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IN THE MATTER OF THE CORONERS ACT (NORTHERN IRELAND) 1959

**IN THE MATTER OF A SERIES OF DEATHS THAT OCCURRED IN
AUGUST 1971 AT BALLYMURPHY, WEST BELFAST**

**INCIDENT 3
THE DEATH OF MR EDWARD DOHERTY**

CORE ABBREVIATIONS USED IN THIS INQUEST:

NOK:	Next of Kin
MoD:	Ministry of Defence
RUC:	Royal Ulster Constabulary
CSNI:	Coroners Service for Northern Ireland
HET:	Historical Enquiries Team
RSR:	Review Summary Report
RMP:	Royal Military Police
APC/PIG:	Humber Armoured Personnel Carrier
SMG:	Submachine Gun
GAA:	Gaelic Athletic Association
RVH:	Royal Victoria Hospital

Sections

Paragraphs

I. Introduction	[1]-[8]
II. Setting the Scene	[9]-[13]
III. Family Testimonials	[14]
IV. Engineering Evidence	[15]-[16]
V. Civilian Evidence	[17]-[34]
VI. Military Evidence	[35]-[57]
VII. Pathology Evidence	[58]-[63]
VIII. Ballistics Evidence	[64]-[66]
IX. Additional Evidence	[67]-[69]
X. Conclusions from the Evidence	[70]-[102]
XI. Verdict	[103]

I. INTRODUCTION

[1] This is an account of the evidence and my conclusions and verdict. I have considered all of the evidence heard between 28 November 2018 and 10 December 2018 and additional evidence heard in September 2019. I have also considered all of the papers and the written submissions of counsel. This text does not recount each and every aspect of the voluminous material I have considered and so it should not be assumed that where some detail is not specifically mentioned I have not considered it. I have considered the totality of the evidence in reaching my findings.

[2] In the introductory chapter I set out the law governing inquests in Northern Ireland which I have applied. With the agreement of all parties I have heard this inquest as a judge sitting as a coroner without a jury. I have kept in mind the investigative obligation imposed by Article 2 of the European Convention on Human Rights. I have applied the balance of probabilities as the standard of proof. As I state in the introductory section, the standard of proof is one thing but the state of cogency of the evidence is another as this case relates to events 50 years ago. The court is mindful that memory is affected by the passage of time and so accounts must be examined carefully before findings can be made. In accordance with my obligations in law I have, upon assessing all of the evidence I have seen and heard, tried to reach a verdict on the core issues. Where I have not been able to reach a conclusion I have explained why.

[3] Mr Edward Doherty was 30 at the date of his death. He was a father of four. He was a builder's labourer and he lived on Iveagh Street.

[4] Edward Doherty died on 10 August 1971 on the Whiterock Road. He had been on his way home from visiting family in Norglen Parade when his way was blocked by a barricade. Mr Doherty was shot by a soldier who was driving a military vehicle at this barrier. The shooting took place around 5pm and he died

shortly afterwards. This death occurred as part of a series of events which took place in Ballymurphy, between 9 and 11 August 1971. The death of Mr Doherty on 10 August 1971, is a single incident, the third in a series of five I am examining.

[5] In 1972 an inquest into this death was conducted by the coroner Mr Elliott. That recorded an open verdict. In 2011 the Attorney General of Northern Ireland ordered a fresh inquest.

[6] By way of correspondence of 24 May 2011 the Attorney General provided reasons for doing so as follows:

“In particular I have considered the statement of Soldier B which was submitted to the inquest on 4th May 1972. In this statement soldier B described firing one aimed shot at a man whom he said was throwing a petrol bomb, before being struck on the right side of his head and knocked unconscious. Soldier B later identified this man as Edward Doherty. I have also considered the statement made by the same soldier to the Royal Military Police on 12 August 1971, in which he describes the incident in which he was struck on the head thus:

‘I had my weapon in my left hand being a left handed shot, and, holding the door open with my right hand, I brought my weapon to the aim at the man with the rifle. As I did so, I received a blow to the right side of my head with what I do not know, but my right eye was injured. I was partially blinded but I fired at the man with the rifle. I must have inadvertently engaged the change lever on

automatic as I emptied the magazine firing towards the rifleman.'

It appears that the statement made by soldier B to the Royal Military Police was not available to the original inquest and the coroner's jury would it appears have been unaware that the soldier in question had admitted firing a total of 30 bullets in the vicinity of the barricade on the Whiterock Road instead of only one aimed shot as appears from the statement which was submitted to the inquest.

This issue could not have been, and indeed was not, explored at the original inquest."

[7] I heard oral evidence from civilian witnesses and military witnesses, including M3 the soldier in question. I have also considered written statements and all of the papers filed in this matter. I have considered maps of the area, contemporaneous media reporting and newspaper death notices. I have been provided with helpful written submissions by the counsel representing the next of kin and the Ministry of Defence ("MoD"). My verdict is in narrative form, bearing in mind the obligations upon me which I have set out in the introductory section of the findings. I will summarise the evidence in the subsequent paragraphs.

[8] The how, when and where of this death is not contentious. It is also not contentious that the deceased was shot by a soldier serving in the Royal Engineers who was driving a vehicle in the area on the day in question. The main question in this inquest is whether the use of force can be justified. The next of kin say it cannot, whereas the MoD assert that the shooting was justified because of unlawful activity at the barricade.

II. SETTING THE SCENE

[9] To obtain a sense of the area in 1971 I have utilised maps and photographs which I refer to here to assist the reader. Particular reference was placed upon Plan B drawn from an Ordnance Survey map of the area in 1965. Brian Murphy is Consultant Engineer. He provided a report to the court and some plans of the area in which Mr Doherty was shot. He also took some photographs of the area which were utilised. Prior to giving evidence there was some dispute about the exact locus of the incident. This was resolved by all parties and so Mr Murphy concentrated on location 1. He also gave evidence about the style of the tractor being driven by the soldier M3, namely an Allis-Chalmers military issue vehicle.

[10] I reproduce the map which shows the area of the Whiterock Road I have been dealing with (**Annex 3.1**). Location 1 is marked. I also reproduce two photographs of the Allis-Chalmers tractor (**Annex 3.2**). In addition, I reproduce some photographs of the Whiterock Road in the present day taken by Mr Murphy. These show the camber of the road and also some houses where eye witnesses were located. Photograph 21 (**Annex 3.3**) - shows 51 Whiterock Road (the home of Martin McLaughlin who witnessed from an upstairs bedroom window). Also photograph 29 (**Annex 3.4**) shows 7 Whiterock Drive (where Mr Doherty was taken after he had been shot). Photographs 31-46 (**Annex 3.5**) detail the view from 51 Whiterock Road, where Mr McLaughlin was. This shows a view overlooking the road and the cemetery.

[11] I visited the scene myself and saw the locus of this event on the Whiterock Road. Driving up the road the cemetery entrance is visible on the left, rows of houses on the right, Brittons Parade.

[12] On the day in question, Mr Doherty was on his way home from visiting family when he came across the barricade. The circumstances of how he got shot are disputed but he did get shot by a bullet which was fired by a soldier from a tractor

who was trying to remove the barricade. That much is uncontroversial. The core questions are where was Mr Doherty when he was shot, was he the petrol bomber, and was the soldier justified in opening fire?

[13] The context of the day is important. This incident came after the deaths on 9 August 1971 in Ballymurphy following Operation Demetrius and the introduction of internment in Northern Ireland. This was a fraught time in West Belfast and in other parts of Northern Ireland. The Historical Enquiries Team (“HET”) Review Summary Report (“RSR”) refers to the setting as follows:

“When the army was sent to NI in 1969 to support the RUC, it was welcomed as a neutral force by most sections of the community. By the time of Mr Doherty’s death in August 1971 though, a substantial section of the nationalist community had come to regard the army as an instrument of state oppression. The Parachute Regiment in particular had a poor reputation in Belfast; many considered them to be violent, arrogant and insensitive. Only 3 days before Mr D was killed, a member of the Parachute Regiment shot dead Henry Thornton who had been driving his work van along Springfield Road when it backfired. His passenger Arthur Murphy was taken to the nearby RUC Station where he was allegedly assaulted. That night there was severe rioting against the army in the Springfield area.

Young soldiers generally viewed tours of duty in NI with trepidation. Between February and August of 1971, 14 of them had been killed. On one hand the army regarded the nationalist communities as the areas from which threats to their safety were most likely to emerge and on

the other the nationalist community viewed the soldiers as agents of the state who were determined to repress them, almost at any cost. The situation was extremely tense and there was little sign of it improving.

The RUC were overwhelmed by the volume of serious incidents and the dire security situation. Normal policing functions all but ceased and many regarded the RUC to be an unprofessional, sectarian and unionist police force that had no genuine desire to investigate allegations of wrongdoing by members of the security forces. Instead of playing only a supporting role to the RUC, the army soon assumed primary responsibility for safety and security throughout NI. In 1970 the head of the army and the RUC Chief Constable reached an agreement that army investigators would interview soldiers who were alleged to have been involved in serious incidents. More will be said of the agreement later in this report, but a consequence of it was that it negated any possibility of an independent and effective investigation.

The day before Mr Doherty died internment was implemented under the Special Powers Act, which allowed the police and army to indefinitely detain without trial those suspected of terrorism. Hundreds of Catholics were arrested in dawn raids. Between August 7 and 11 23 people died as a result of incidents that took place in West Belfast and thousands of people were burned out of their homes. Hijacked lorries, buses and cars were used to construct barricades creating effective no-go areas; visible symbols of success to those who

espoused a republican agenda, and an embarrassing challenge to the authority of the State. It was near to one such barricade that Eddie was shot and killed.”

III. FAMILY TESTIMONIALS

[14] Before hearing the formal evidence, Mr Doherty’s family provided some personal testimonials. His sister and son were able to do this and they made the following observations. The family told me that he had been in an awful state after hearing of the deaths in Ballymurphy. His family were devastated by this death and stressed the ripple effect of this on a number of members and the acute pain caused by the fact that Mr Doherty’s death occurred on his own road. They said that this was an injustice and they wanted to fight for the truth. They referred to the fact that Mr Doherty was a 30-year-old married man and father of four when he died. I have heard a testimonial from his family about the great loss occasioned by his death. I have also heard that Mr Doherty was a working man, a builder’s labourer. His father was formerly a member of the Territorial Army (“TA”) and had been a member of the Royal Engineers before that. In addition I received a statement from Kathleen McCarry, his sister, and that refers to the fact that Mr Doherty joined the TA himself. When he came home he suffered from depression but he got on with life. He worked and enjoyed fishing and clay pigeon shooting as pastimes. He was described as a humble man, a devoted husband and a threat to no one.

