder of Seaport Avenue one must pass over these lands. In 2017 Ross Sweeney erected signs on these lands which stated, "Access beyond this point is by permission of the landowner."

[5] Both plaintiffs hold express rights of way granted to them by the Council along Seaport Avenue. Megan Sweeney's grant was contained in a deed dated 11 July 2011 ("the 2011 Deed") and Ross Sweeney's in a deed dated 1 February 2013 ("the 2013 Deed").

[6] Attached to each of the said deeds was a copy of an OSNI map. The plaintiffs say that the width of each right of way in front of 14 Seaport Avenue is the width shown coloured at that point on the maps attached to each deed. The plaintiffs each claim their rights of way where they pass number 14 Seaport Avenue have been obstructed and interfered with by the defendants, who have placed boulders and posts on the North Eastern side.

[7] The defendants dispute the width of the rights of way claimed by the plaintiffs and deny that they have interfered with the rights of way of the plaintiffs. The defendants say that the plaintiffs' rights of way are limited to the width of the physical stone roadway, as it was at the time of the relevant grants in 2011 and 2013 (and which the defendants say is unchanged).

[8] By way of civil bills issued on 16 August 2023 the plaintiffs claim the following:

- (a) Declaratory relief as to the extent of their expressly granted rights of way along Seaport Avenue;
- (b) Injunctive relief and damages in relation to the defendants' alleged interference with those rights of way; and
- (c) Declaratory relief that the defendants do not enjoy any right of way along Seaport Avenue.

[9] The defendants, Ms Ferder and Mr Coplievitz, own three parcels of land:

- (a) Folio AN 255537, County Antrim which comprises a dwelling house at lands known 14 Seaport Avenue ("the main parcel 2).
- (b) Folio AN247350, County Antrim which comprises:
 - (i) A parcel of land between the main parcel and council portion of Seaport Avenue ("the Western parcel"); and
 - (ii) A parcel of land on the Eastern side (sea side) ("the Eastern parcel").

[10] The Western and Eastern parcels were previously vested in the Council pursuant to a Vesting Order dated 1 October 1964 and were transferred to the defendants by a conveyance dated 24 October 2017 ("the 2017 Conveyance"). The said conveyance does not grant the defendants an express right of way over Seaport Avenue.

[11] The plaintiffs allege that only the posts and boulders installed by the defendants on the northeastern side of the stone roadway are on lands subject to and, obstruct and interfere with each of the defendants' rights of way.

[12] The defendants claim they benefit from a right of way over the Sweeney lands and remainder of Seaport Avenue to number 14. The defendants resist the plaintiffs' claims. Notices of Counterclaim issued on 21 September 2023 (Megan Sweeney) and 21 November 2023 (Ross Sweeney) claiming the following relief:

- (a) Declaratory relief that the defendants benefit from a right of way over the lands at Seaport Avenue owned by Ross Sweeney and the remainder of Seaport Avenue owned by the Council and seek a key to unlock a bollard that is located on lands owned by Ross Sweeney;
- (b) Injunctive relief and damages for alleged interference of that right of way and trespass on to the defendants' lands by the plaintiffs by exceeding the rights of way granted to benefit the plaintiffs' lands.

[13] The Council is the owner of Seaport Avenue save for those lands owned by the Sweeneys. The Council is the defendant to the counterclaim in respect of the case as between Ross Sweeney and the defendants (ICOS 23/067761). The Council is not a party to the Ross Sweeney's claim against the defendants nor is the Council a party to Megan Sweeney's claim against the defendants. The Council has title to a portion of Seaport Avenue, pursuant to a vesting order dated 1 October 1964 ("the Vesting Order"), made by the then Ministry of Health and Local Government for Northern Ireland the Council's predecessor, Antrim County Council, in exercise of

its powers and for the purposes of, inter alia, the Development of Tourist Traffic Act (Northern Ireland) 1948.

[14] This vesting order operated to vest Seaport Avenue (and other lands) in the Council, "... in fee simple discharged from all claims estates incumbrances and charges whatsoever in accordance with and subject to the provisions of the said Acts." In *Steele & Smyth v Sweeney & Ors* [2018] NICTY 2, DCCJ Duncan held that the effect of the Vesting Order was to extinguish all prior interests in respect of the Avenue. This appears to have been accepted by the parties save for an issue raised in para [16] of the defendants skeleton argument in which it was suggested that the Council did not obtain the title of a Western parcel of land by the Vesting Order; that parcel was later transferred to the defendants by the Council in 2017. However, as stated above, the plaintiffs do not assert any claim in respect of the Western parcel.

[15] In the late 1990s the Council erected signs at the entrance of Seaport Avenue which stated, "No vehicular access except for Seaport Lodge and the jetty only." From around 2012 the Council erected various vehicular barriers at the entrance to Seaport Avenue. In 2012, the Council provided the first defendant, Ms Ferder, with a key to a chain barrier which was later replaced with a bollard at Seaport Avenue. Ms Ferder had a key at some times but not at others.

[16] The various claims give rise to two main issues:

- (i) The extent of the rights of way held by the plaintiffs, "the Width Issue;" and
- (ii) Whether the defendants, or their predecessors in title, have acquired a right of way along Seaport Avenue to number 14, "the Prescription Issue."

[17] In accordance with the format already adopted for the running order and submissions in this case I propose to consider the Width Issue and then the Prescription Issue. Before I do so, I wish to address a number of preliminary matters:

Implied easement

[18] In the defendants' final closing submissions, they now advance a claim that they have an implied right of way allegedly created by the 2017 conveyance. As correctly stated by both the plaintiffs and the Council in their closing submissions, such a claim has not been pleaded nor was the case opened with reference to same. At hearing, the claim by the defendants for a right of way was said to be based on both lost modern grant and the Prescription Acts.

[19] However, at para [2] of the defendants' final submissions, it is stated that their claim in respect of a right of way is on two bases, the first by prescription due to continuous user and the second that a right of way must exist for the benefit of lands

on either side of Seaport Avenue, “the additional lands” and that if those additional lands benefit from an implied right of way, then it means that the front lawn of number 14 Seaport Avenue can be accessed as of it. It is stated, “This is largely a legal argument as opposed to one that depends upon a significant degree of evidence.” I am not persuaded of this but, in any event, I consider it would be unfair to permit the claim to be advanced at this late stage when it was not in issue at trial nor explored in evidence. I will therefore exclude same from my considerations.

The Council's Position

[20] In Part 1 of the plaintiffs’ closing submissions, at para [4], it is stated:

“The Council maintained its ‘neutral’ position at trial; it did not lead evidence, challenge any expert or lay witness or make submissions. However, it was represented and watched throughout proceedings, no doubt with increasing interest (or possibly alarm) as the defendants sought to challenge the registered boundaries of the Council portion of Seaport Avenue and to avoid the consequences of the defendant’s continuing trespass to those lands.”

[21] In Part 1 of the closing submissions on behalf of the defendants at para [14] it is stated:

“The court will note that in addition to not calling any evidence of its own the Council did not cross examine any witness called on behalf of the Sweeneys or Joyce Ferder. This means that the evidence presented to the court was not contested by the Council.”

[22] And at paras 14(i)-(v) submit certain evidence of Ms Ferder went “unchallenged” and was “not corroborated” by the Council.

