



An
Coimisiún
Pleanála

Inspector's Report ABP-320050-24

Type of Application

Substitute Consent

Development

Raising of ground levels by filling of land, the provision of concrete surface on part of that filled area with the use of the filled area for storage of vehicles and materials and all associated site works. The application is accompanied by a remedial Natura Impact Statement (rNIS).

Location

Court, Kildimo, County Limerick

Planning Authority

Limerick City and County Council

Applicant

O'Carroll Haulage and Plant Hire Limited

Observer

Transport Infrastructure Ireland (TII)

Date of Site Inspection

7th August 2025

Inspector

Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.23 hectares and is located within the rural townland of Court, Kildimo, County Limerick, which is located approximately 1.2km east of the village of New Kildimo. The site comprises of an existing industrial type building and yard which is accessed off the local road L-8038. The access junction is located approximately 180 metres south of the N-69 junction. The existing premises is operated by O'Carroll Haulage and Crane Hire and is used for the parking of vehicles, storage of crane vehicles, crane parts and associated equipment. The site is bounded by an adjoining commercial/industrial premises to the south, agricultural lands to the north and east, and the local road L-8038 to the west.
- 1.2. The River Maigue is located approximately 750 metres east of the site which forms part of the designated Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) and River Shannon and River Fergus Estuaries Special Protection Area (SPA) (Site Code 004077). An existing filter drain bounds the west and north boundaries of the site. An existing open drain is located at the northwest corner of the site which flows north/east where it connects to an Office of Public Works (OPW) arterial drain approximately 50 metres east of the site. This drainage network ultimately outfalls into the River Maigue approximately 2km downstream.
- 1.3. The subject site is located within a coastal flooding zone of medium probability (Mid-Range Future Scenario taking into account climate change using an increase in rainfall of 20% and sea level rise of 500mm) where there is a 1 in 200 chance of a flood event occurring (or an annual exceedance probability (AEP) of 0.5%).¹

2.0 Development subject to Substitute Consent

- 2.1. This substitute consent (SC) application seeks retention permission for the raising of ground levels by filling of land, the provision of concrete surface on part of the filled area and the use of the area for the storage of vehicles and materials. The application also seeks the retention of new palisade fencing that was erected along the roadside boundary as well as security lighting. The application is accompanied by a remedial Natura Impact Statement (rNIS).

¹ <https://www.floodinfo.ie/map/floodmaps/> (CFRAM Mid-Range Future Scenario layer)

- 2.2. The area subject to the fill amounts to approximately 0.78 hectares. The proposed parking area that has been finished in concrete is located along the western side of the site next to an existing filter drain and amounts to an area of approximately 0.16 hectares. The submitted site cross section drawing illustrates that a total of c. 2,257m³ of fill was introduced to the site. The submitted documentation does not outline the source or the types of material that were imported into the site.
- 2.3. The SC application includes permission for a number of remedial measures including the installation of sustainable drainage system (SuDS) measures. These measures include bioretention areas along the boundaries of the filled area, filter drains, forecourt separator, petrol interceptor and a 550m³ attenuation tank. The surface water will then be discharged via a stormwater rising main (and pumping station) to the existing open drain approximately 70 metres north of the fill area. Additionally, an area of fill (c. 0.13 hectares) to the east of the site will be allowed to return to natural vegetation. It is proposed to plant native hedgerow on the inside of the roadside palisade fence and along the northern boundary of the fill area. Lighting columns are proposed along the boundaries of the filled area.

3.0 Relevant Planning History

Subject Site

Planning Authority (PA) ref. 21/190 / An Coimisiún Pleanála (ACP) ref. 310182-21
(Decision date 21/07/2021)

O'Carroll Haulage and Crane Hire Ltd sought retention permission for extension of hardstanding area, security lighting and boundary security fencing which was refused by the PA and upheld by the Commission after a first party appeal. The Commission refused permission on 3 no. grounds; 1. Flood risk having regard to the location of the site in Flood Zone A; 2. Non-compliance with the provisions of the development plan in terms of providing industrial/commercial development to settlements where infrastructure can be provided; and 3. Serious injury to the character and visual amenities of the area due to the rural character of the site and nature and extent of the development.

The Commission should note that the retention application and appeal was not accompanied by a Natura Impact Statement (NIS). However, the inspector and

Commission did raise concern with the lack of consideration by the applicant on the impact on European sites, however, decided not to include it as an additional reason for refusal.