IV. ENGINEERING EVIDENCE

[15] In evidence, Mr Murphy explained that location 1 where the incident occurred remains largely the same today as in 1971. He described this as an area of wide urban road (the Whiterock Road) bounded by a cemetery wall to the left (looking up the road) and a Gaelic Athletic Association pitch and some waste ground to the right now a children’s play park. The waste ground was described as rough and undulating. Mr Murphy said that the locus was country wards up the

inclining Whiterock Road from in or around the barricade up as far as 51 Whiterock Road. The exact situation of the barricade was impossible to mark, but broadly it was agreed by a process of asking witnesses to indicate it on Mr Murphy's plan B that this was on relatively flat terrain above the brow of the initial steep hill on the Whiterock Road leading towards Brittons Parade. There is a height difference of two feet over a distance of 38m (124.6 ft) from the centre of the road at Brittons Parade to the centre of the road outside 57 Whiterock Road. The road is therefore two feet higher in line with No. 57.

[16] Mr Murphy provided some information from his own researches about the Allis-Chalmers tractor. Referring to photographs of this type of vehicle, he said that it was not fitted with protection or with grills. He referred to the soldier's description that there was only one door on the left hand side as according with some photos but another textbook showed access from both sides. Mr Murphy accepted the soldier's estimate of the vehicle being about 10 feet off the ground as realistic, which meant the soldier's eye line would be six inches less than that.

V. CIVILIAN EVIDENCE

i. Original Depositions

[17] These depositions were all read into evidence in accordance with the rules and by agreement of all parties.

[18] A deposition was read from Mr Doherty's widow, Mary Ann Doherty, dated 4 May 1972. In that deposition Mrs Doherty said that she resided at 82 Iveagh Street with her four children and that her husband resided there until his death. She stated that she last saw her husband on Sunday 8 August 1971 when he left to go to work as a labourer with John Laing Builders. She said that on the Sunday afternoon she left home to spend a fortnight's holiday at a house, 17 Chapel Street, Killough, but

that her husband stayed behind as he had his holidays in July and had to go to work. Mrs Doherty described her husband as in good health when she left him.

[19] Anthony Morgan's deposition is undated. In it he stated that he resided at 24 New Barnsley Drive since 15 August 1971 and before that at 137 Norglen Parade. He said his wife is the sister of the late Edward Doherty. He said that at about 4:30pm on 10 August 1971 Edward Doherty called at his house with his father. He said he was in good form. Mr Morgan said that Edward Doherty left at about 4:50pm and said that he was going home to his own house at 82 Iveagh Street. He said the barricade was about 10 minutes' walk from 137 Norglen Parade.

[20] Robin Shields' statement is dated 4 May 1972. He said that he is employed as an ambulance driver. On 10 August 1971 about 5pm as a result of a message he left the depot to go to 7 Whiterock Drive. He said he went up the Falls Road to the Whiterock Road. He said when he got to the Whiterock Road he heard shooting and he could not get up the Whiterock Road because of it. He said he remained at the Falls/Whiterock junction for a time but the shooting continued and then he returned to the depot.

[21] Robert Brown's deposition is dated 1 May 1972. He said that he was employed as a driver by O'Kane Funeral Undertakers. He said that on Tuesday 10 August 1971 at about 7pm he went to 7 Whiterock Drive and collected the body of a man he now knew to be Edward Doherty and conveyed the body to Laganbank Mortuary. He said the Whiterock Road was blocked near Whiterock Drive, 20 to 30 yards from the barricade.

[22] Dr Kevin McAvinney in an undated deposition said he was a GP. On the evening of 10 August 1971 he went to Belfast City Mortuary, Laganbank Road, where he saw the body of a male identified as ED, 82 Iveagh Street and he pronounced life extinct.

[23] Thomas Doherty in a deposition made on 4 May 1972 said that he was the brother of the late Edward Doherty. He said it was about one month since he last saw his brother alive. He said that on 11 August 1971 he saw his remains at the Belfast Mortuary and identified the body as that of his brother. He said he knew nothing about the circumstances of his shooting.

[24] Detective Sergeant JD Wilson in a deposition made on 14 May 1972 said that on 11 August 1971 Thomas Doherty identified to him the body of his late brother Edward Doherty at the mortuary and that later he identified the body to the State Pathologist, Dr T K Marshall, who carried out a post-mortem examination of the body.

ii. Oral Evidence

[25] Mr James McCabe gave evidence to the inquest. His evidence is contained in a statement provided for the inquest of 5 October 2018 with a plan attached. He had not made a statement before. He said he lived in the area at the time. He said it was a terrible time – people were under siege after the introduction of internment. He said he had a clear unobstructed view of the digger at the barricade. He said the soldier exited the left door and fired continuously left to right. He said he was worried he would shoot again so he started firing stones at him. He said no petrol bombs were being thrown at the time, maybe later. He said there was a barrel of diesel in the barricade which went off. He said he did not see the man being shot but he saw in the aftermath a pool of blood and air bubbles coming from the man. He said he walked away and did not go home for two days. He said he still had flashbacks. He said he was prompted to make the statement as a result of reading an article in the Guardian newspaper. He said he had post-traumatic stress disorder and other mental health issues. When questioned, the witness referred to other internet research he had undertaken, a documentary he had watched and the fact that he was prompted to make the statement and come forward because he found out a “British soldier had changed his statement.” A number of inconsistencies were

put to this witness. The witness was however clear and demonstrated in the witness box that as far as he could recall the soldier fired a large number of shots “spraying the crowd” and “emptying his magazine.”

[26] Mr Martin McLaughlin also gave evidence. He lived in the local area at the time, but since 1990 he had lived in England so he travelled back to Northern Ireland to give evidence. He provided a statement on 5 September 2016 and a statement of 14 November 2018 to the Coroners Service of Northern Ireland (“CSNI”). These statements were read and then Mr McLaughlin gave the following evidence. He explained that he was a 9-year-old boy when the incident occurred. He lived at 51 Whiterock Road at the time. He said he saw some families on the news in 2016 and there was an appeal for witnesses to come forward, so he did. He said he was with his mother and sister on the day in question watching events unfold from the front bedroom window of 5 Whiterock Drive. His sister has since passed away and his mother has dementia. He said he saw a Mr Whelan outside who was a man his father knew. He said he was talking to another man he did not recognise. He described the barricade on Whiterock Road and the digger. He said there were bottles, bricks being thrown and petrol bombs, and the sound of rubber bullets. He said he saw a crate with petrol bombs in it. He said Mr Doherty was just outside No. 49, half turned, looking back towards the barricade. He said he was looking over his left shoulder, when he jerked or stumbled, fell forward and hit the ground and there was a pool of blood. Mr McLaughlin said he wanted him to get up. He said “I didn’t want to see it but I couldn’t unsee it.” Then he said “four men came and scooped him up.” He heard three maybe four loud cracks after that. He said people were running around after that.

[27] When questioned, Mr McLaughlin confirmed that he did not see the soldier shooting as he was concentrating on the man who was shot. He said he heard a single shot followed by three or four live rounds. He said the man who was shot was not running, he was looking over his left shoulder. The witness described the blood that was left marking where the man was shot and that people came and put

flowers and candles on the spot because that is where it happened and a man cleaned blood away from outside the gate.

iii. Pro formas taken by John Morris & Co

[28] Shortly after events a firm of solicitors called John Morris & Co took evidence from witnesses on a pro-forma form. These were all read into the record, by agreement of the parties, pursuant to Rule 17, save that of James McAreavey who gave oral evidence.

(a) **Patrick O'Reilly**

He said the incident occurred 10 yards past Britton's Parade on the Whiterock Road proper at 5:15pm on Tuesday 10 August 1971. He said there were 60 men, 25 women, 40 boys, 1 digger. He said the digger driver had a black beret, the soldiers red berets. He stated:

"Army arrived to remove barricades across Whiterock Road. They fired machine gun as they arrived at the barricade. Some of the crowd reacted by throwing stones and other missiles. The driver of the digger fired a shot and as there was no other shooting I assume this was the bullet that killed Edward Doherty.

Although I did not see Doherty fall, I am sure the driver who fired the shot did not see him either because of the trees in the barricade which were about fifteen feet high. I am also sure this man who was a stranger to the district had no part in the gathering at the barricade. This man in my opinion was the victim of an indiscriminate act."

In answer to the question “who fired the fatal shot?” he said “the soldier driving the digger.”

(b) **William Whelan**

This witness described the same scene and time. He said there were 40 boys there. He said the digger driver fired the fatal shot. In describing the situation immediately before the incident he said:

“Army approached barricade to remove it. Crowd started to throw stones. When digger moved in, something in barricade exploded. Driver panicked, leaned out, fired with left hand.”

He also said:

“I saw incident from house in front of barricade on Whiterock Road. I did not see what happened behind barricade. To the best of my knowledge the digger driver was the only one to fire through barricade. Paras, Sergeant fired a burst wildly across McCrory Park.”

(c) **James Park**

He described the same location and time. He said 500 youths were present and paratroopers (known by red berets). He said that the digger driver fired the fatal shot. He also said:

“As the army approached the barricade a crowd gathered behind it on the Whiterock Road and in McCrory Park

and a petrol bomb was thrown into the barricade, setting alight a 40 gallon drum of diesel fuel.

When the bomb had been thrown the digger driver opened fire into the barricade. There were some shots fired across the park by the army (probably using a sub-machine gun). The army did not seem to be aiming their fire at any particular individuals.

In the burst of fire from the digger a man behind the barricade fell wounded. He was carried to a house in Whiterock Drive. Some minutes later I went to this house and identified the body as that of Edward Doherty, whom I had known since my youth."

(d) **James Sloan**

He described the same location and time. He said 40 boys were there. He said he "was not present until shots were fired".

"I was standing at the corner of Whiterock Drive/Whiterock Road when I saw a man obviously wounded. I ran towards him and assisted him round Whiterock Drive corner and laid him on the ground. His left breast was saturated with blood and I could see he was dying. We carried him to 7 Whiterock Drive and I think he had died before we reached there. I heard one hour later he was Edward Doherty as he was identified by a neighbour."

(e) **Joseph Lunney**

He described the same scene within broadly the same time. Fifty men and 15 boys. He said he had no idea who fired the fatal shot. He said he assisted in carrying the wounded man with a Mr Sloan.

(f) **Thomas Lunney**

He referred to same location and approximate time. His statement refers to 10/20 men, 5/10 women, 30/40 boys.

He said a soldier from the other side of the barricade fired the fatal shot.

He said:

“Army arrived to remove barricade. They fired rubber bullets. Stones were thrown over the barricade at the army. One petrol bomb was thrown, it hit the top of the barricade and fell into the trees on the barricade.

I saw a man (afterwards identified as Edward Doherty) fall forward with hands outstretched in front of him. He had apparently been running away from the barricade when he was shot from the other side of the barricade. I went over to him thinking he had tripped and stumbled, but on seeing his face change colour, I realised he had been shot, although at first I thought he had taken a heart attack.”

iv. Oral evidence of Mr Joseph McAreavey

[29] Mr McAreavey filled out a pro forma with Morris solicitors. He also made a deposition to the original inquest. He completed a statement dated 16 November 2018 and he gave evidence before me. In his evidence he said that he recalls that he was taken from prison to give evidence, having been interned in Long Kesh from October 1971 to August 1972.