[23] I note in closing submissions on behalf of the Council at para [3] it is stated:

“In correspondence dated 16 May 2024 the Council confirmed the adoption of a neutral position in this action. Accordingly, the Council did not challenge or support the evidence of any party or witness during the course of the hearing. It is submitted that this strategy accords entirely with the neutral position previously asserted and ought not to be taken as the basis for inferring or implying support (or the contrary) for any claims advanced by any party in the proceedings. The

court is therefore asked to disregard the defendants' invitation to read into the Council's conduct of the hearing as an endorsement or acceptance of the defendant's contentions, or to consider it a basis on which to infer or imply same. The Council is firmly neutral."

[24] I am satisfied that the Council adopted an entirely neutral position in these proceedings. Having lodged a Notice of Intention to Defend, it was a matter for them whether they elected to call witnesses or cross-examine. Ultimately, it is for the parties bringing the respective claims to prove their cases to the required threshold.

The width issue

[25] The parties agree that the plaintiffs' lands (Seaport Lodge and the Seaport Jetty Lands) benefit from expressly granted rights of way to pass along Seaport Avenue by virtue of the 2011 and 2013 Deeds. The Width Issue concerns the width of each of those rights of way where they pass in front of the defendants' property at 14 Seaport Avenue. It was common case that the width of each of the rights of way is ultimately a question of interpreting the instruments by which the rights of way were granted. The plaintiffs rely on the scaled measurements taken from their respective maps. The defendants maintain the rights of way extend only across the hard stone roadway and the colouring shown on the respective deed maps was meant to be indicative of the location of the roadway only.

[26] In the 2011 Deed, a right of way was granted to Megan Sweeney in the following terms:

"To pass and repass over and along the Servient Tenement being the road shown coloured blue on the plan at all times of the day and/or night with and/or without vehicles of any kind."

[27] The Servient Tenement was defined as:

"The roadway known as Seaport Avenue and more particularly delineated on the map annexed hereto and thereon coloured blue."

[28] In the 2013 Deed, a right of way was granted to Ross Sweeney in the following terms:

"... the benefit of a right of way at all times and for all purposes over and along the roadway known as Seaport Avenue shown coloured green on the plan attached hereto."

[29] It was the plaintiffs' case that each of the rights of way in front of number 14 Seaport Avenue is that which is shown on the maps and is ascertained by the scaled up measurements there being no measurements on the Deed maps. The affidavits served by Megan and Ross Sweeney contained statements to the contrary and referred to a range of measurements. At hearing, I heard evidence from Mr Griffiths, solicitor for the plaintiffs and from Megan and Ross Sweeney on this issue. It is highly regrettable that such errors went unnoticed for a considerable time, particularly in relation to such a crucial matter. However, I accept the explanations provided and accept that the errors arose by genuine mistake caused by the numerous copies of deeds that had been collated over the years.

[30] It was the defendants' case was that the width of the right of way was the width of the stone roadway as it was at the time of each grant and the maps were used to identify the Seaport Avenue in question bearing in mind there are two Seaport Avenues in Portballintrae and in interpreting each grant one must look to the words used in the respective deeds in light of the "relevant background context" which included the "physical state of the lands in question as at the date of each grant."

[31] In *Girvan v Hool* [2021] NICh 26, Humphreys J summarised the legal principles for interpretation of conveyances as follows:

"[15] Interpretation of conveyances requires adherence to a number of fundamental principles:

- (i) The starting point is the 'parcels clause' which contains the description of the property being conveyed;
- (ii) The weight to be given to any plan attached to a conveyance will depend upon the words used. Where the words "for the purposes of identification only" are included, the plan will be subordinate to the words of the parcels clause. Where it states, "more particularly delineated on the plan attached hereto," this means the plan prevails in the case of any ambiguity;
- (iii) The traditional rules of the construction of documents apply and therefore the task is to ascertain the meaning which a reasonable person having all the background knowledge available to the parties would have understood the words to mean – cf. *Arnold v Britton* [2015] UKSC 36;

- (iv) Where there is any ambiguity or doubt, extrinsic evidence is admissible as an aid to interpretation – see, for instance, *Vance v Collerton* [2019] EWHC 2866 (Ch.);
- (v) The authorities make it clear that the critical question on construction is an objective one: ‘What would a reasonable layman think he was in fact buying?’ – see, for example, *Cameron v Boggiano* [2012] EWCA Civ 157.

[16] The task was summarised by Lord Briggs in his dissenting judgment in *Lovering v Atkinson* [2020] UKPC 14:

‘It is common in unregistered conveyancing ... to find parcels of land described both by a plan and by words. Where each method of description (viewed separately) leads to the same result, then no difficulty of construction arises. Sometimes the two work together, each filling in gaps left by the other or adding to the detail. But sometimes they point to different outcomes in terms of the extent and boundaries of the land being conveyed. In such a case it is a question of construction as to which should prevail or be given the greater weight. Conveyancers frequently use well known phrases to resolve that issue. A plan may be referred to ‘for identification purposes only.’ This usually means that the verbal description will prevail, where it differs from the plan. Or the land being conveyed may be described as ‘more particularly delineated on the plan annexed hereto’ in which a case the plan will generally prevail over the verbal description.’ [para 50]

[17] In *Alan Wibberley* [supra] Lord Hoffman observed:

‘It follows that if it becomes necessary to establish the exact boundary, the deeds will almost invariably have to be supplemented by such inferences as may be drawn from

topographical features which existed, or may be supposed to have existed, when the conveyances were executed.”

[32] In determining the proper interpretation of the Deeds, I turn to consider the background circumstances and relevant prior instruments. In a Deed dated 21 September 1999 (“the 1999 Deed”) between the Council and Mr Arthur and Mrs Carole McKinlay (who at that time owned Seaport Lodge) the parties agreed that the McKinlays would have an option to require that the Council provide them with a right of way along Seaport Avenue. Recital 2 of the 1999 Deed provided:

“By virtue of the Vesting Order (“the Vesting Order”) short particulars of which are set out in the First Part of the Second Schedule the Council is seized of the roadway known as Seaport Avenue shown coloured brown on the map annexed hereto (“Seaport Avenue”) and is seized inter alia of the premises particularly described in the Second Part of the Second Schedule (“the Servient Tenement”) in fee simple free from encumbrance.”

[33] The map attached to the deed was taken from a 1979 OSNI map.

[34] Clause 3 of the 1999 Deed provided:

“For the further avoidance of doubt the Council accepts that McKinlay is entitled to a grant of right of way at all times with or without vehicles over and along Seaport Avenue from and to the public adopted road from and to the Dominant Tenement and unless an alternative right of way shall have been previously granted pursuant to Clause 1 hereof the Council shall upon the written request made at any time during the perpetuity period of eighty years from the date of this Agreement grant such right of way over Seaport Avenue on the basis that McKinlay shall bear the Council’s costs thereof.”