PA ref. 19/267 (*withdrawn*)

O'Carroll Haulage and Crane Hire Ltd sought permission to import soil and stone to raise an agricultural field in order to improve the agricultural output of the field. This application encompassed both the area of the SC application and the wider agricultural field to the north, measuring a total of 2.84 hectares.

It should be noted that this application was accompanied by a NIS. The application was declared withdrawn by the applicant on 10/10/2019.

PA ref. 07/576 (*Decision date 24/01/2008*)

Walsh Road Cargo sought permission for the construction of an extension to the rear (east) of the existing commercial unit. The proposed extension measured 324sqm. The PA refused to grant permission due to concerns with the intensification of use and negative impact on the rural character of the area in terms of its scale, use and additional traffic movements where adequate sight visibility did not exist at the entrance. It considered the development contrary to policy ED33 where expansion of existing industrial or business enterprises in the countryside may only be permitted where the size and scale remains appropriate.

PA ref. 98/718 (*Decision date 15/05/1998*)

Michael O'Brien was granted permission by the PA for the construction of a warehouse and ancillary offices (626sqm) for the storage of parts and the servicing of equipment for the construction and mining industry. After a further information request, the applicant stated that the parts to be stored were service and maintenance parts for all types of construction machinery such as excavators, teleporters, dump trucks and rock breakers with the volume of traffic to and from the site being two to three deliveries per day.

The Commission should note that the area of the permitted development was 0.4 hectares.

Enforcement History

PA ref. DC-040-20 – This related to the hardcore of a greenfield site and the use of same for parking and storage of vehicles. A warning letter under Section 152(1) of the Act was issued to the applicant on 27/02/2020. An Enforcement Notice under Section 154 of the Act was served on 16/5/2022. Legal proceedings under Section 157 of the Act were initiated on 21/6/2023.

Adjoining Site to the south

PA ref. 21/101 (Decision date 25/11/2021)

Permission was granted for the construction of a 150sqm covered storage building. As part of this application the PA considered the area of hardstanding proposed not acceptable and requested the applicant to submit revised proposals that did not expand the site activities beyond the area of hardstanding permitted under application ref. 17/958. This was in response to the applicant submitting the area of hardstanding which was already deemed not acceptable by the PA under ref. 17/958.

PA ref. 17/958 (Decision date 08/02/2018)

Permission was granted for the construction of a workshop extension to the rear of an existing workshop and retention permission for workshop use from commercial to light industrial. The applicant also sought retention permission for an external hardstanding yard, however, the extent of the area was considered not acceptable by the PA. In response to the PA concerns, at further information stage, the hardstanding area for retention was reduced from 3,800sqm to 934sqm which was considered acceptable by the PA.

PA ref. 05/122 (Decision date 28/04/2005)

Derek Walsh was granted permission for renovation and extension to existing commercial repair unit.

4.0 Policy and Legal Context

4.1. Limerick Development Plan 2022-2028

Section 5.8.15 (Rural Enterprise and Employment Opportunities)

Development Management policy provides for the development of rural enterprise, related to the area's amenity potential and many enterprise/employment uses are either 'Open for Consideration' or 'Permitted in Principle' in the rural areas of the County. The Planning Authority will balance the requirement to protect the sensitive nature of the rural area with the requirement to enable enterprise development.

Objective ECON O35 (Rural Development)

It is an objective of the Council to:

a) Facilitate the development of acceptable rural enterprises and to minimise pollution from agricultural and industrial sources by means of development management and water pollution legislation.

Section 11.6.7 (Small Scale Home-based Businesses in Rural Areas)

In general, commercial activities should be accommodated in towns and villages where existing services and facilities are available. However, the Planning Authority recognises that there are circumstances where there is a need for self-employed and small-scale commercial activities, located adjacent to and/or within the curtilage of existing houses in the open countryside. The Planning Authority will therefore seek to balance the need for such proposals against the impact on existing residential amenity and the environment. Proposals that involve the change of use or new development for purposes of home-based employment will be assessed under criteria including:

- It is of an appropriate design and scale for its location and does not detract from the rural character of the area.
- Permission will be subject to normal environmental and planning criteria. Any subsequent change or proposed expansion of the business will need to be reconsidered by the Planning Authority to assess whether the premises or location would still be acceptable.

Objective EH O1 (Designated Sites and Habitats Directive)

It is an objective of the Council to ensure that projects/plans likely to have significant effects on European Sites (either individually or in combination with other plans or projects) are subject to an appropriate assessment and will not be permitted under the Plan unless they comply with Article 6 of the Habitats Directive. The Council, through the planning enforcement process where applicable, seek to restore the

ecological functions of designated sites, where they have been damaged through inappropriate development.