[30] He said that he did not know Edward Doherty well but he played football for Iveagh United and Edward Doherty was a supporter so he knew him to see. He said that in August 1971 he lived in Ligoniel. He came to the Whiterock area that day to assist distributing bread and milk to families around the barricades. He said there were tables erected on the road for this near Brittons Parade. He described the atmosphere at the barricade as "rough", "electric" and "chaos" as he said the Army was trying to break through and they were defending. He said men, women and children were throwing stones and a big tree was felled from the cemetery to form part of the barricade.

[31] Mr McAreavey said that he saw Mr Doherty go through the foliage trying to get through the barricade and he thought "there's that eejit going through the trees." He said that he saw the digger trying to get through, then the soldier shot Edward Doherty. He maintained that a bullet went through his own coat but he said there was one shot by the soldier and Edward Doherty said "I'm hit" and fell into his arms. He said there were no petrol bombs, no shooting, nothing by those at the barricade at that time. He said the soldier laughed and said "I've got one." He said he carried Edward Doherty over his shoulder to Mrs Mulligan. In answer to questions Mr McAreavey referred to another man being shot at the bottom of the Whiterock before this happened. However, he said it was "a lot of bunkum" that there was a crate of petrol bombs and no rubber bullets. He did not hear or see an explosion in the barricade. He said Mr Doherty was not doing anything suspicious, he was trying to get through the barricade; he may have slipped on glass and then

he was shot and fell into his arms. He thought the soldier may have been targeting him as he was the “biggest one there.”

[32] Mr McAreavey was asked about his differing accounts. In answer to questioning he said the first document of 21 August 1971 was wrong and the pro forma document from 1972 was not entirely correct. He said his account at the inquest was not full given that he was an internee and he was brought to court in handcuffs. He implied that he could not speak freely because of that. He said the most accurate account was that he had given to the coroner in November 2018.

[33] In the pro forma statement he provided at the time Mr McAreavey said that 250 men were involved. He said:

“I was told that people had been injured in McCrory Park. I was making my way through the crowd, down the footpath, alongside the barricade when a young man running away from the barricade stumbled on the footpath and bumped into me. Just then I heard a shot (I actually saw the leaves of the fallen tree parting as it zipped through). ‘I’m hit’ the man said he fell into my arms. I held on and carried him away about 30 yards to the gate of the second house past Britton’s Parade where we both fell. Mr Sloan then helped me to carry him to Whiterock Drive where my sister-in-law, a nurse, pronounced him dead.”

v. Other civilian evidence

[34] William Whelan is deceased. He completed a pro forma, made a statement to the HET in 2009 and spoke to Laura McMahon, parts of which were read out as follows. The thrust of this account was as follows. Mr Whelan was in his forties. He

said in this that he helped to build the barricade. He saw the digger coming and saw the soldier fire the shot. He never left the cab. He said he had no reason to fire as there was nothing going on. He said he helped bring Edward Doherty round to Mrs Mulligan's. He said there was a lot of rioting and he was involved. He referred to previous court proceedings where the judge accused him of collaborating with others to give the same statement. He said the barricade was high, as much as the pillars at the cemetery - 12 feet. Trees had been cut from the cemetery to build it. By agreement of the parties I also received a short video of Mr Whelan speaking about events at a relatives' event.

VI. MILITARY EVIDENCE

(i) M3

[35] Soldier M3 gave evidence and was questioned over two days. M3 is the current cipher given to this witness, however it is common case that he was called Soldier B at the time and his original deposition and statements use that cipher. I afforded anonymity and screening to this witness on the basis of an application I had received and in accordance with established legal principle. I did however permit a number of close family members of the next of kin to observe him. M3 was questioned at length and I have reflected carefully on all of the evidence he gave and the documentary evidence I was provided with. If I do not specifically mention some detail it does not mean I have not considered it. I highlight only the main parts of this evidence in this narrative but I have considered all of it in reaching my conclusion.

[36] M3 filed a comprehensive statement of 29 October 2018 for the CSNI. In addition, he made statements to the Royal Military Police ("RMP") in 1971 which are dated 12 August 1971, 13 August 1971 and 28 October 1971. He was interviewed by the HET on 16 June 2010. M3 also gave an interview to Panorama at the time and that was viewed in pixelated form and a transcript was provided during the inquest.

[37] In addition, M3 attached the relevant portions of the Yellow Card to his statement for CSNI and he was questioned about these sections which I record here as this issue is of particular relevance. The following sections apply:

- “2. Never use more force than the **minimum** necessary to enable you to carry out your duties.
3. Always first try to handle a situation by other means than opening fire:
 - (a) Fire only aimed single shots;
 - (b) Do not fire more rounds than are absolutely necessary to achieve your aim if you have to fire.
5. **A warning must always be given before you open fire.** The only circumstances in which you may open fire without giving warning are described in para 12 below.
7. **You may fire after due warning -**

against a person carrying a firearm but only if you have reason to think that he is about to use it for offensive purposes.
8. **Against a person throwing a petrol** bomb if petrol bomb attacks continued in your area against troops and civilians, or against property, if his action is likely to endanger life.

12. You may fire without warning -

Either when hostile firing is taking place in your area and a warning is impracticable, or when any delay could lead to death or serious injury to people whom it is your duty to protect or to yourself, and then only:

- (a) **against a person using a firearm** against members of the security forces or people whom it is your duty to protect; or
- (b) **against a person carrying a firearm** if you have reason to think he is about to use it for offensive purposes.

Note: 'Firearm includes a grenade.'

[38] M3 explained that he was a member of the Royal Engineers in 1971. He said that he was deployed with 2 Para D Company with the task of clearing barricades. He said he did 12 weeks basic training upon enlistment in 1969. That involved basic weapons training. He said he received the Yellow Card manual and he was told to keep it with him. He said he had his own Allis-Chalmers tractor which he used for the whole tour. He described this as a reliable vehicle, with a maximum speed of 15mph. He said the only door was on the left- hand side.

[39] On the day in question he said he had a Sterling submachine gun which would use low velocity 9mm bullets. At paragraph 18 of his statement to the CSNI M3 explains that:

“The magazine would have been attached to the gun when stored. The gun had a change lever which is a three position switch. The furthest back that the lever can go is “S” safe. In the safe position the gun won’t fire. It is possible to cock a gun when it’s on S but in order to fire you have to move the lever to the first position. The first position, which is one click forwards towards the barrel is R - repetition. Repetition means that the gun fires one round with a squeeze of the trigger. The other setting is A - automatic, where if you hold the trigger it will empty the magazine. If you give the trigger a short press then it will fire in bursts.”

[40] M3 described being deployed on 9 August 1971, which was the day of the internment operation. He explained that he was tasked to clear barricades and that the barricade where these events occurred was the largest he had ever seen. He also described that there were crowds of people on the street around the barricade. He said there were missiles being thrown: stones, petrol bombs and a blast bomb. He said 12 soldiers were deployed from the armoured personnel cars or “pigs” accompanying him.

[41] In his statement provided to the CSNI the witness described his numerous attempts to get through the barricade. He repeated this in evidence, namely that after numerous failed attempts to get through the centre of the barricade he moved to the right hand side of the road where he thought he could see a gap. During the previous manoeuvres he said there was blast which buckled one of the wheels on the tractor. He said he managed to move some of the barricade at that point. It is at this stage that he says he saw a man facing him on the other side of the barricade and that this man threw a petrol bomb at the tractor and it exploded over the front of the left wheel. However, he tried again and “went to have another run at the barricade.” At this point he said he had his weapon across his lap for defence. He said that he

saw the man throw a second petrol bomb. Then he refers to the man gesturing for the crowd to join him, lighting a petrol bomb and climbing the barricade and as he was preparing to throw a third petrol bomb, M3 said he shot him. In his statement M3 said the man was the only person on the barricade, moving towards him, with a lit petrol bomb and he was encouraging others to join him.

[42] M3 was clear in his evidence that he saw a man throw a petrol bomb over the barricade towards the tractor. He placed his weapon across his lap for defence as he felt his life was in danger as there was only one exit to the left from the tractor. He said he had five rounds in his weapon. At paragraph 40 of his statement made to CSNI he states that:

“A Sterling SMG magazine can hold 30 rounds and I believe that the RMP soldier who drafted my statement assumed that is how many rounds I would have had. In fact, as a Sapper, I only had 5 rounds in my SMG. This was the standard issue of ammunition for an SMG. We did not have access to lots of ammunition, as we only had our weapons for protection.”

[43] M3 said that he gave no warning in these circumstances but he maintained that warnings had been given by other soldiers on the ground. During the evidence M3 then described an escalation in violence which he said involved petrol bombs and live rounds. By then he said a soldier E had told him to halt. He said he began reversing when he saw a man in the vicinity of McCrory Park with a rifle. He said he opened the window on right hand side of the vehicle and fired the remaining 4 rounds at him. He said the gun was incorrectly in the automatic position. In the course of this soldier M3 was injured in the face, he lost consciousness and control of the vehicle and he was ultimately taken away for treatment.

[44] He said that while in hospital he was shown a photograph of Edward Doherty and he identified him as the petrol bomber.

[45] M3 said that he did not receive a debriefing. He also confirmed that he received a Military Medal for bravery. He said that he attended the original inquest in 1972. Finally, to complete his evidence the witness was shown the Panorama video and confirmed that was him but he could not actually remember it.

[46] In answer to questions, M3 explained that he did not extend the gun. He did not fix sight. He held it with his dominant left hand and fired one shot, having only a few seconds to make up his mind that this was what he needed to do to protect himself. He accepted in evidence that he may have missed the man throwing the petrol bomb and hit another man. During his evidence M3 also agreed that he may have made a mistake in his identification of Edward Doherty when he was shown the photograph in the hospital.

[47] M3 said that he did not see the man he was shooting at sustain the wound so he was asked the following question by coroner's counsel:

"Is there a possibility that you missed the man firing the petrol bomb and hit another person who was further up the road?"

M3 agreed that this was possible."

[48] He was also asked about the position of the barricade and agreed it was roughly at the point between the H-I of the words Whiterock Road on Plan B. He was then asked the following question by coroners counsel:

“Well, if I can put it like this, if you did miss the petrol bomber then the line of fire was in the direction of the location I’ve just described, is that right? is that fair?”

M3 agreed that was right.”

[49] During examination by counsel for the next of kin M3 was taken through all of his statements made to the RMP and HET. It was suggested that different evidence had been given about the petrol bomber – for example, his account changed from the man being in front of the crowd to climbing up the barricade. In his original statement, it was put to M3 that he said there were 30 rounds in the gun, while in the most recent he said five. He was asked why he had not taken the opportunity to correct that when he spoke to HET. It was suggested that he was embellishing his account to suit his own ends and to try to justify his actions. M3 denied that suggestion.

[50] M3 was also examined about his own medical condition and in particular a medical note from the time which referred to his story being “grossly inconsistent.” It was also put to him that there was no mention of loss of consciousness and that at its height the injury was a slight graze to right temple and particles in his cornea which required eye drops. The relevant personnel in the military hospital was a captain who recorded the narrative was put to M3 as follows:

“The story he gives is grossly inconsistent and concerns his attempts to demolish a barricade in Belfast on the 10th of August 1971. He was apparently involved in a gun battle, during which a bullet grazed his right temporal region and he was knocked out not before he had emptied the rest of his magazine in the direction of a hidden gunman however. This story of dizziness, followed by loss of consciousness, may be related to the fact that it is

his reason for knocking down the side of somebody's house as well as the barricade."