[35] The defendants submit that as Recital 2 expressly refers to Seaport Avenue as “the roadway known as Seaport Avenue”, on any sensible construction a roadway is to be considered to be a surfaced piece of ground and that the map is being used to identify Seaport Avenue rather than define the precise bounds of the right of way. They point to the description of the Servient Tenement provided in the second part of the Second Schedule wherein the lands referred to are not Seaport Avenue and contend that it is of significance that the Option Deed specifically makes use of the words “particularly described” for the Servient Tenement but not for the right of way over Seaport Avenue. Further, they submit that it is inherently unlikely that the

Council and the McKinlays intended that the 1979 map, being then twenty years old, would be used to identify the precise width of the right of way that might have been granted in twenty or more years' time and, ultimately, that the colouring used on the map was simply to identify the roadway known as Seaport Avenue and not to determine the width of the right of way.

[36] The defendants rely on the Court of Appeal decision in *St Edmundsbury and Ipswich Diocesan Board of Finance v Clarke (No.2)* [1975] 1 WLR 468 wherein it states, that "the prima facie grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used." At hearing, Mr Gowdy invited me to consider the topography of the roadway and in particular what he described as "the steep banks" as one moves up the roadway by what was once a wine bar and is now offices. He submitted that the road at that point can't be significantly wider than 2 to 3m of hard pack. In opening, he described this as "our main answer to the width issue."

[37] I am not persuaded by the defendants' arguments. As highlighted by the plaintiffs, the 1999 Deed contemplated a future grant of a right of way of up to 5m in width. Clause 1.2 of the 1999 Deed provides that if at any time within 80 years from the date of the deed it is decided that Seaport Avenue shall have ceased to be capable of safe use to the dominant tenement the Council agreed to the construction a road of not more than 5m in width. The defendants argue with some persuasiveness that this would refer to a roadway in an alternative location perhaps to the rear of Seaport Lodge on the basis that if coastal erosion had made the front inaccessible than that would be their only option. I find it of note, that at that time, in the period at the end of the twentieth century a suitable right of way for common vehicular usage was considered to be of not less than five metres and indicates the Council recognised the possibility that a right of way of that width could be granted in the future. However, I do not find that the recital of the prior title to include the 1999 deed in its option restricted the Council from granting any wider right of way by way of separate deed in 2011 or in any later Deed such as the 2013 Deed.

[38] I visited Seaport Avenue on the 13 March 2026. My observations, having visited the locus were that the roadway varies in width along its length. As one passes by what was previously the wine bar there is indeed a steep bank and a bend before the roadway straightens up as one travels towards Seaport Lodge and the jetty. As regards the topography of the lands around the vicinity of the old wine bar, I note that none of the experts surveyed the roadway at that point and no measurements were taken, their enquiries focused on the lands around number 14. However, as can be seen from the photographs provided in the trial bundle at pages 2664 and 2671 large commercial vehicles have been able to access Seaport Avenue travelling from the main public road and on to Seaport Avenue to reach Seaport Lodge and the jetty. Indeed, some of the first defendant's complaints related to such traffic on the roadway. I am not persuaded that the *St Edmundsbury* decision lends support to the defendants' case.

[39] I find that the description of the lands and right of way in the 2011 Deed ie, “the roadway known as Seaport Avenue and more particularly delineated on the map annexed hereto” operate, in accordance with established authorities and when set against the background circumstances operate so that what is shown on the map prevails in the circumstances of this case. I am satisfied that the parties intended the plan to prevail and that the width of the right of way is that shown on the map attached to the 2011 Deed.

[40] Turning to the 2013 Deed, the wording is different. The recital is, “...the benefit of a right of way at all times and for all purposes over and along the roadway known as Seaport Avenue coloured green on the plan attached hereto.” The wording is clearly not the same as in the 2011 Deed. Counsel for the defendants submits that the plan appended to the 2013 Deed is clearly only being used to identify the location of the roadway known as Seaport Avenue. He contends that it is not attempting to set out the width of the right of way being granted and places significance on the fact that the words “more particularly delineated” are not used.

[41] I am not persuaded by these arguments. Whilst the words “more particularly delineated” are not used, the recital did not contain the words “for identification purposes only” which are more commonly used to denote that the words in the recital prevail. There would have been no reason to colour green the roadway known as Seaport Avenue on the 1979 OSNI map as Seaport Avenue was clearly marked thereon. I have considered the 1979 OSNI maps attaching to both the 2011 and 2013 Deeds neither of which show any other Seaport Avenue but the subject Seaport Avenue which, supports the construction that it was the right of way that was being coloured and not simply the roadway.

[42] In any event, I do not consider that because the area and width of the green on the plan exceeds the existing width of the road known as Seaport Avenue, it conflicts with the wording used but rather that the plan is to be used to assist in interpreting the parcels clause. The plan can be used to elucidate the width of the right of way as no dimensions are provided for the right of way in the recital and therefore the means of ascertaining the dimensions of the right of way is by reference to the map. If only the existing roadway was to be included it would have been an easy task for any mapper or conveyancer to colour within the delineated lines of the roadway as shown on the map. The fact that it deviates again suggests that the shading is used to identify the full extent of the right of way and not the feature of the roadway.

[43] I find that the appropriate construction of the 2013 Deed is that it was the right of way that was shown coloured green on the plan. The area coloured green clearly extends beyond the hatched lines delineating the sides of Seaport Avenue shown on the Ordnance Survey map. This is consistent with the right of way being of different dimensions to Seaport Avenue itself.

[44] There was a joint meeting of the parties' expert witnesses, Mr Bell and Mr O'Neill for the plaintiffs and Mr Hannaway for the defendants which took place on 27 June 2025 following which a joint minute dated 28 July was produced in which it is recorded that the experts agreed the following:

- (i) When scaling the right of way from the 2011 Deed map, Mr Hannaway generally concurs with Mr O'Neill's dimensions I.e 5.8m.
- (ii) The 2011 Deed and 2013 Deed are not based on the same map. The 2013 map is a digitised and updated map. However, as best as Mr Hannaway can overlay, they appear to show the right of way conveyed was similar.
- (iii) Outside the Ballintrae Hotel (now Ballintrae House) the 2013 easement is different. As a result, all experts agree that "easements" granted in 2013 to Ross Sweeney differ to those granted to Megan Sweeney. Mr O'Neill pointed out that there appeared to be no difference at the front of 14 Seaport Avenue, Mr Hannaway agreed.
- (iv) The posts and boulders placed by the defendants on the North Eastern side of the roadway leave a passable width of between 4.12m and 3.55 metres.
- (v) In light of their knowledge of Seaport Avenue and the associated maps, the said posts and boulders are positioned within the coloured routes shown on the 2011 and 2013 Deeds.
- (vi) The said posts and boulders interfere and obstruct the full width of the rights of way of the plaintiffs as shown on the maps attached to the 2011 and 2013 Deeds.

[45] Mr Gowdy submitted that I was not bound by the findings of the experts. That is true but I found their findings to be reliable and attached weight to same. Having considered all of the available evidence I am satisfied that the width of the right of way granted to each plaintiff along that portion of Seaport Avenue passing along number 14 is shown by the coloured areas of the respective maps. I find that the defendants have interfered with the plaintiffs' right of way by narrowing the available width at that portion of Seaport Avenue by installation of items such as posts and boulders.

[46] I find that the plaintiffs are entitled to damages for interference with their rights of way. However, having considered all of the evidence I am not persuaded that damages should be of the magnitude as submitted in the plaintiffs' closing submissions ie £10,000 each. Whilst the narrowing of the roadway along number 14 will have hindered vehicular traffic; it did not prevent access to the plaintiff's lands.