Section 6.3.5 Trees, Tree Preservation Orders and Hedgerows

Objective EH O10 (Trees and Hedgerows)

It is an objective of the Council to:

a) Retain and protect amenity and biodiversity value of the County and City by preserving as far as possible trees, woodlands and hedgerows, having regard to the significant role that trees and hedgerows play in local ecology, climate change and air quality and their contribution to quality place making and the associated health and wellbeing benefits.

Section 6.3.6 Invasive Species

Objective EH O11 (Invasive Species)

It is an objective of the Council to:

d) Employ biosecurity measures to prevent the spread of invasive alien species and disease and to insist that all such measures are employed on all development sites.

Objective IN O12 (Surface Water and SuDS)

It is an objective of the Council to:

c) Maintain, improve and enhance the environmental and ecological quality of surface waters and groundwater, including reducing the discharges of pollutants or contaminants to waters, in accordance with the National River Basin Management Plan for Ireland 2018-2021 (DHPLG) and the associated Programme of Measures and any subsequent River Basin Management Plan.

f) Address the issue of disposal of surface water generated by existing development in the area, through improvements to surface water infrastructure, including for example attenuation ponds, the application of sustainable urban drainage techniques, or by minimising the amount of hard surfaced areas, or providing porous surfaces as the opportunity arises.

g) Protect the surface water resources of the Plan area.

Policy CAF P5 (Managing Flood Risk)

It is a policy of the Council to protect Flood Zone A and Flood Zone B from inappropriate development and direct developments/land uses into the appropriate lands, in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009 (or any subsequent document) and the guidance contained in Development Management Standards and the Strategic Flood Risk Assessment (SFRA).

Objective CAF O20 (Flood Risk Assessments)

It is an objective of the Council to require a Site-Specific Flood Risk Assessment (FRA) for all planning applications in Flood Zones A and B and consider all sources of flooding (for example coastal/tidal, fluvial, pluvial or groundwater), where deemed necessary. The detail of these Site-Specific FRAs (or commensurate assessments of flood risk for minor developments) will depend on the level of risk and scale of development. The FRA will be prepared taking into account the requirements laid out in the SFRA, and in particular in the Plan Making Justification Tests as appropriate to the particular development site. A detailed Site-Specific FRA should quantify the risks, the effects of selected mitigation and the management of any residual risks. The assessments shall consider and provide information on the implications of climate change with regard to flood risk in relevant locations.

4.2. National Guidelines

- Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009)
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (Department of Housing, Planning and Local Government, 2018)
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities (2009)

4.3. **Planning and Development Act 2000, as amended**

Section 177K – Decision of the Commission

(1A)(a) The Commission shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Commission.

(1J) In considering whether exceptional circumstances exist under subsection (1A)(a) the Commission shall have regard to the following matters:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated
- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Commission considers relevant.

4.4. **Planning and Development Regulations 2001, as amended**

Schedule 2, Part 1 – Exempted Development (General)

Class 22 – Development for industrial purposes

Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process.

Condition/Limitation

The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

4.5. Natural Heritage Designations

The subject site is not located within any designated natural heritage site. The nearest designated sites are the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) and the River Shannon and River Fergus Estuaries Special Protection Area (SPA) (Site Code 004077) which are located approximately 750 metres east of the subject site.

4.6. Environmental Impact Assessment (EIA) Preliminary Examination

The development subject to this SC application has been subject to preliminary examination for environmental impact assessment. I refer the Commission to Appendix 1 in this regard. Having regard to the characteristics and location of the development and the types and characteristics of potential impacts, it is considered that there was and is no real likelihood of significant effects on the environment. The development, therefore, does not trigger a requirement for environmental impact assessment screening and a remedial Environmental Impact Assessment Report (rEIAR) or EIAR is not required.

5.0 Submissions

5.1. Planning Authority (PA)

On 18th September 2024 the planning authority (PA) made a submission on the application which is summarised as follows:

- A full planning history of the site and adjacent site is provided. The submitted planning statement outlines that the adjacent third-party premises to the south

of the site has not been allowed to increase overtime, in particular the hardstanding/external storage area. Previous planning history on this site shows that the applicant was required to reduce the external hard standing area due to the unzoned and unserviced nature of the rural lands.