[51] I have also considered the statement of Soldier B which was submitted to the original inquest on 4 May 1972. In this statement Soldier B (now known as M3) described firing one aimed shot at a man whom he said was throwing a petrol bomb, before being struck on the right side of his head and knocked unconscious. Soldier B later identified this man as Edward Doherty.

[52] The same soldier gave a statement to the RMP on 12 August 1971, in which he described the incident in which he was struck on the head and said that:

"I had my weapon in my left hand being a left handed shot, and, holding the door open with my right hand, I brought my weapon to the aim at the man with the rifle. As I did so, I received a blow to the right side of my head with what I do not know, but my right eye was injured. I was partially blinded but I fired at the man with the rifle. I must have inadvertently engaged the change lever on automatic as I emptied the magazine firing towards the rifleman."

[53] M3's personnel file revealed that he was dismissed from the Royal Navy in 1969 and then charged with cashing a stolen cheque in June 1971.

[54] In response to the obvious issues which arose from M3's differing accounts, he said that the RMP had got some details wrong in his original statements. He also said that he did not correct HET during their interviews as he was in bad health at the time. He accepted when questioned by MoD counsel that he may be wrong about the identification. He said he was stunned by all of this and that might have explained inaccuracies in the medical reports. In relation to the disciplinary record

he said he took a staff car and so was discharged from the Navy but he was very young at the time.

[55] At the conclusion of his evidence M3 said that this incident has remained with him. He said that he wished he could turn back time and he said he wanted to offer his sympathy to the family of Mr Doherty. He confirmed that at the time he was also shown a photo of Joseph Corr which he said was the second man he shot at on the Whiterock Road that day. M3 was the only military witness to give evidence.

(ii) Soldier A

[56] Evidence was also read from the statements of Soldier A. He was present at the time of this incident. He made a number of statements to the RMP and made a statement for the inquest dated 4 May 1972. In that statement he said he was employed as an Internal Security Operative in Andersonstown on 10 August 1971 tasked with removing road barriers erected by rioters. He said Soldier B (now M3) was also part of the operation. He described the barricade on the Whiterock Road. He said there were 200-300 persons assembled in the grounds of a school on the right hand side of the road, behind the line of the barrier. He said that "as we arrived at the barrier a large number of assorted missiles, petrol bombs and one nail bomb were thrown by these people, and by several others located in the grounds of the cemetery on the left hand side." He then described attempts by the shovel operator to break through the barrier which were without success. He said in the meantime several rubber bullets were fired into the crowd.

[57] He said that after 15-20 minutes the order was given for personnel to move in the Armoured Personnel Carriers ("APC"). They then reversed. He said he also saw the shovel reverse and he saw the driver with the right-hand cab door open firing his 9mm Sterling submachine gun towards the school grounds. Soldier A said he could not see what he was firing at but it was two bursts. Thereafter, he said that the mechanical shovel vehicle was driving in an erratic manner and he ordered his

personnel to assist. He said that shortly after B was taken away, he saw a man throw a petrol bomb in the general direction of the APCs from the cemetery. He said he took one aimed shot at him and that he is certain he did not hit this man. At the conclusion of this statement, Soldier A said:

“I would like to add that whilst at the barrier at the start of the rioting the civilians were given about 20 or 30 warnings about throwing petrol bombs. They were shouted at by myself and other personnel at the scene but they had no effect.”

Soldier A has never been identified.

VII. PATHOLOGY

[58] This evidence was given by Professor Thomas Marshall who was State Pathologist in 1971 and who conducted the post mortem. Dr Benjamin Swift, Consultant Forensic Pathologist, and Dr Nathaniel Cary also gave expert evidence on the pathology issues. Various reports were provided by these witnesses and they helpfully discussed matters leading to an agreed note of 23 November 2018, compiled by Dr Swift which reads as follows:

“Summary of Opinion

1. The following points are agreed between Dr Cary, Professor Marshall and myself:
 - (a) ED died as a result of a single gunshot wound to the chest, which caused catastrophic internal bleeding due to damage to the aorta (the main blood vessel in the body) and penetrating injury of

the lungs. As such, death would have been rapid but not instantaneous.

- (b) The wound to the left lower chest was the entrance wound.
- (c) The wound to the right chest was the exit wound.
- (d) The appearance and internal description are entirely consistent with having been caused by a ballistic projectile such as a 9mm bullet (a low/medium velocity projectile).

We are all in agreement that the wound depicted is not consistent with a high velocity ammunition round.

2. It was agreed by Dr Cary and myself that there was more than one scenario by which the deceased could have received the gunshot wound.

- (a) Dr Cary states that it is not possible to exclude other scenarios, such as the deceased being shot while running away, bent over, or whilst lying down (the latter of which Dr Swift would not disagree with in theory).
- (b) Dr Swift reiterates that, of the two scenarios provided within the supplied witness statements the pathology would better fit the account of soldier B and that there has been no suggestion of

Mr Doherty lying prone when he received the single fatal wound.”

[59] Dr Swift also gave oral evidence. He confirmed that he was working from photographs and that presented a limitation. In evidence Dr Swift ignored Professor Marshall’s measurements. Dr Swift said he thought the accounts of Soldier B best fit the pathology. However, he said there were a “great variety of possibilities” of how the deceased sustained the injury he received. He said it was quite an unusual site – given the height discrepancy between entrance and exit, the bullet was moving upwards. Dr Swift agreed that if the deceased’s body was bent in some way that would explain an upward moving bullet. Or if facing away, with left side exposed and the body was bent that would suffice but there would have to be twisting.

[60] Professor Marshall gave evidence and confirmed that he conducted the post mortem on Mr Doherty on 11 August 1971 at 6pm. He said that there was no issue regarding the velocity of the bullet involved as categorisations have changed over the years and that was the reason for the difference in the reports. Today, the bullet would be described as low/medium velocity. Professor Marshall stood over the measurements given in his report but he stressed these were estimates taken at the time without precise measuring instruments, from his assessment of the deceased’s body. He observed that you cannot look at photographs to take measurements, you have to be there; it is an estimate and the 10° estimate of inclination is probably the most useful guide, this is in essence a back to front, left to right, upwards bullet wound.

[61] When questioned, Professor Marshall agreed that the history was given to him and was hearsay. He also agreed that if he had noted some feature such as a smell of petrol he would have included that in this report. Professor Marshall could not assist regarding the photograph that was produced of Mr Doherty with his

clothes on. He said he would have seen the man's clothes but not examined them in detail. He said:

“I have no note here that there was a scene of crime officer so this was probably in the days before we had them and in those days, the early days, we would hand the material to the police.”

[62] Mr Albert Fleming gave evidence. He was a scenes of crime police officer at the time. He provided a deposition to the original inquest dated 4 May 1972. In that he said that he took swabs from the right and left hands of the body of John Edward Doherty. He said he also took possession of the following clothing from the body:

- (i) Green woollen shirt.
- (ii) Cotton vest.
- (iii) Dark blue trousers with black plastic belt.
- (iv) White cotton trunks.
- (v) Pair of slip on shoes.
- (vi) Pair of red patterned socks.
- (vii) Dark blue suit jacket.

[63] Mr Fleming stated that he handed the swabs and clothing over to the Department of Industrial and Forensic Science. When questioned, Mr Fleming could not say why no results were provided. He confirmed the process for taking swabs to test for gunshot residue. He could not recall if the swabs were also tested for petrol.

VIII. BALLISTICS

[64] Helpfully, the three ballistics experts met and filed an agreed note of their position dated 6 December 2018. The experts, Mr Olden, Mr Mastaglio (with Ms Shaw) and Ms Kiernan also filed comprehensive reports which were put before

the court by agreement. I set out the following relating to wound information which is by agreement of these experts and which I take from the minute:

- “6. The reported wounds are consistent with ‘low velocity’ such as 9mm Sterling SMG, rather than high velocity.
7. The reported wounds are consistent with entry to the left side of the back and exit from the front right chest.
8. The reported wounds are consistent with a direct shot rather than the result of a deflection/ricochet.
9. The wound track described by Dr Marshall indicates little or no deflection/deviation to the bullet’s path.
10. The resolution of the potential ambiguity between the internal/external entry/exit sites is strictly one concerning anatomy and would be more suitably addressed by a pathologist.

Relating to the posture of Edward Doherty when he was struck by the bullet

11. The bullet struck the left side of the back and tracked forwards and from left to right in relation to the body (recorded as 45 degrees left to right angle). This indicates that ED’s back was not directly facing the firer, nor was his left side, but

that he was turned approximately mid-way between these two points.

12. The bullet wound track was at an upwards angle in relation to the body (between approximately 10 and 30 degrees upwards, depending on how the post mortem report is interpreted). The finding could be explained if the shot had been fired from the cab of the tractor when ED was located the other side of the barricade (ie at a lower level), if he had been leaning or bending such that his right shoulder was lower than his left.
13. Such an explanation could also apply if ED had been on the barricade, assuming that he was located at a height level lower than, or the same as, that of the firer.
14. Given the various uncertainties it is not possible to reliably assess the extent of such leaning or bending by ED when the shot was fired. The information available therefore allows for the possibility of ED running (while leaning/bent) or bending down to the ground or throwing. It does not provide support for any particular one of these explanations over the other.
15. It is not possible to determine the firing distance or the location of ED when the shot was fired.

16. It is not possible to determine whether the shot was the result of semi or full automatic firing.

Regarding shots reportedly fired at man holding a rifle

17. Available information varies regarding the “fully automatic” firing by Soldier B at the man holding a rifle (whether fired from left to right side of cab) – MSM refers to Soldier B’s latest comment (not previously available to PO or AK) implying that 4 shots were fired fully automatically rather than 29.
18. It is possible to discharge a two shot burst with a Sterling SMG – however it would be difficult to achieve deliberately due to the Sterling’s rate of fire.

PO, MSM, AK agreement

19. The selector lever requires firm pressure to change its position between the three settings (A, R, S) which would be apparent to the operator.
20. A relatively short burst of full automatic fire could potentially be achieved without losing control of the gun, despite it being held in one hand. This would depend on the ability of the person firing to maintain a strong and secure grip on the gun.

Regarding lead testing

AS

21. The lead testing for lead particles on the swabs and clothing of Mr Doherty appears to have been carried out. The original forensic file has not been located and there are no items available for re-examination."

[65] In addition to this written record Mr Olden gave some oral evidence. He explained the discipline of ballistics. In summary, he said this case involved relatively short distances and a stable bullet. He said the disagreement about the angle between entry and exit (10° or 25°) did not really matter in general terms. His conclusion was simply that to achieve the upwards angle of the wound track, given that the firing angle was downwards, the deceased's right shoulder had to be lower than the left. He said the deceased could have been flinching or crouching, looking over his left shoulder. He agreed when questioned that if standing straight and upright outside No. 51 this could not have happened.