[47] The experts agreed that the posts and boulders are not within Folio AN247350 and are on lands belonging to the Council. As acknowledged in the Council's closing submissions, the *full extent* of the claim made against the Council and which the court is called upon to decide in respect of the Council is whether the defendants have acquired a prescriptive right of way across the Council's portion of Seaport Avenue. Any issues regarding the ownership of the lands upon which the boulders and posts were not raised in pleadings and I do not propose extending my consideration in respect of the counterclaim between the defendants and the Council beyond that which is pleaded.

The prescription issue

[48] Before setting out my decision in respect of the prescription issue I wish to address a preliminary matter. In the defendants' closing submissions reference is made to an interjection by Mr Shaw KC, senior counsel for the plaintiffs, during the cross-examination of Ross Sweeney and it was queried whether there was to be a formal concession, "to the effect that No 14 enjoys a pedestrian right of way over Ross Sweeney Lands and the Council Lands." I am satisfied that no concession was made at hearing and accept that the plaintiffs have disputed the defendants' claims from the outset and continued throughout proceedings to dispute the defendants' claims in respect of any alleged right of way held by the defendants in their entirety and proceed on that basis.

[49] The defendants counterclaim against both Ross Sweeney and the Council for declarations as to the existence of an alleged prescriptive right of way burdening both the Sweeney Portion of Seaport Avenue and the Council Portion of Seaport Avenue and for an injunction to restrain alleged interference by Ross Sweeney and the Council with the alleged right of way. They also counterclaim for damages in respect of alleged trespass.

[50] As against Megan Sweeney the defendants seek a declaration as to the existence of the alleged prescriptive right of way. The right of way claimed is for access to and egress from No 14 by foot and by vehicle. The area of Seaport Avenue in issue is that from the Bayhead Road to the front of No 14 and therefore involves lands belonging to Ross Sweeney and lands belonging to the Council.

[51] As stated at para [8] the case for the defendants was pleaded and opened at hearing as being based on a right of way acquired under the Prescription Acts by way of lost modern grant and I do not intend to consider any arguments based on any alleged implied easement.

[52] The defendants bear the burden of proof in establishing continuous user as of right and as per established case law such use must have been without force, without secrecy and without permission. I also remind the parties that in reaching my decision, I must arrive at my own findings based on the evidence presented in

this case. The defendants sought to rely on findings of fact arrived at in the case of *Steele & Smyth v Sweeney & Ors.* Whilst that case concerned a neighbouring property ie, number 16 Seaport Park, the adjoining property to number 14, I am not bound by those findings.

[53] Section 2 of the Prescription (Ireland) Act 1832 Act provides:

“No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement ... when such way ... shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way ... was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way ... shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.”

[54] Section 4 of the 1832 Act adds the following:

“Each of the respective periods of years herein-before mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.”

Lost modern grant

[55] Under this doctrine the courts are “prepared to indulge in an alleged fiction that the easement ... claimed was the subject of a grant executed since 1189 but before the action brought by the claimant, and that the deed of grant has been lost and so cannot be produced in evidence ... [T]he presumption arose that user from living memory or a period of 20 years prior to the action established the existence of a lost grant.” [Wylie, *Irish Land Law* 5th Ed at 7.69].

Evidence

[56] In reaching my final conclusions I have taken all of the evidence presented including the documentary evidence, affidavits and oral evidence given at hearing into account, even if not expressly referred to below. Before delivering my findings and final determination on the prescription issue, I set out a brief summary of the evidence given in respect of the prescription issue:

Dr Keith Steele

[57] Dr Steele is an owner of number 16 Seaport Avenue which featured in *Steele & Smyth v Sweeney & Ors.* He confirmed that his grandfather paid by cheque for number 16 and number 14 in 1946, with number 14 being transferred to Matthew Rankin, Dr Steele's uncle, at the time of purchase. Dr Steele is now 70 years old and has memories extending back to his childhood of times spent at Seaport Avenue. He conceded that his memories do not extend before the age of 10.

[58] Matthew Rankin was married to Martha Rankin and during the 1960's they lived in a small cottage on Ballyclough Road. They owned number 14 Seaport Avenue and would rent number 14 out in summer months, July and August, to a family called Gamble. The remainder of the year the house was unoccupied.

[59] Dr Steele's grandparents lived in number 16. His grandfather died in 1965 and after that, Matthew Rankin would have tended to grass cutting for both number 14 and 16. He stated:

"I can't say it was something regular (as in the grass cutting) but I saw it on more than one occasion. I was at school and only using the house primarily in July and August so I was not there all the time."

[60] Matthew Rankin died in 1973 and a short time, perhaps six months later, Martha Rankin moved from Ballyclough Road to live in number 14. After Matthew died, Dr Steele's father undertook the task of grass cutting for the two properties and would have visited Martha once a week. When cutting the grass, Dr Steele's father would have used both the Bayhead Road and Seaport Avenue entrance. Dr Steele recalled being with his father on one occasion when the grass was being cut and, on that occasion, he used the Bayhead Road entrance.

[61] Dr Steele described Martha as a bit of a recluse who rarely went out and confirmed that Martha could not drive. Matthew and Martha Rankin had a son called Noel who was a BBC foreign correspondent. Dr Steele described him as an "infrequent visitor" to Seaport Avenue. When asked how long Noel would stay on visits he stated: "He certainly wouldn't have stayed a week. It was difficult as he

couldn't drive and had to fly over or get a boat and train and then a taxi from Coleraine." Dr Steele stated that over the years he saw Noel walking on Seaport Avenue lots of times when Noel would have been visiting Portballintrae.

[62] Martha Rankin died in 1989 and Dr Steele recalled being a pall bearer at his Aunt Martha's funeral and carrying the coffin along Seaport Avenue. He could not remember if the hearse parked on the Bayhead Road or Seaport Avenue.

[63] Dr Steele first met Joyce Ferder, the first defendant, a few months after Martha died. He recalled that Noel Rankin and Ms Ferder used number 14 intermittently in the 1990s and he would have seen them walking along Seaport Avenue during their visits. Dr Steele recalled in 1996/1997 Ms Ferder had an accident which affected her eyesight badly and after her accident she came to live in number 14 Seaport Avenue. When asked what use Ms Ferder and Noel Rankin made of Seaport Avenue, he stated that they used it to walk down but that Ms Ferder was not "terribly active and so would not be out walking every day."

[64] In 2000/2001 an extension to number 14 was built and Dr Steele remembered seeing a car parked on the front lawn. However, he stated in evidence that whilst he saw the car parked, he did not recall ever seeing Ms Ferder drive on Seaport Avenue.

[65] Noel Rankin died on 25 December 2010. Dr Rankin had no recollection of Ms Ferder using Seaport Avenue in the period between Noel's death and the erection of the barrier by the Council in 2012. Both Dr Steele and Ms Ferder were given keys by the council to open the barrier. He testified that had "absolutely no idea" of what use Ms Ferder made of Seaport Avenue after she was given a key.

[66] I found Dr Steele to be a credible witness.