- It is stated that the subject and adjacent business are comparable in scale, form and function, however this is considered an unreasonable statement as the hardstanding area associated with the subject site is substantially larger than the hardstanding area associated with the adjoining premises.
- Information in relation to enforcement cases has been provided.
- Information in relation to the relevant planning policy within the Limerick Development Plan 2022-2028 is outlined.
- It is noted that floodlighting is proposed along the north and northeast boundary which is considered injurious to the rural character of the area.
- As the site is located in rural unserviced area the scale of the proposed development is not considered small-scale commercial activity and is considered unacceptable from a land use point of view. It is at odds with section 11.6.7 (small scale home-based businesses in rural areas), objective ECON O35 (Rural Development), policy CGR P4 (Revitalisation of Towns and Villages), objective CGR O20 (Town and Village Revitalisation) and Objective CGR O17 (Development within Level 5 Settlements).
- It should be noted that the local authority refused planning permission under application ref. 07/576 due to an intensification of an industrial use outside a defined settlement and lack of information on surface water treatment.
- It is acknowledged that the application has incorporated mitigation measures to improve the quality of existing permitted discharge and proposed discharge of surface water to surface water drains including the provision of interceptor surface water drains and bioretention areas. It is recommended that the mitigation measures outlined in the submitted NIS are included as a planning condition.
- An internal report from the Roads Department is attached recommending approval subject to a number of conditions in relation to roads, surface water

and sustainable drainage management systems management and construction management.

- An internal report from the Heritage Officer is attached recommending the implementation of the NIS mitigation measures together with lighting and natural revegetation measures.
- An internal report from the Floods Department is attached raising no objection to the development on the grounds of flood risk subject to a condition for an emergency flood access and egress plan. The predominant flood risk to the development is tidal and the raising of ground levels it is considered that it is unlikely to impact on important flow routes or result in a loss of compensatory storage that would increase flood risk elsewhere.
- It is recommended that planning permission is refused for the following reason:
 - *The proposed development, by reason of its scale and expansion of site boundaries onto unzoned land within a rural area, is not considered to constitute small-scale commercial activity appropriate to its location. The scale of the development undermines the rural character and setting of the area. The development is considered contrary to Policy CGR P4, Objective ECON O35, Objective CGR O17 and Objective CGR O20 of the Limerick Development Plan 2022-2028 to provide for industrial/commercial development in or adjacent to settlements. The development would militate against the proper development of nearby towns and villages where commercial development would be more appropriately located and would be contrary to the proper planning and sustainable development of the area.*

5.2. Applicant Response

A response to the PA's submission was received by the Commission on 11th November 2024 which is summarised as follows:

- The council has confirmed that it has accepted the findings of both the submitted AA screening statement and remedial NIS that effects on any Natura 2000 are unlikely. It is also noted that the council has accepted the suitability of

the mitigation measures proposed including the reduction of the hardstanding area by 0.13 hectares.

- The references to the third-party premises to the south and extension to it are directly relevant to this application and grant of permission in 2021 reflects the pattern of permitted development on that site. This grant also included a new 150sqm industrial structure to the rear of the existing structure.
- The development is consistent with the provisions of the Limerick Development Plan in particular the provisions of objective ECON O35, CAF O20 (Flood Risk Assessments), IN O12 (Surface Water and SuDS) and EH 01 (Designated Sites and Habitats Directive).
- The external use of the existing premises for the storage and maintenance of construction related vehicles relates to an authorised use and is thus deemed an acceptable rural enterprise. The current proposal is necessary for the applicants existing business and is not intended to facilitate significant expansion.

5.3. Observations

Transport Infrastructure Ireland (TII) submitted an observation to the Commission on 24th September 2024. It had no specific comment to make in relation to the subject development and noted that the site accesses the local road network prior to access to the N69 national road.

6.0 Assessment

- 6.1. Having examined the substitute consent (SC) application details and all other documentation on file, including all of the submissions received in relation to the application, the reports of the local authority, and having inspected the site, and having regard to the relevant local, regional and national policies and guidance, I consider that the substantive issue in the first instance is whether 'exceptional circumstances' exist that would justify the grant of substitute consent.

Exceptional Circumstances

- 6.2. Section 177K(1A)(a) of the Planning and Development Act 2000, as amended (*herein referred to as PDA2000*) states that the Commission shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent. I note that the applicant has put forward its exceptional circumstances case within sections 3.2 and 7.6 of the submitted 'planning compliance statement'. The Commission should note that there have been no submissions from the public relating to this matter.
- 6.3. I note that there are seven matters to consider under Section 177K(1J) of PDA2000 which I have outlined as (a)-(j) in bold below, together with my assessment and conclusion on whether the applicant complies with same.