[66] Mr Mastaglio was also called and he was specifically asked about ignition of the diesel barrel. In answer he said that perforation of the barrel alone would not cause ignition, it needs a spark or a flame and a lit petrol bomb would do.

IX. ADDITIONAL EVIDENCE

i. A further civilian witness

[67] A witness came forward late in the day and provided a statement of 4 July 2019. I also heard oral evidence from this witness on 24 September 2019, who is known as C5 as I afforded him anonymity. The background in which C5 came to

give his evidence was examined during the evidence. From that examination it became apparent that C5 only became aware that Mr Doherty's death was part of the Ballymurphy inquest when socialising in a pub some months prior to making his statement. He said he was talking to two men. C5 was asked to identify the men. He did not want to do so in open court but he provided the names to me, after which it became apparent that one of the men had previously given evidence in the inquest. C5, when asked, said this man had not mentioned giving evidence to him. During his evidence C5 said that maybe five or six persons had contributed to the conversations which resulted in C5 being advised to see a solicitor, which he did. He was 22-23 years old at the time and lived in the area, although he left some three years later.

ii. M748 Recall

[68] M748 was also recalled to give evidence in Mr Doherty's inquest because he had completed an Army 'Injury Report.' Part 1 of the form signed by M3 records that:

"I was driving a MWT in the Whiterock Rad area on the afternoon of 10 July 1971. After clearing a barricade I saw a gunman running across some waste ground on my right. I opened the cab window to engage him and he opened fire. His bullet hit my tractor and ricocheted hitting me on the side of the head and threw glass into my (R) eye."

M748 said that the date of 10 July 1971 is likely to be an error. The correct date should be 10 August 1971. M748 was unable recollect the injury report or provide any assistance in regard to the death of Mr Doherty.

iii. Military logs

[69] There are limited records of this incident, however three relevant records are found in the 2 Para Log, the 39 Brigade Log and HQ NI Log, all for 10 August 1971. These are summarised as follows:

2 Para Log for 10 Aug

Serial	Time	Detail
125	1723	Report from RUC, Driver of Moby Dick at Andersonstown wounded

39 Bde Log for 10 Aug

Serial	Time	Detail
259	1748	54 Bty (54 Battery Royal Artillery) - While clearing a barrier on the Whiterock Road in 54 Bty area Para Sapper tractor driver shot in the head, now in RVH, not thought to be serious, as known happened about 1700

HQNI Log for 10 Aug

Serial	Time	Detail
79	1805	A sapper belonging to 53 Bd Sq att to 54 Sgn with 3 Queen's hit in head by bullet from a barricade in Andersonstown. Wound believed to be only a graze but soldier now in RVH.
87	1950	Boy named Docherty (sic) was found wounded has since died believed from Whiterock area.

X. CONCLUSIONS FROM THE EVIDENCE

[70] This event occurred nearly 50 years ago when Northern Ireland was experiencing a turbulent time known as the Troubles. The passage of time is significant and it obviously makes the task of adjudication extremely difficult. I must bear in mind that memories of these events may not be accurate. I must also take into account that people may be consciously or subconsciously influenced by what has been said about this event since it happened in the community or in the media. Even with the best will in the world it is impossible to remember every single detail of events that occurred so long ago with accuracy. However, I must try to see if I can

establish facts on the balance of probabilities. In undertaking this task I have considered a wide variety of evidence. It is tempting to pick through it all highlighting consistencies and inconsistencies. However, interesting as that may be I have taken an overall, holistic view in the search for answers. That is because no one piece of evidence is determinative and it is extremely difficult to establish the fine detail of events at this remove. The contemporaneous evidence is important but I bear in mind the limitations of investigation at the time. Many witnesses are also deceased or unable to attend. Those who have attended are understandably hampered by having to remember events so long ago.

[71] Notwithstanding the above, I have an obligation to decide as much as I can. Having considered all of the evidence two issues are clear. Firstly, the location of this event is uncontroversial. Secondly, the fact that M3 fired the shot that killed Mr Doherty is not disputed. The exact circumstances are more difficult to determine.

[72] Helpfully, counsel isolated four potential scenarios as follows:

- (i) M3 fired at Edward Doherty who was about to throw a petrol bomb.
- (ii) M3 fired at a person who was about to throw a petrol bomb. The bullet missed the petrol bomber and fatally wounded Edward Doherty.
- (iii) M3 fired at the man with the rifle who was Edward Doherty.
- (iv) M3 indiscriminately discharged the weapon (and emptied the magazine of his Sterling SMG) into the crowd whereby one bullet struck and killed Edward Doherty.

[73] In terms of these possibilities there was no evidence that would lead me to think scenario (iii) is at all realistic. There is limited corroboration of M3's account of

the gunman and whatever evidence there is does not point to Mr Doherty given his location. This scenario can be ruled out.

[74] In deciding on any of the other scenarios I begin my analysis by consideration of the ballistics and pathology evidence. In doing so I must record that the striking feature of this category of evidence is that none of the experts could be sure of what happened. I note that Dr Swift seemed to prefer M3's version of events as a likely cause but he was not definitive on that. In my view it is safer to say, as Dr Swift did in the agreed note, that there are a number of options.

[75] I found Professor Marshall's evidence particularly persuasive as he examined the body at the time. That is of considerable benefit rather than an assessment of photographs. Professor Marshall said that his measurements were estimates. Without being overly formulaic he stated that there was an upward angle between the entrance and exit wound. In answer to questions, Professor Marshall said he would have noted something such as the presence or smell of petrol so if he did not it was not there. He said that the history was given to him by police and so the account that Mr Doherty was throwing petrol bombs is not to be equated with fact.

[76] Drawing from the pathology evidence I conclude that Mr Doherty died from a single gunshot wound to his chest, back to front, left to right with an upwards trajectory, caused whilst the deceased was running or bent over in some way. There is no evidence to support the theory that he was lying down.

[77] The ballistics evidence also left open various possibilities as is apparent from the agreed note. I am grateful to Mr Olden who summarised the position in an accessible and effective manner when giving evidence. During his testimony he simply said (and demonstrated) that the deceased's right shoulder had to be lower than the left to achieve the upwards trajectory. In other words he could not have been standing straight.

[78] Mr Fleming's evidence was also important in that swabs were taken and sent for testing but no results were provided. There was no explanation given for this and so I proceed on the basis that there is no evidence of gunshot residue or petrol residue pertaining to the deceased.

[79] I now turn to my analysis the civilian and military evidence. First, I have considered those witnesses who gave statements but did not give evidence before me. I approach this evidence with some caution given that it is untested. However, there is value in it, given that it is contemporaneous evidence. The civilian reports from the time do not present one consistent thread, however looking at it as a whole I find the following background facts established on the balance of probabilities.

- (i) The location of the barricade was clearly near to the junction of Britton's Parade at the Whiterock Road. This equates to other evidence I heard that it was probably between the letter H and the letter I in WHITEROCK on the map (see **Annex 3.1**).
- (ii) A crowd had clearly gathered just before Edward Doherty was shot. It is impossible to know exactly how many were there but I think it is safe to say it was substantial and probably over 50 people.
- (iii) The atmosphere was tense and it is clear to me from the statements that there was some hostility on display towards the Army.
- (iv) There were missiles being thrown. In the statements there is also broad support that petrol bombs were a feature. In my view that makes sense and is the most consistent narrative given. I am also satisfied that there probably was an explosion in the barricade.
- (v) A tree was cut down and formed part of the barricade.

- (vi) M3 fired at the barricade from the tractor.
- (vii) Mr Doherty was not engaged in any particular activity.
- (viii) There was a lot of noise in the area including the sound of rubber bullets.

[80] This evidence is only part of the picture. My ultimate conclusion has also been shaped by the oral evidence I heard, particularly that of Mr McLaughlin, Mr McAreavey and M3. Having reflected on all that has been said by these three core persons I have reached the following conclusions.

[81] I begin by saying that Mr McAreavey's evidence troubles me in a number of respects which I explain as follows. First, I cannot accept as realistic his account that there were no petrol bombs being thrown. I do not think that makes sense given the environment and this assertion is in conflict with the bulk of the other evidence. Second, I do not think his account of Mr Doherty being up on the barricade pushing through the foliage "to get to the hospital" adds up. Again, this does not accord with other civilian accounts. He is really the only person who places Mr Doherty on the trees which made up the barricade save M3. Third, I am not convinced by Mr McAreavey's description of Mr Doherty falling into his arms and him carrying him to Mrs Mulligan's. I am not inclined to adjudicate on Mr McAreavey's own role however I think he is mistaken so far as Mr Doherty's position at the time he was shot is concerned. Overall, I found Mr McAreavey's account to be out of step with the bulk of the other evidence and so I cannot rely on him as an accurate historian of events.

[82] Mr McLaughlin was only nine years old at the time, so there are obvious concerns in my mind as to the strength and accuracy of his recall. However, I do wish to record he was an extremely impressive witness. He also lived at 51 Whiterock Road which is right at the heart of this scene. I entirely accept that someone standing at the window of that house would have been able to observe

events. Mr McLaughlin told me that he did witness events at the time and that he saw Mr Doherty fall. He said there were petrol bombs being thrown. He also said he saw Mr Doherty turn to the left although that does not totally reconcile with the ballistics and pathology evidence.

[83] In other words Mr McLaughlin said that Mr Doherty was somewhere outside No. 51 or in that vicinity when shot behind the barricade, in a turning position, probably flinching or crouching and he was not throwing petrol bombs. This is important evidence which was clearly given. The issue is whether I can rely on it given the fact that Mr McLaughlin was a child at the time and the passage of time which may have corrupted his memory. I have considered these factors, however I do place some weight upon the evidence, given that this view is corroborated by other statements taken at the time that I have set out in the course of this narrative which refer to Mr Doherty being behind the barricade and acting normally. Therefore, on the balance of probabilities I find that Mr Doherty was somewhere in the vicinity of the pavement outside 51 Whiterock Road.

[84] C5 came to the inquest late in the day, which is unusual and so he was questioned about his motivation. In his evidence C5 said he did not follow the inquest in the media. He also did not make a statement at the time and it is clear that his recollection differs from other witnesses, particularly in one material respect – i.e. that M3 got out of the cab, kneeled and took a position before firing at a man on the pavement. Only one other witness, James McCabe, claims he saw a witness get out of the cab and shoot. The bulk of the evidence is against this and I prefer the preponderance of evidence that M3 shot from within the cab. This chimes with the highly charged situation where M3 was under attack from petrol bombs, and he was failing to move a barrier. I do not think it is credible that M3 would have got out of the cab in the way described by C5. It seems to me that at this remove of time C5 is mistaken.

[85] I am also concerned that his story may have been influenced by his conversations at the pub which resulted in him coming forward. Overall, this is not an account upon which I can rely in terms of identifying the location and circumstances of this death. C5 has tried to help and he was probably in the vicinity at the time as he lived in the area, however his evidence is not exact or reliable as I have said on the core issue. I place some weight on his general observations, that there were people at the barricade, stone throwing and petrol bombs but other than that I cannot rely upon the details he has given.

[86] I then turn to an assessment of M3's evidence. As I have said, M3 came and gave evidence over two days and so I have been able to assess what he said to me along with the statements he made in coming to my conclusions.