Ms Joyce Ferder

[67] At hearing, over the course of two days Ms Ferder gave extensive testimony. I do not intend to rehearse all of her evidence but I have considered it all in its entirety. However, in very brief summary, Ms Ferder testified that she visited number 14 Seaport Avenue for the first time in 1983 but did not enter the house at that time and, in fact, was never in the house during Martha Rankin's lifetime.

[68] Ms Ferder stated she had visited Portballintrae in the years between 1989 and 1997 many times along with Noel Rankin. She testified that she often drove along Seaport Avenue and that she and Noel would have also walked along the Avenue, Noel would often cycle and she too would cycle occasionally. It was her evidence that from 1997 she resided at number 14 which she considered her home. In the years that followed she spent significant periods there and frequently drove along Seaport Avenue and would have parked her car at the front of the house. She would

have walked along the Avenue too. Ms Ferder recalled having furniture and other goods delivered to the front of the house; the delivery vehicles were driven along Seaport Avenue. She stated that postal deliveries were made to the front of the house “at times” and that the postal van would stop at number 14 for same. Ms Ferder stated that coal deliveries were made once or twice per year, the coal lorry would have been driven along Seaport Avenue to the front of Number 14.

[69] Ms Ferder confirmed that in the years following Noel Rankin’s death she had undertaken various trips to the Arctic working on a photojournalism project but denied that she was absent from Portballintrae for lengthy periods. Ms Ferder testified that she travelled to Philadelphia in late 2019/early 2020 for an exhibition of her work; she was due to return back to Portballintrae on 8 March 2020 but instead remained in the United States as her mother was ill and subsequently made the decision to remain in the United States given the then imminent travel restrictions due to the Covid Pandemic. Ms Ferder returned to Portballintrae in May 2021 and stayed in Number 14 for 6 days before returning to Florida. She was back in Portballintrae for a “few weeks” in December 2021 and when asked when she was next back in Portballintrae, she replied: “I think it was probably sometime in 2022. I know I was definitely back in 2023.”

[70] I was not impressed by Ms Ferder’s evidence. I found her to be a poor historian and an unreliable witness, perhaps best illustrated by the contents of the Statutory Declaration which she submitted to the Council in support of her application for a key to the bollard the Council had installed in 2012. I found the contents of her Statutory Declaration to contrast significantly with the published obituary Ms Ferder had written about her late husband Noel Rankin and the general content of her statutory declaration to be inconsistent with the accounts of the history of occupation and use of number 14 Seaport Avenue provided by other witnesses.

[71] By way of example, in the obituary Ms Ferder wrote of Noel Rankin’s early life growing up in a small cottage on the Ballyclough Road, of his many travels and his long distinguished career travelling far and wide as a foreign correspondent. Yet in the statutory declaration she stated that Noel Rankin lived at 14 Seaport Avenue since his parents bought it in 1946 and lived in the property continuously until his death in December 2010⁵. In her Statutory Declaration she stated that she had lived permanently in Number 14 since June 1997 but at hearing confirmed she had moved from Rome to live in Number 14 in July 1999, that being when she “moved her stuff” over to the property. I found her explanations for these inaccuracies unimpressive and lacking in candour.

[72] Ms Ferder also submitted photographs in evidence in support of her case as to user. At hearing she volunteered that some dates that she had provided for the photographs were not correct. Given that Ms Ferder is an experienced, professional

photographer, I found the explanations given by her for the inaccuracies unpersuasive.

Mr Sam Turtle

[73] Mr Turtle also lives at number 12. He testified that he has lived there “permanently” for around thirty years and prior to that on a “semi-permanent basis,” staying at number 12 on weekends and maybe on other occasions. He could not recall anyone ever coming to stay with Martha Rankin. He did not recall anyone using Seaport Avenue to access number 14 although he recalled seeing “plenty of vehicle traffic up Seaport” but not specifically to number 14 and could not recall ever seeing Noel Rankin staying in number 14 whilst Martha Rankin was alive. He testified that after Martha died Noel Rankin and Ms Ferder would occasionally visit number 14 but could not say how often this occurred in the years 1989-1999. During that period, on occasion, Mr Turtle used Seaport Avenue to access the front of number 12, turning his vehicle across the ground of number 14.

[74] After 1999 – his evidence was that Noel Rankin was away “quite a bit” because of his work but Ms Ferder remained in number 14 and was heavily involved in a campaign to get a village hall in Portballintrae. He recalled Noel Rankin walked regularly along Seaport when he was staying back in number 14 and seeing Ms Ferder out walking “fairly regularly” with Mr Rankin too but it was not “like a daily thing.” He never saw Noel Rankin cycling but would have seen him being driven by Ms Ferder. The car was usually parked on the land side of number 14 but on several occasions, he saw it parked on the front lawn and that on such occasions it would likely have been driven up Seaport Avenue. He accepted in cross-examination that that a car could be driven to the front lawn of number 14 by accessing along the side from the rear driveway.

[75] Mr Turtle retired from teaching in 2009. He stated that up until his retirement he worked long hours including on a Saturday as he was involved in lots of school extra-curricular activities.

[76] I found Mr Turtle to be a credible witness.

Mr Mark Allen

[77] Mr Allen described himself as a “close family friend” of the defendants. He stated he had known Ms Ferder since 2008 but did not visit number 14 Seaport Avenue until after Noel Rankin had died. He recalled being a passenger in Ms Ferder’s car when it was driven along Seaport Avenue on more than one occasion. He confirmed that when he drove his own car, he accessed the property from the Bayhead Road.

[78] Mr Allen testified that he had taken the photographs in May 2018 which were submitted in evidence. These photographs were of Ms Ferder accessing Seaport Avenue. It was Mr Allen's evidence that the said photographs were taken "show people back in the states how we got to the front of the house." I found that to be an unlikely explanation in the context of the background circumstances regarding access to Seaport Avenue.

[79] I did not consider Mr Allen to be a truly independent witness and overall, I found his evidence of limited assistance.

Ms Gail Morrow

[80] Ms Morrow testified that she had lived in 12 Seaport Avenue all her life. She is now 73 years old. She recalled Matthew and Martha Rankin rented number 14 in the summer months. Ms Morrow testified that she recalled Matthew Rankin coming to cut the grass of number 14 on numerous occasions when she was young; he would drive up Seaport Avenue and park his car at the front of number 14. She "imagined" this would be around once per week. Ms Morrow recalled a family called Gamble stayed in number 14 during the summer months and when they came to stay, on arrival they would drive up Seaport Avenue to unload golf clubs from the front of the house. However, for the remainder of their stay they would access the property from the Bayhead Road. Ms Morrow recalled that the Gambles rented number 14 from the Rankins as a holiday rental for around eight summers.

[81] Ms Morrow testified that coal was delivered to the front of number 14 from Seaport Avenue, stating in evidence, "there was a little gap to the side and it was easier for Mrs Rankin to get coal into her little living room in wintertime."

[82] Ms Morrow recalled that during visits to his mother Noel Rankin would have walked. He would have also cycled along Seaport Avenue but she accepted he would also have used the Bayhead Road too. She could not say if Noel Rankin would have cycled along Seaport in the years after his mother's death.

[83] After Martha Rankin's death, Noel Rankin and Ms Ferder would have stayed in number 14 but she could not say how often that would have been. She recalled Noel Rankin would have been a passenger in a car driven by Ms Ferder and she would have seen the couple walking along Seaport Avenue.