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

EIA Directive

- 6.4. Firstly, with regards to the Environmental Impact Assessment (EIA) Directive, I have determined under Appendix 1 of this report that the development to be retained did not result in or is likely to result in significant effects on the environment and that the development does not trigger a requirement for EIA screening nor is a remedial Environmental Impact Assessment Report (rEIAR) or EIAR required. Therefore, I consider that the regularisation of this development would not circumvent the purpose and objectives of the EIA Directive. Accordingly, I consider that the applicant meets the exceptional circumstances tests, in terms of the EIA Directive, as referenced within matters (c), (d) and (e) below.

Habitats Directive

- 6.5. I consider the relevant issue is whether the regularisation of the development would circumvent the purpose of the Habitats Directive. The Commission should note that the SC application has been accompanied by a remedial Natura Impact Statement (rNIS). The purpose of the Habitats Directive is to conserve natural habitats and wild fauna and flora by the designated Special Areas of Conservation (SACs). Any plan or project not directly connected with or necessary to the management of such a

designated European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is required to be subject to appropriate assessment (AA) of the implications for the site in view of the European site's conservation objectives. I note that Special Protection Areas (SPAs) are separately designated under the Birds Directive.

- 6.6. I note the case put forward by the applicant that the rNIS submitted is in accordance with the provisions and requirements of Part XA of PDA2000 and such assessment by the Commission can be carried out in accordance with the same legislative provisions, and therefore, the regularisation of the development does not facilitate or result in the circumvention of the Habitats Directive.
- 6.7. However, I consider that the material consideration in relation to compliance with this matter is the previous planning history of the subject site associated with the applicant. The Commission should note that the applicant previously applied to the planning authority (PA) for permission to import soil and stone and to raise the levels of a 2.83ha site (which incorporated the current SC site) (*PA ref. 19/276*). I highlight to the Commission that this was for permission and not retention permission. I note that this application included a Natura Impact Statement (NIS) and mitigation measures were proposed to protect water quality and the European sites, including the implementation of a 5 metre buffer zone between any works and the land drains. Whilst I acknowledge that the site of ref. 19/276 included the infilling of the larger agricultural field to the north of the subject site, it also included the area of this SC application. The application was withdrawn and therefore no decision was made in this case.
- 6.8. Notwithstanding this, the Commission should note that a NIS was still prepared and submitted as part of this application, which I consider relevant, as it shows an understanding on behalf of the applicant of the sensitivity of the area in terms of potential impact on European sites. The Commission should note that the submitted rNIS has outlined that no mitigation measures have been installed to date and acknowledges that there is potential for silt or pollutants to enter the drainage network. I also note that the 5 metre buffer zone was not implemented.
- 6.9. Having regard to the foregoing, it is my view that prior to the undertaking of infilling works onsite the applicant was aware of the sensitivities of the site, the requirement for an Appropriate Assessment due to the hydrological connection to the European

sites and the requirement to implement mitigation measures in order to protect the integrity of these sites. Therefore, it is my view that the regularisation of this development would circumvent the purpose and objective of the Habitats Directive. Accordingly, I consider that the development does not fall within the scope of exceptional circumstances.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised

- 6.10. I note the explanation put forward by the applicant regarding this matter. I note that there are no Section 5 declarations of exempted development associated with the subject site on file. Firstly, it was believed by the applicant that it could avail of the exempted development provisions set out under “*Class 22, Part 2 of Schedule 3 (sic*) of the Planning and Development Regulations 2001, as amended*” (*Part 1 of Schedule 2). I note that this exemption relates to the storage of raw materials, products, packing material, fuel or waste within the curtilage of an industrial building (*my emphasis*).
- 6.11. With regards to this point, I consider the planning history of the site again to be relevant. The parent permission granted under application ref. 98/718 related to an area of 0.4 hectares and thus this amounted to the curtilage of the site. Having reviewed Google Street Imagery from the L-8038 and N-69 public roads (*taken from August 2019*) the curtilage of this permitted 0.4-hectare site was clearly defined by a tree/hedgerow field boundary along its northern boundary, beyond which was an agricultural field. It is my view that as the applicant was aware of Class 22 it equally should have been aware that the removal of this field boundary and encroachment into greenfield agricultural lands would amount to an extension beyond the curtilage of the site.
- 6.12. Moreover, it is my view that the applicant should have been aware that the act of storage and the act of infilling of lands with imported material and part concreting of same were separate activities and which was not covered under the Class 22 exemption.
- 6.13. Additionally, the Commission should note that exempted development under Class 22 is subject to a single condition/limitation which is that any storage of materials “*shall not be visible from any public road contiguous or adjacent to the curtilage of the*

building". Having inspected the site, the site is clearly visible from the adjoining L-8038 public road. Again, as the applicant has referenced knowledge of Class 22, it is my view that it should also have been aware of its single limitation.