[87] In examining the evidence of M3 it is apparent that M3 has given different accounts at different times. I will not rehearse all of this but I will highlight some particular issues. I start with the identification of Mr Doherty. This is contained in M3's statements from the time. In a sense matters have moved on, as M3's evidence to me was that he could not be sure with his previous identification of Mr Doherty. That comes as no surprise to me because the identification was clearly flawed given the way the photograph was put to him by the RMP. Also, I am satisfied that the descriptions do not match up in any event. The serious question marks over this procedure are exacerbated by the fact that Mr Corr's photograph was also put to M3 in an attempt to identify the gunman in the waste ground. Therefore, I do not rely upon the historical identification evidence of Mr Doherty as the petrol bomber. That means that I also rule out scenario (i).

[88] However, I accept the part of M3's evidence about what he was doing that day. I accept the evidence that he tried to break through the barricade in the centre part but failed and then he moved to the right- hand side. I accept his evidence that a device exploded in the barricade during the first attempt, particularly as that account was corroborated by others. I accept his evidence that he was making more

headway at the right hand side of the barricade and there he came across the petrol bomber. On the basis of his evidence I cannot say how many people were behind the barricade, but I accept the evidence that someone threw a petrol bomb which exploded at the front of the vehicle and that M3 reversed back and then made a further attempt to break through. I accept that the man threw a second petrol bomb at the vehicle. I cannot be sure that there was a third petrol bomb on the basis of the statements but there were at least two thrown directly at the Allis-Chalmers M3 was in.

[89] At this point the evidence of M3 is not as clear. In his original statement he says that he saw the man lift the petrol bomb from a crate, light it and throw it. In evidence he said the man was only visible waist up as he was standing on the trees forming the barricade which were substantial (variously described as 15-20 feet high) and he was only 20 feet away.

[90] Also, M3's account of the gunman on the waste ground is hard to follow. In his statement he refers to hearing one or two shots from the direction of the road on the waste ground. It is also important to note that the medical record from the time refers to his "gross inconsistency" in describing this event. There is no reason to believe that the medical report is anything other than authentic. M3 seems to have sustained an injury but clearly there was scepticism as to the extent of it and his story on the basis of what the medical officer documented. I cannot be satisfied that M3's evidence is wholly reliable in relation to the gunman.

[91] M748 had no actual recollection of taking this account. However M748 said he would have spoken to M3 and others, although no statements are forthcoming. In his evidence M3 accepted that he did not actually see a gunman open fire or have personal knowledge of a bullet ricochet causing the injury. There is therefore a question mark as to how this official account came out and whether it was created to try to explain and justify the shooting of Mr Doherty.

[92] There is another part of M3's evidence which is hard to comprehend. That relates to the ammunition used and how the Sub Machine Gun ("SMG") was fired. First, as regards the ammunition, M3 has clearly sought to distance himself from his deposition in 1972 which clearly recorded that there were 30 rounds of ammunition in his gun. He did not correct the alleged error when interviewed by HET in 2010. Yet now he states that there were only five rounds in the gun.

[93] In my view it is also unbelievable that M3 would fire one shot at the petrol bomber and then mistakenly place the machine gun into automatic mode which he said he did when firing at the alleged gunman. This does not make sense, particularly as all of these events happened so quickly.

[94] It is also important to note that by his own admission M3 did not have the butt of his submachine gun out, he did not sight it and he held it in his hand when he fired. To my mind the most likely scenario is that M3 fired around the area of the barricade. M3 was using a powerful Sterling submachine gun. I cannot say exactly how many rounds were fired in which direction and at which point. However, I conclude on the balance of probabilities that M3 fired a number of shots as some of the civilian witnesses suggest. I am not convinced that this was in the way described by James McCabe but I am satisfied on the balance of probabilities that there was more than one shot fired at the barricade.

[95] M3 accepts that he gave no warning. The only mention of warnings comes from Soldier A. On any reading M3 acted in contravention of the Yellow Card which specifically requires a warning to be given.

[96] I cannot say who the petrol bomber was that M3 shot at, even though the parties have asked me to speculate about that. I have already said it was not Mr Doherty. He was an innocent man who posed no threat. He was on the street and came across all of this on his way home and was probably stopped maybe talking to someone and thinking about what to do next. There was a lot of

commotion and noise and rubber bullets being fired and so it is reasonable in my view to accept that Mr Doherty was not standing upright at the relevant time. I cannot say what exactly his stance was but I am willing to accept that his body was bent or twisted in some way in accordance with the expert evidence. The body showed no signs of petrol or explosives. Mr Doherty was not associated with any terrorist group. He was an innocent victim of this situation.

[97] That leaves an assessment of the reasonableness of M3's actions in shooting at the petrol bomber. Was he justified in doing so, in fear of his life? He says he was on the basis that he was exposed, in an unarmoured tractor and faced with a man throwing a petrol bomb for the third time. He accepts no warning was given but he says he had to act on the spur of the moment.

[98] In all of the circumstances of this event I am satisfied that M3 did hold an honest and reasonable belief that his life was in danger. Therefore, I am prepared to accept that the use of some force against the petrol bomber was justified. However in my view his actions went beyond that. I cannot accept that M3 fired as indiscriminately at the barricade as suggested by the next of kin, as I think there would have been greater injury in that case, but it seems to me that he probably fired a number of rounds at the barricade. I do not accept that he fired only one shot.

[99] In a consideration of this nature the law requires the use of force to be proportionate and for there to be a minimisation of risk to prevent loss of life. M3 knew that there were people other than the petrol bomber in the area. I understand that M3 is now saying he may have hit Mr Doherty when he was actually aiming at the petrol bomber. I bear in mind that the first time he referred to that as a possibility was at this inquest in answer to coroner's counsel. When put to him, M3 said that this may be a possibility and that if Mr Doherty was in a position around 51 Whiterock Road that was within the line of fire. Having analysed all of the evidence, I can accept that M3 fired in response to being confronted by a petrol bomber, and that Mr Doherty may have been in the line of fire. However, as I have said, I do not

accept that M3 fired a single aimed shot. I am satisfied that the use of force by M3 was disproportionate to the risk posed to him.

[100] I conclude that M3 fired a number of rounds one of which hit Mr Doherty. I cannot say whether that was a round specifically aimed at the petrol bomber or not. Therefore my conclusion does not accord fully with either of the two remaining scenarios (ii) and (iv) although it includes elements of both. That is as much as I can say about how this death came about. In any event, I am satisfied that there is a breach of Article 2 given that the shooting occurred without minimisation of risk.

[101] I also conclude that these individual actions of M3 were not properly examined or investigated at the time. That is clear to me given the absence of accounts from other soldiers and upon examination of the official records of M3's injury.

[102] Finally, I must record that I do not rely on matters raised from the personnel file, to establish bad character. Rather, I am simply not satisfied that M3 presented me with an entirely credible explanation for his actions. My view is strengthened by the varying accounts M3 has given and his changing evidence put forth to justify his actions. Unfortunately, Mr Doherty was caught up in what happened in this incident and he lost his life as a result.

XI. VERDICT

[103] (a) The deceased was Edward John Doherty of 82 Iveagh Street, Belfast.

(b) His date of birth was 24 February 1941 and he was born at Grove Street, Belfast.

(c) He was a builder's labourer.

- (d) Edward Doherty died on 10 August 1971 on the Whiterock Road as a result of injuries received from a gunshot wound to the torso.
- (e) The cause of his death was “bilateral haemothorax due to bullet wound of aorta” as a result of the gunshot wound to the torso.
- (f) His death was caused by injuries sustained when he was struck by a bullet fired by M3, a soldier in the Royal Engineers.
- (g) Soldier M3 fired the bullet from an elevated position on an Allis-Chalmers loading type vehicle that he was using to try to clear a barricade on the Whiterock Road – positioned on the Falls Road side near the entrance to Brittons Parade.
- (h) Edward Doherty was positioned behind the barricade, further up the Whiterock Road, probably on the pavement. He had been on his way home from visiting family in Norglen Parade when his way was blocked by the barricade.
- (i) The shooting took place around 5pm.
- (j) Edward Doherty was most likely on the other side of the barricade turning to look towards the barricade with his right shoulder in a position lower than his left side on to the barricade. His body was bent.
- (k) Edward Doherty was not acting in a manner that could reasonably be perceived as posing a threat of death or injury to M3. He was not a petrol bomber and he was not acting in any other way that would justify a violent attack on him.

- (l) There was a threat to M3 from a petrol bomber who had thrown a number of petrol bombs with the result that M3 was in fear for his life, sitting as he was in the Allis-Chalmers vehicle.
- (m) M3 was justified in taking action against the petrol bomber.
- (n) M3's use and firing of his weapon was not sufficiently or appropriately controlled or regulated for the following reasons:
 - (i) The weapon was a powerful Sterling submachine gun.
 - (ii) He did not risk assess the situation before opening fire.
 - (iii) He fired in a manner which was disproportionate and not in accordance with training.
 - (iv) He did not follow Yellow Card rules of engagement.
 - (v) He did not issue a warning.
- (o) There was a violation of Article 2 given the manner in which the shooting occurred without minimisation of risk.