[84] Ms Morrow testified that she first "got chatting" with Ms Ferder in 1999 when Ms Ferder and Noel Rankin called to Ms Morrow's house where they discussed house renovation plans.

[85] During the period when Noel Rankin was ill, she remembered that Ms Ferder would drive to the front of the house along Seaport Avenue as it was easier for Noel Rankin to access the house that way.

[86] Ms Morrow retired in 2007 and described having a busy career up until then; working long hours throughout her career. She was involved in an amateur dramatics society and would host parties for members of the society. It was her evidence that on such occasions her guests would drive along Seaport Avenue and turn across the ground in front of number 14.

[87] Ms Morrow provided a Statutory Declaration dated 13 April 2012 in support of Ms Ferder's application to the Council for a key to the barrier the Council had installed. I found the contents of her Statutory Declaration to be lacking in precision. I note that Ms Morrow also swore an affidavit on 31 January 2025 in support of the defendants' case. At para 2 of same she avers to her recollection of Mr and Mrs Matthew Rankin driving up Seaport Avenue. Para 3 of her said affidavit reads, "I cannot recall if Noel Rankin did likewise." Noel Rankin did not drive and I found Ms Morrow's answers in cross-examination on this issue to be evasive.

[88] I would describe Ms Morrow as a well-meaning individual but one who is somewhat casual in her approach to accuracy and I considered her evidence to be tainted by bias towards Ms Ferder.

Ms Lori Knight

[89] Ms Knight gave evidence via WebEx from her home in America. She described herself as a close friend of the first defendant. She testified that after Ms Ferder's accident in 1997, Ms Ferder had to undergo various treatments outside of Northern Ireland and would have stayed with Ms Knight during some of those periods. Ms Knight first visited Portballintrae in July 1999. She stated she has since visited around 12 times including a visit of around three months in early 2015 and remembered being driven up Seaport Avenue. When cross examined, Ms Knight agreed that over the course of all of her visits, such journeys would total approximately half a dozen occasions "or thereabouts."

[90] Ms Knight also testified that other visitors to number 14 would have driven up Seaport drive to number 14 but accepted in cross-examination that most motorised traffic accessed number 14 via the Bayhead Road.

[91] Ms Knight recalled seeing Ms Ferder's car parked at the front of her house having observed same during zoom calls on two occasions.

[92] I found Ms Knight's evidence of limited assistance and did not consider her a truly independent witness.

[93] The following witnesses gave evidence on behalf of the plaintiffs:

Mr Arthur McKinlay

[94] Mr McKinlay lived in Seaport Lodge from 1988 -1999. He testified that post was delivered to Seaport Lodge by means of a postal van and on its return journey down Seaport Avenue the postal van would stop at what is now Sweeney's Office. Mr McKinlay stated that he "understood" post was delivered to Mr Sweeney's mother who lived at the back of that property. He does not remember seeing the post man going into that property but assumed post was delivered there as he often saw the van stop there and there was no other entrance to that property other than via Seaport Avenue.

[95] According to Mr McKinlay, all other houses along Seaport Avenue had their post delivered from with the main public road. He disputed that the post van stopped at number 14 and the description of the extent of motorised traffic use on Seaport given by Ms Ferder.

[96] I found Mr McKinlay to be a credible witness.

Mr Ross Sweeney

[97] Mr Sweeney was born in 1983 and lived at 32 Seaport Avenue before his family moved to live in Seaport Lodge in the early 2000's. He boarded in Methody from year 8 to year 12 and thereafter attended grammar school in Coleraine for his final two years of school. He is married and lives with his family in Holywood County Down. He recalled that he would have at first been driven to school by his mother and once he passed his driving test would have driven himself to grammar school. He testified that although he has lived away from Seaport Avenue for some years now, he regularly returns home to Seaport Lodge. Mr Sweeney testified that he did not see Ms Ferder on Seaport Avenue or witness the user she alleged on Seaport Avenue.

[98] I found Mr Sweeney to be a credible witness.

Ms Megan Sweeney

[99] Ms Sweeney was born in 1988 and provided a similar narrative of living at Seaport Avenue during her childhood, moving to Seaport Lodge in the early 2000's. Ms Sweeney moved away in 2006 to attend university in London where she continues to live but stated that she regularly returned to Portballintrae. As set out above, Ms Sweeney is now the registered owner of Seaport Lodge. Ms Sweeney testified that she had never witnessed any of the alleged user or seen Ms Ferder on Seaport Avenue.

[100] I found Ms Sweeney to be a credible witness.

Consideration and findings

[101] The case for the defendants was opened on the basis that the evidence presented would establish at least twenty years' continuous user from 1964 and in their opening at hearing it was stated that the period from 1964 would be presented in six chapters described as follows and quoting from the said opening:

- “Chapter 1 1964-1973 – the Vesting Order to Matthew Rankin’s death;
- Chapter 2 1973-1989 – during Martha Rankin’s widowhood to her death;
- Chapter 3 1989-1999 – the period to when Noel Rankin owned the property and he and Ms Ferder were in a relationship; marrying during that time in 1997. Later in 1997 Ms Ferder suffered an injury and in 1999 obtained indefinite leave to remain in the UK and from that time was permanently and ordinarily resident in Portballintrae.
- Chapter 4 1999-2010 – the period to Noel Rankin’s death;
- Chapter 5 2010-2019 – the period before Ms Ferder left for the United States of America in December 2019;
- Chapter 6 2020-2023 – the period up to the issue of proceedings.”

[102] However, at para [40] of the closing submissions on behalf of the defendant different date ranges for consideration are set out. They are as follows:

- “(a) 1946 to 1973 (the latter date being Matt Rankin’s year of death);
- (b) 1973 to 1989 (the latter date being Martha Rankin’s year of death);
- (c) 1989 to 2010 (the latter date being Noel Rankin’s year of death); and
- (d) 2010 to 2019.”

[103] The plaintiffs object to the introduction of any alleged user prior to 1964 pointing out that this is contrary to the defendants' pleaded case which relied on alleged user since 1964 and contrary to the opening submissions at trial. The plaintiffs contend it would be unfair for the defendants to advance any case on alleged user prior 1964 given that same raises factual issues which were not explored or able to be challenged in evidence. I concur and find that it would be unfair to allow same.

[104] In any event, none of the witnesses appear to have addressed any relevant issues as regards user in that earlier period. Dr Steele's evidence was that his memories were from when he was around the age of 10 which would have been from around 1965. Ms Morrow testified she was aged 73 so was born around 1953, I find it unlikely any of her evidence related to that prior period but in any event found her evidence generally unpersuasive. It would appear none of the other witnesses could testify as to user in the earlier periods given their ages or limited connections to area.

[105] I therefore return to consideration of the six chapters referred to in the defendants' opening submissions.

[106] In making my final determinations I am mindful of the guidance provided by Deeny J in *Finlay v Cullen* [2014] NICH 17 at para [30]:

"[30] It is clear from the case law that the decisions of the courts are fact specific. It seems to me that a person in the position of the plaintiff trying to establish that they have acquired such a right by prescription must demonstrate repeated acts of enjoyment of the right of way for twenty years noticeable by any owner of the servient tenement of full age and reason. While the learned editors of Gale say that the enjoyment can be intermittent the period of intermission must be relevant. Clearly in the context of a vehicular right of way it is not going to be continuous in the sense of a right to light (in daytime). It may not even be daily although that appears to have been the user in *Haley v Hawkins*. But it must be sufficiently regular and frequent to bring home to the owner of the servient tenement that the owner of ... the putative dominant tenement, is using as of right the right of way enjoyed by the owners of the adjoining dwellings."

Chapter 1 - 1964-1973

[107] The defendants submit that the evidence of Dr Steele and Ms Morrow support a finding of vehicular user during this period as both witnesses recalled vehicular user by "Matthew Rankin/his tenants" and in the case of Gail Morrow the delivery of coal. Such coal deliveries would likely not be a one off event even if there was no witness evidence to the extent of the deliveries.

[108] I do not agree. Dr Steele and Ms Morrow both confirmed that number 14 was let out each year for up to two months each summer. Dr Steele confirmed that for the remainder of the year the house lay unoccupied. Ms Morrow's evidence was that she recalled seeing the "odd delivery lorry" travelling up Seaport Avenue; Dr Steele did not recall any commercial vehicles along Seaport Avenue. Ms Morrow's evidence about coal deliveries related to the period when Martha Rankin lived in number 14. It was her evidence at hearing that she recalled coal was delivered to "a little gap to the side" of Number 14, so that it was easier for Mrs Rankin to get coal into her "little living room."

[109] As regards how often Dr Steele observed Matthew Rankin coming to cut the grass he stated, "I can't say it was something regular but I saw it on more than one occasion. I was at school and only using the house primarily in July and August so I was not there all the time." Ms Morrow's response when asked how often Matthew Rankin cut the grass was that she "imagined" this would be around once per week. The vehicular use by the Gambles along Seaport Avenue appears to be confined to an initial drop off on arrival and thereafter they accessed number 14 from the Bayhead Road.

[110] I am not satisfied on the evidence before me that any vehicular user during this period was sufficiently regular and continuous.

Chapter 2 - 1973-1989

[111] It was the defendants case that although Martha and Noel Rankin did not drive, deliveries of coal continued and that deliveries of post were also likely made in this period.

[112] On balance, I accept that deliveries of coal would likely have been made to number 14 during the period of Martha Rankin's residence. However, I find the evidence presented insufficient to establish that deliveries of sufficient frequency and regularity occurred via Seaport Avenue rather than from the main, Bayhead Road. Ms Morrow, whose evidence I treat with caution, could not say how often she observed a coal lorry on Seaport Avenue. Dr Steele had no recollection of seeing any commercial vehicles travelling along Seaport Avenue.

[113] I accept that postal deliveries would have occurred during this period. However, having considered the evidence of Ms Ferder and Mr McKinlay, I prefer the evidence of Mr McKinlay. On balance, I find that postal deliveries to all

properties other than Seaport Lodge and the Sweeney building at the County Road end of Seaport Avenue, were likely made via Bayhead Road.

[114] The defendants also rely on visits by Dr Steele's father to Martha during this period but I am mindful that Dr Steele's father owned the adjoining property, number 16 where, on balance, I presume he would have parked during such visits which would have been insufficient to alert the owner of the servient tenement of user as of right in respect of number 14.

[115] According to Dr Steele, Martha Rankin lived in number 14 from around six months after her husband's death but was a virtual recluse who rarely left her home. Martha Rankin could not drive. Noel Rankin visited infrequently. He also could not drive. Whilst I accept that Noel Rankin likely walked along Seaport Avenue and on occasion would also have cycled during his visits to Portballintrae, I am not persuaded that continuous and regular user is established. It was clear from the evidence presented that his visits were infrequent, sporadic and irregular, and often of short duration.

Chapter 3 - 1989-1999

[116] Noel Rankin's and Ms Ferder's careers involved long periods spent abroad. Ms Ferder's own evidence was that when they each returned from assignments they would meet up in various locations but that breaks between assignments were not all spent in Portballintrae.

[117] In evidence, Dr Steele stated that Noel and Ms Ferder used the house only "intermittently during the early 1990s." Mr Turtle said the couple visited "occasionally." According to Ms Morrow, before Ms Ferder moved into number 14 as her home, the couple came to Portballintrae "from time to time." I find it noteworthy that Ms Morrow described first getting to know Ms Ferder when she and Noel visited Ms Morrow in her house at number 12 around 1999, to discuss home improvements.

[118] Ms Ferder owned an apartment in New York for three years from 1994 when she worked for CBS. After her marriage to Noel Rankin in October 1997, she moved to Rome to work for the UN. Ms Ferder was unfortunately seriously injured in December 1997 during a work assignment to Kenya and required intensive treatments outside of Northern Ireland for significant periods.

[119] I note also that Dr Steele referred to Ms Ferder's eyesight as having been "badly affected" by her accident which suggests, that in the early stages of Ms Ferder's recovery she was unlikely to have been driving. In fact, Dr Steele could not recall ever seeing Ms Ferder drive along Seaport Avenue and as stated, Noel Rankin did not drive. As regards pedestrian use, Dr Steele also described Ms Ferder as "not particularly active."

[120] Having considered all of the evidence, on balance, I am not persuaded that Noel Rankin and Ms Ferder were present in number 14 at Seaport Avenue on a sufficiently regular or frequent basis during this period so as to ground or establish user or that any activities by them during visits were sufficient to do so.

Chapter 4 - 1999-2010

[121] I am satisfied that the Council erected signs in the late 1990s at the entrance of Seaport Avenue which stated, "No vehicular access except for Seaport Lodge and the jetty only." I consider the signs erected by the Council to have been sufficient notice of an objection to all vehicular use without permission. As such it operated to prevent the accrual of a prescriptive right after the date of installation as per *Winterburn v Bennett* [2016] EWCA in which it was held:

"In my judgment, there is no warrant in the authorities or in principle for an owner of land to take these steps in order to prevent the wrongdoer from acquiring a legal right. In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be 'as of right.'"

[122] In evidence, Ms Ferder stated that she understood the signs to apply to those who did not already benefit from a right of way and not to her. It was a common theme in her evidence that she maintained the Vesting Order of 1964 did not affect any rights attaching to number 14 and that number 14 benefited from a right of way, her predecessors in title having "fought" the Vesting Order (I note this position contrasted with the opening submissions at hearing made on behalf of the defendants when it was accepted that the effect of the Vesting Order was to extinguish prior rights). However, I find her oral evidence to be inconsistent with various pieces of correspondence either written by her or on her behalf as set out below.

[123] In a letter Ms Ferder wrote to the Council's Principal Administrative Officer on 12 June 2000 in which she stated:

"I do appreciate the council posting a sign at the foot of the road explaining the road is only for access to Seaport Lodge ... I have no argument with not being allowed to use the road to get to my own home"

and in which she encouraged the Council to take stronger measures to discourage people from using Seaport Avenue. The letter suggests that not only was Ms Ferder

not using Seaport Avenue but accepted that the Council could legitimately prohibit her from doing so.