Signed: Mrs Justice Keegan
Coroner

Date: 11 May 2021

ANNEX 3

INCIDENT 3: THE DEATH OF EDWARD DOHERTY

3.1 TBM Consultants Plan/Ordnance Survey Map 1965

3.2 Photographs of Allis Chambers Tractor

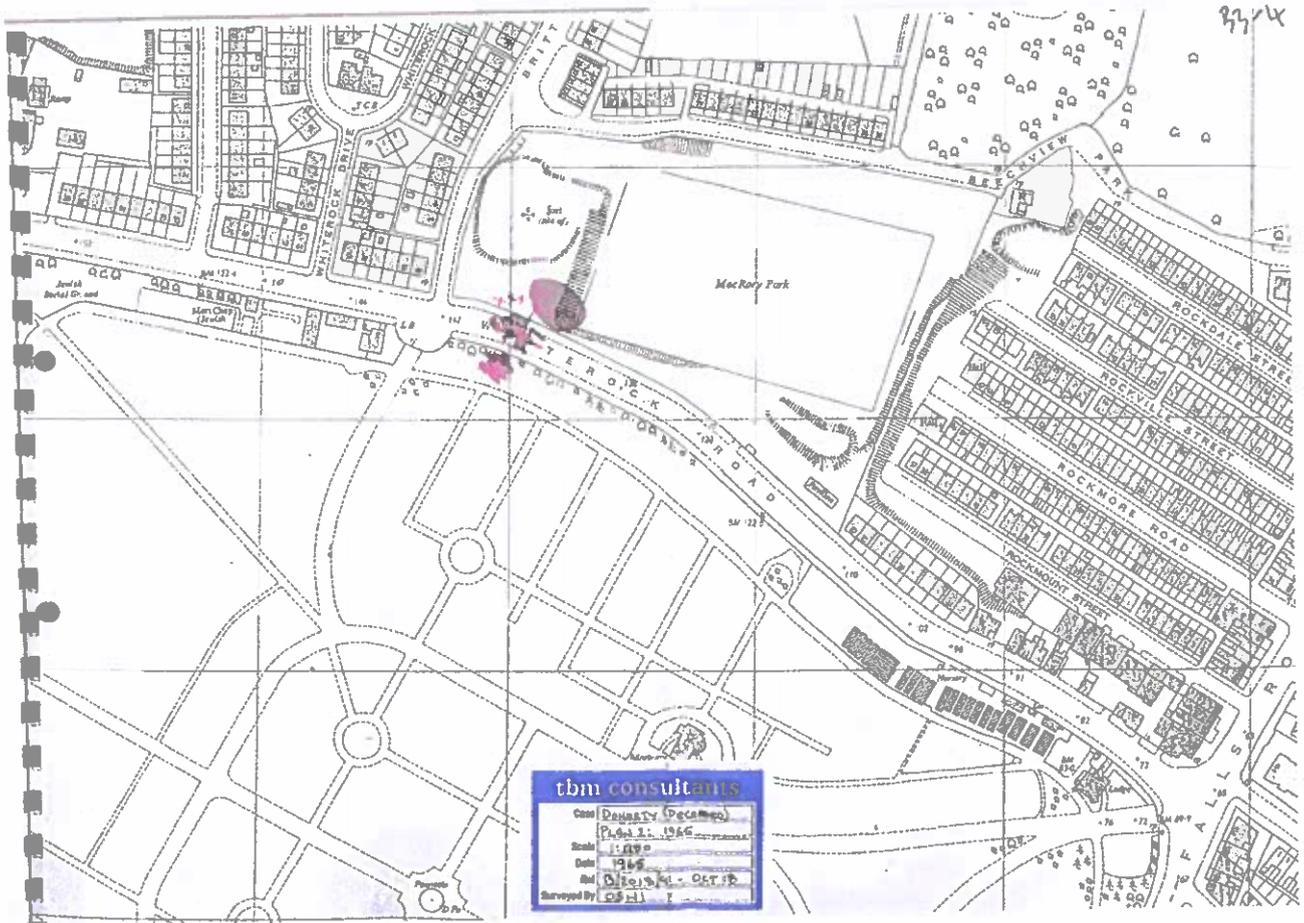
3.3 TBM Photograph 21 (51 Whiterock Road)

3.4 TBM Photograph 29 (7 Whiterock Drive)

3.5 TBM Photographs 31 - 46 (the view from 51 Whiterock Road)

3.1 TBM Consultants Plan / Ordnance Survey Map 1965

27/14



tbm consultants
Case: DENAHY (Denahy)
Plot: 1: 1966
Scale: 1: 1000
Date: 1966
Site: 1: 1966 - OCT 19
Surveyed By: 1: 1966

3.2 Photographs of Allis Chambers Tractor



X



3.3 TBM Photograph 21 (51 Whiterock Road)



3.4 TBM Photograph 29 (7 Whiterock Drive)

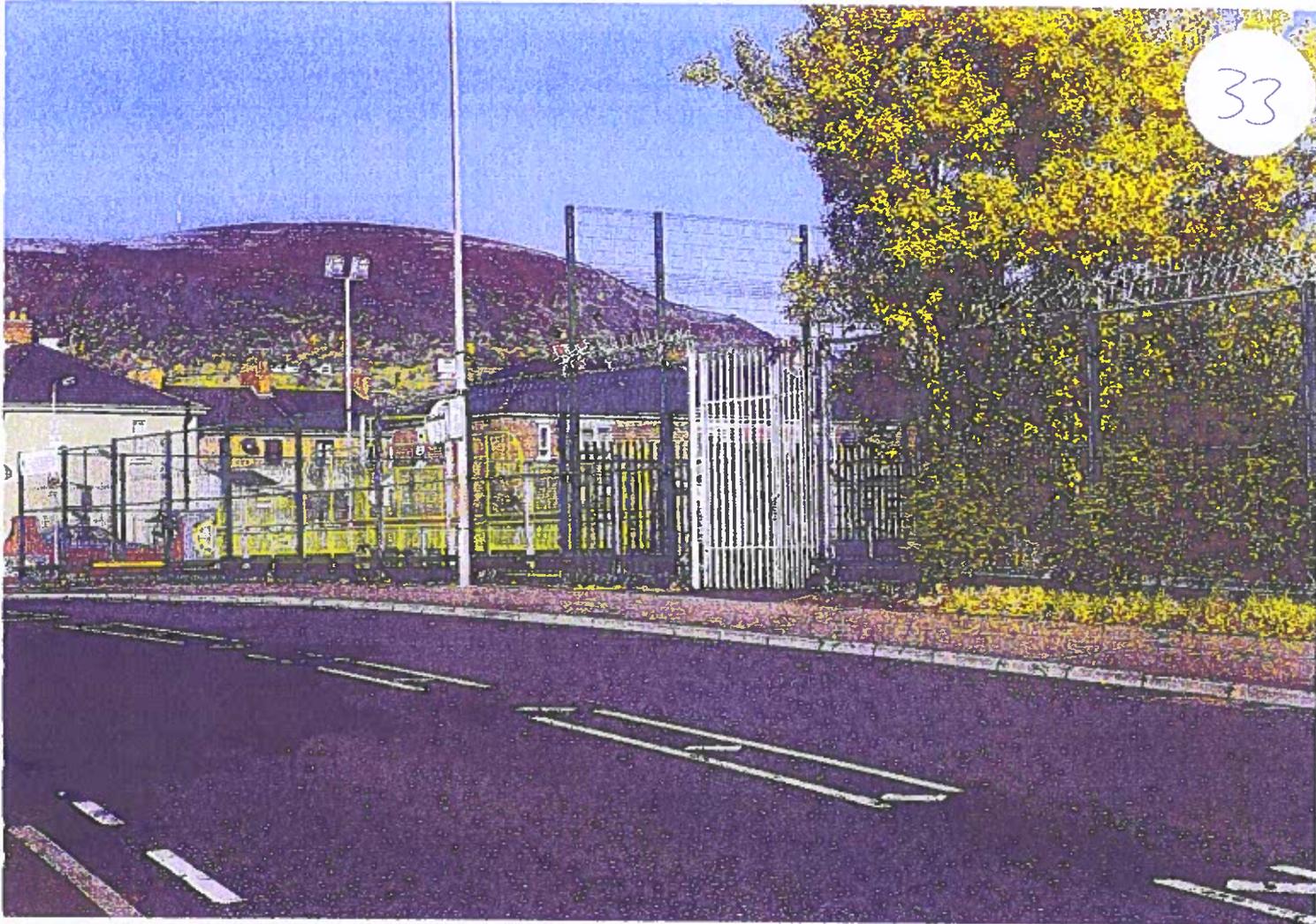
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3.5 TBM Photographs 31 - 46 (the view from 51 Whiterock Road)



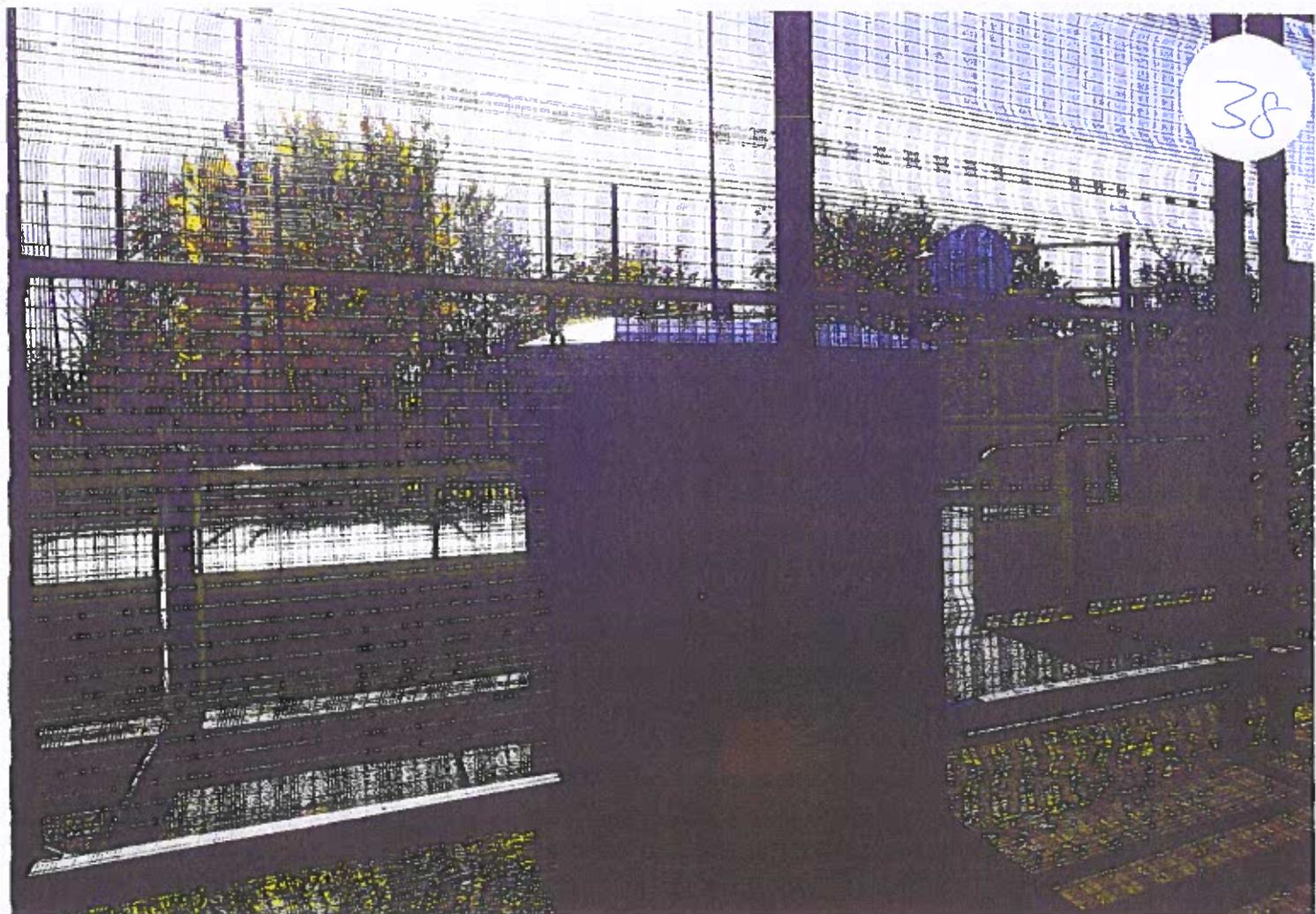
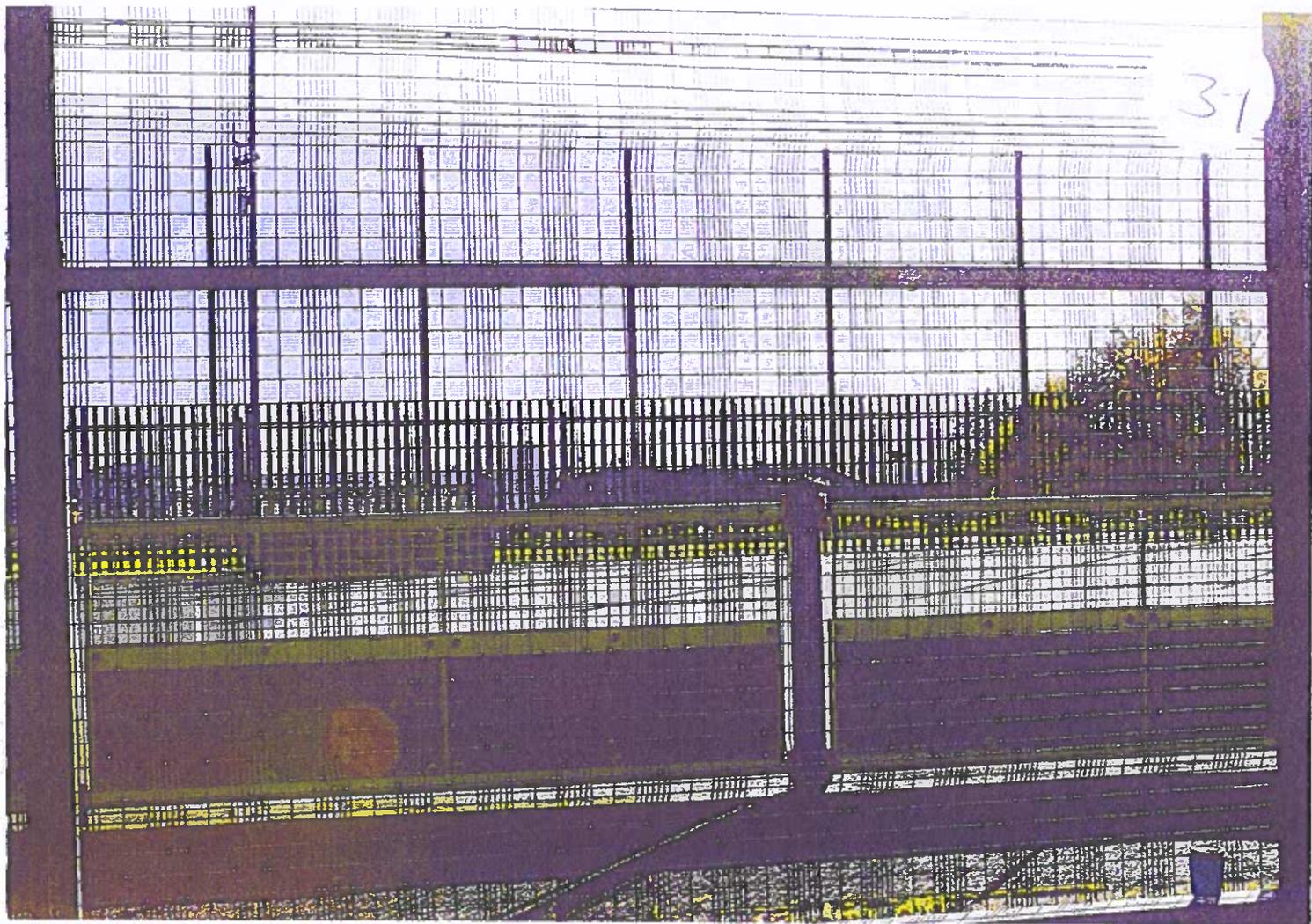
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34