[124] In a letter to the Council from Ms Ferder's previous solicitors dated 4 November 2014, it refers to the Vesting Order of 1964 and it is stated:

"My client's late husband and his neighbours in 16 Seaport Avenue fought the Vesting Order. Antrim County Council granted the owners of 14 and 16 Seaport Avenue permission to travel along Seaport Avenue."

[125] In a letter dated 14 May 2021 from her present solicitors, in which the defendant enquires if the Sweeney family have permission for lorries and machinery to access Seaport Lodge via Seaport Avenue it is stated, "Our client would be somewhat surprised if such permission has been granted to the Sweeney family given that she was denied permission for a lorry to use Seaport Avenue to access her property in 2015 in order to fix the roof." Which refers to permission having been sought by the defendant from the Council in 2015.

[126] As regards pedestrian and bicycle user, as above I note that Dr Steele stated that Ms Ferder was not terribly active and would not have been out walking every day. Ross or Megan Sweeney testified that they had never observed Ms Ferder walking along the Avenue. Ms Morrow recalled Noel Rankin and Ms Ferder walked along Seaport Avenue "not infrequently." Only Ms Ferder claimed Noel Rankin cycled in this period but this was not supported by evidence from any of the other witnesses.

[127] I am not persuaded that there was regular or frequent use such as would alert a land owner that any pedestrian use was as of right nor am I persuaded that there was sufficient evidence to support a finding of bicycle user.

Chapter 5 - 2010-2019 and Chapter 6 - 2020-2023

[128] Given my findings thus far, it is somewhat academic to consider user during the periods covered by Chapters 5 and 6 which when combined run from 2010 to 2023, a total period of thirteen years. I note that in the final closing submissions lodged on behalf of the defendants they address user only to the period of 2019. However, for the sake of completeness, I have considered the evidence given in respect of the final Chapters.

[129] In evidence, Dr Steele stated that he recalled Ms Ferder sold her car shortly after Noel Rankin's death. Dr Steele had no recollection of Ms Ferder using Seaport Avenue in the period between Noel Rankin's death in December 2010 and the erection of the barrier in 2012.

[130] I turn to consider the provision of a key to Ms Ferder in respect of the bollard the Council installed in 2012 the circumstances around same are as set out earlier. At para [13] of the defendants' closing submission it is stated:

"The undisputed fact that the Council gave Joyce Ferder keys to access Seaport Avenue, while it retained control of the chain and bollard, is consistent with the Council accepting that she had a right of way."

[131] It is of course an undisputed fact that the Council gave Ms Ferder a key but I am not persuaded that this in anyway denotes acceptance that she had a right of way. There was no supporting documentation provided to confirm same, nor did the first defendant state in evidence, that the Council, upon providing her with key stated she had a right of way. At hearing, it was her evidence that after a period of correspondence between her solicitors and the solicitors then acting for the Council, she was invited to collect a key from the Council offices.

[132] I do not find that, as the defendant asserts, that the provision of a key by the Council was an acceptance of the existence of a right of way in favour of the defendant. There are other pragmatic reasons why the provision of a key could have been authorised. I also find it significant that sworn documents submitted to the Council in support of Ms Ferder's assertion of a right of way prior to the provision of the key contained factual inaccuracies and ambiguity. I refer to my earlier comments regarding her Statutory Declaration which I consider painted a picture that was not consistent with the actual history.

[133] I was not persuaded by the first defendant's uncorroborated evidence of a subsequent conversation with a council official in 2011 in which that council official confirmed to her that the Council accepted she had a right of way. Her account was vague as to when exactly this occurred or the circumstances of same.

[134] Additionally, I find that from the erection of signs by Ross Sweeney in 2017 any user of the Sweeney Portion of Seaport Avenue was by permission and therefore no prescriptive rights could accrue therefrom. I note there are signs located in the northern and in the southern part of the Sweeney portion, facing in both directions, visible to persons travelling in either direction. At para [126] of the defendants' closing submissions it is conceded:

"From December 2017 onwards any user of the Ross Sweeney Lands was by permission unless a prescriptive right of way had already been established by then."

[135] As for Chapter 6 ie 2020-2023. It was clear from the first defendant's own evidence that for the vast majority of this period she was absent from Number 14 (see para [69] above). In final closing submissions on behalf of the defendants it

appears to have been conceded that this final chapter contains insufficient user, as the last date range stated to be for consideration is 2010-2019.

[136] Turning to the defendants argument that if a prescriptive right is not established in accordance with the Prescription Act, then in the alternative the court should allow the doctrine of Lost Modern Grant to operate. The first defendant contends that she is absolutely entitled, not on the basis of a common law user but by the doctrine of Lost Modern Grant. It is common case that the Vesting Order of 1964 extinguished any prior right of way. In making the case of Lost Modern Grant the defendants must accordingly be contending that there being nothing to prevent the Council from subsequently making such a grant the Council should be presumed to have made such a grant, but that any evidence to support same has been lost.

[137] In order for the court to find that a right-of-way has been established by the doctrine of Lost Modern Grant the court must be satisfied that there was at some stage a continuous user for a 20 year period as of right without force, secrecy or permission. This period does not have to be immediately prior to the issue of proceedings. The court must further be satisfied that the landowner during that period, could have formally granted an easement. If so, such continuous user for a duration of at least 20 years, would give rise to a presumption that an easement was formerly granted. However, for the reasons already given, I am not satisfied that there has been established any period of continuous user of at least a 20 year duration, such as would have required objection by the owners of the servient tenement. There is therefore no presumption arising in this case of a Lost Modern Grant.

[138] Whilst I accept Ms Ferder considers 14 Seaport Avenue to be her home and to have been so since the late 1990s that is not the test I must apply. I wish to make it clear that in reaching my decision I was mindful of the attachment Ms Ferder has to Portballintrae and the contributions she has made to village life there, which are of course commendable. I know my judgment will come as a disappointment to her, but having considered all of the evidence presented, I am not satisfied that the evidence established a sufficiently continuous user as of right for the required period. Overall, I find that the case presented by the defendants in respect of a right of way failed to meet the required evidential threshold and therefore fails.

Conclusions

Plaintiffs' claims

[139] I declare that each of the plaintiffs benefits from an express right of way along Seaport Avenue, Portballintrae and as it passes along the front of number 14 Seaport Avenue and in each case as shown from the maps attached to their respective Deeds, the width of same to be 5.8m.

I grant an injunction restraining the defendants, or each of them, their servants or agents or invitees from obstructing the rights of way of the plaintiffs or each of them or otherwise interfering with the plaintiffs' use and enjoyment of their said respective rights of way along the front of number 14 Seaport Avenue and directing the defendants and each of them to remove any and all installations including rocks, boulders, posts and lights from that part of Seaport Avenue along the front of number 14 Seaport Avenue over which the plaintiffs enjoy a right of way in order to make free and unfettered use of the right of way without interference and to do so within 14 days of today ie by 10.07.26.

I award each of the plaintiffs the sum of £1,000 in damages.

I declare that the defendants do not enjoy a right of way along Seaport Avenue.

The plaintiffs are awarded their costs.

Defendants' counterclaim

[140] I dismiss the counterclaims.

The plaintiffs and the defendant to the counterclaim in ICOS 23/067761, the Council, are awarded their costs.

Costs

[141] I now invite counsel to address me on the appropriate scale of costs.