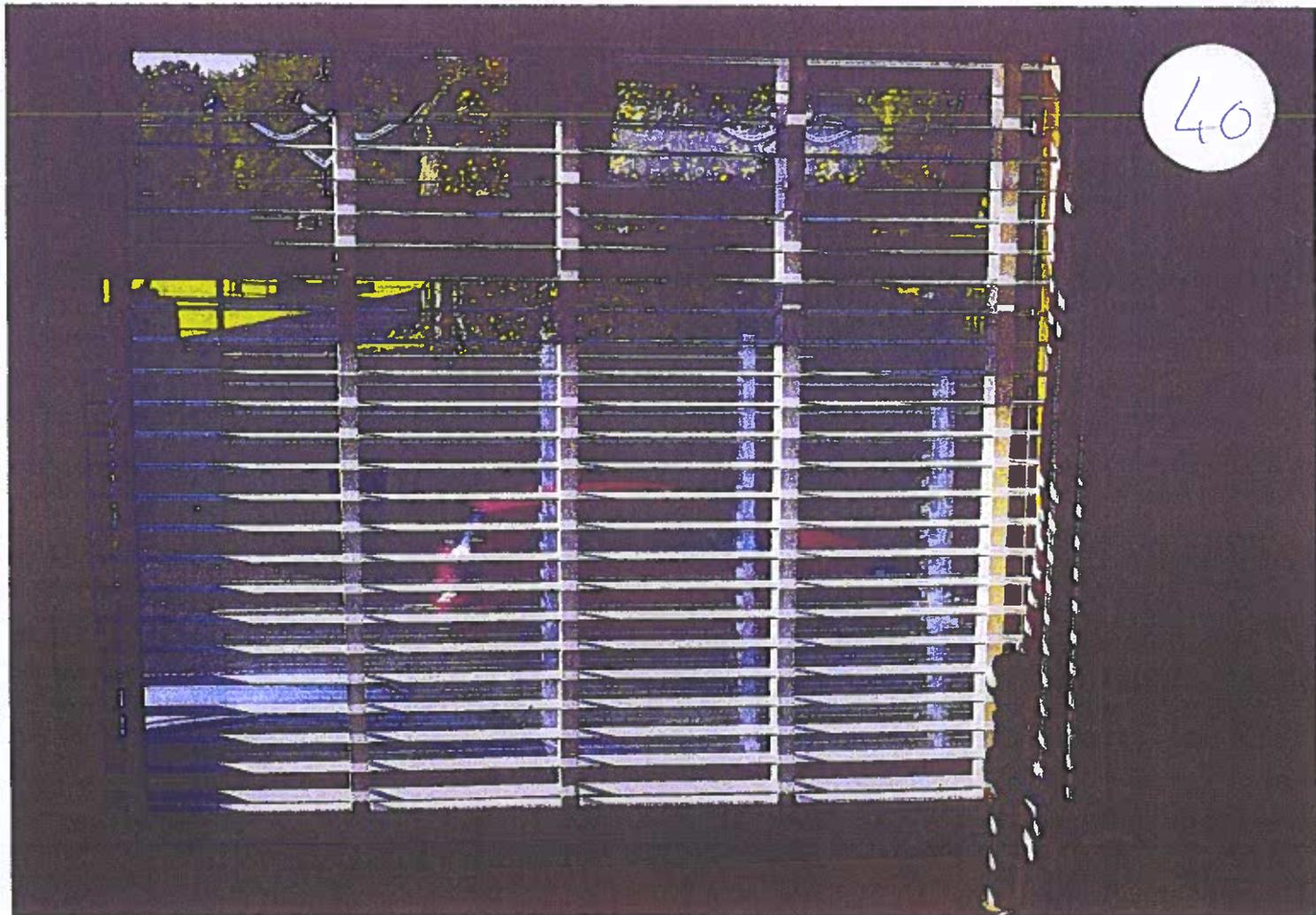




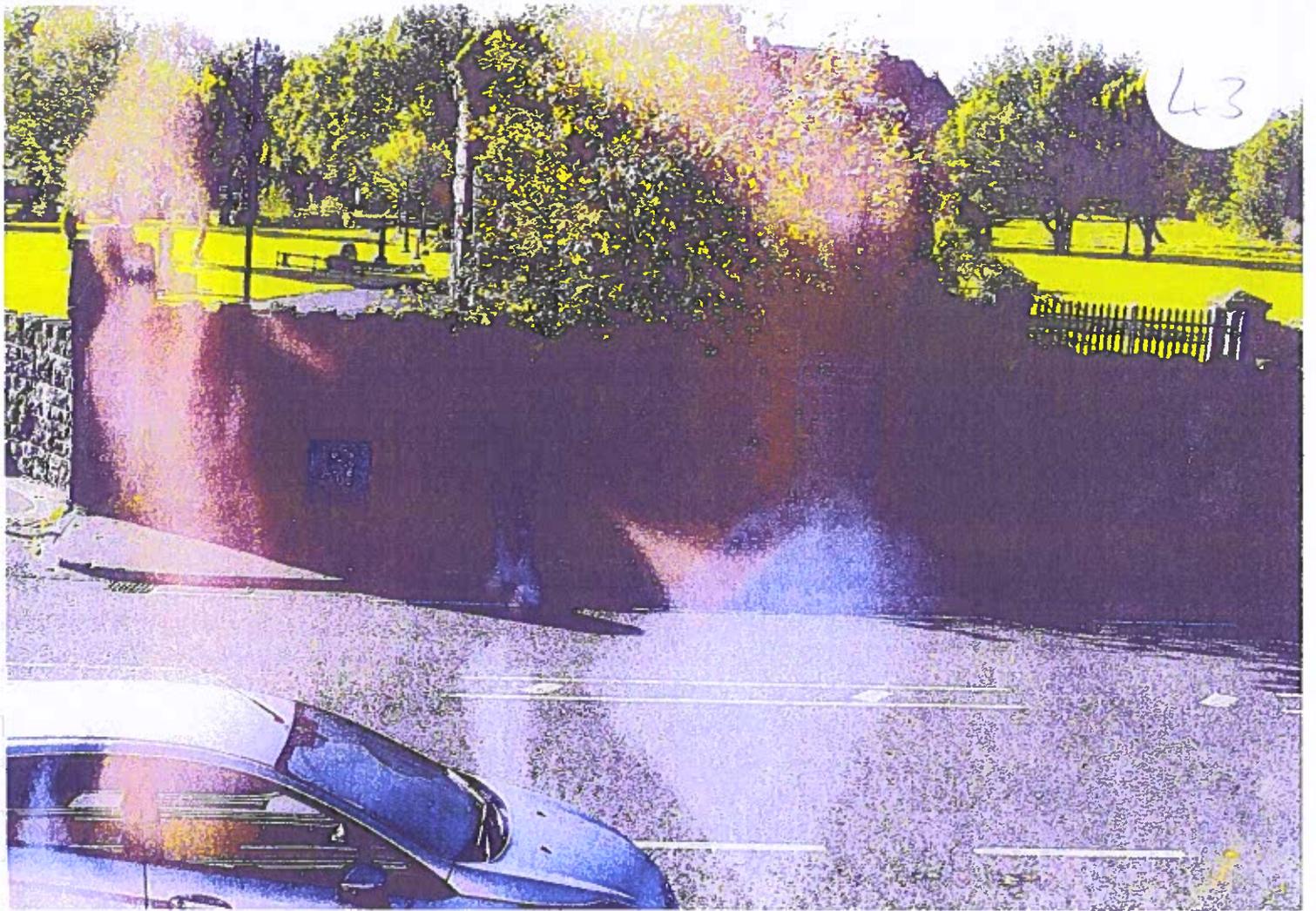
39



40







3.1 TBM Consultants Plan / Ordnance Survey Map 1965