- 6.14. Therefore, having regard to the above, I am not satisfied that the applicant had or could reasonable have had a belief that the development was not unauthorised.
- 6.15. Secondly, it is contended by the applicant that as surface water was previously permitted under application ref. 98/718 to discharge unmitigated to the same boundary stream it was of the belief that the continuation of this practice would not be unauthorised. The applicant states that any understanding and interpretation of the Habitats Directive required technical, experienced and qualified familiarity of same. However, it is my view that this is not a reasonable explanation having regard to my assessment and conclusion under paragraphs 6.7 to 6.9 of this report.
- 6.16. Having regard to the foregoing, I consider that the development does not fall within the scope of exceptional circumstances.

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired

- 6.17. The Commission should note that I have concerns regarding the level of information provided as part of the baseline environment of the rNIS in terms of the imported material and construction methodology, and thus, I cannot determine the impact of these works in the absence of such information. I refer the Commission to Appendix 2 of the report in this regard. However, I consider that this could be addressed by further information from the applicant, and therefore, I have not included this matter within the reasons and considerations set out within Section 10 of this report due to the other fundamental non-compliance with matters (a) and (b) above. The Commission should note that the substitute consent procedure and rNIS have been subject to public participation and therefore this public participation process has not been substantially impaired.

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development

6.18. As outlined above, it is my view that in the absence of baseline information with regards to the construction methodology and to the source and types of material that was imported into the site, a determination of adverse effects cannot be made. However, for the same reasons as outlined in paragraph 6.17 above, I have not included this matter within my reasons and considerations within Section 10 of this report.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

I note the remedial measures proposed by the applicant and subsequent mitigation measures proposed during the construction phase of the remedial measures. I am satisfied that the measures will prevent any harmful impact on the integrity of the European sites. However, again in terms of the works already undertaken, I cannot make a determination on this due to the absence of baseline information relating to the source and makeup of the fill material and construction methodology.

(f) whether the applicant has complied with previous planning permission granted or has previously carried out an unauthorised development

6.19. Having reviewed the planning history of the site the applicant has not been previously granted planning permission on the site. I note that application ref. 21/190 which was refused was a retention application. The development subject to this SC application appears to be the only matter in relation to unauthorised development.

(g) such other matters as the Commission considers relevant.

6.20. I do not consider any other matters to be of significant relevance to the Commission.

Overall Conclusion on exceptional circumstances

6.21. Having regard to the foregoing, it is my view that due to the planning history of the site, in particular to application planning register reference 19/267 which related to permission (i.e. not retention permission) to import soil and stone to raise an agricultural field which was later withdrawn by the applicant, to the submission of a NIS as part of this application, and to the explanation provided by the applicant as part of its case for exceptional circumstances, exceptional circumstances do not exist that would justify the grant for substitute consent. Therefore, it is my recommendation to the Commission that it is precluded from granting substitute consent.

6.22. However, in the event that the Commission is minded to depart from my recommendation, I have proceeded to assess the SC application as per the specified proper planning and sustainable development matters as set out within Section 177K(2) of PDA2000.

Proper Planning and Sustainable Development Assessment

6.23. I consider the substantive proper planning and sustainable development issues to be as follows:

- Planning History / Precedent
- Impact on Visual Amenity and Rural Character of the Area
- Surface Water Management
- Flood Risk
- Traffic Safety

Planning History / Precedent

6.24. The Commission should note that there is an extensive planning history associated with the subject site and adjoining site to the south which I have summarised within Section 3 of this report. The PA has also opened an enforcement case regarding the works to be retained (*Ref. DC-040-20*). It should be noted that the applicant has been previously refused retention permission for the hardstanding area under application PA ref. 21/190, which was upheld by the Commission under appeal ref. 310182-21. In response, the applicant has proposed to reduce an area of c. 0.13 hectares of hardstanding on the east side of the site to allow it to return to natural vegetation.

6.25. Firstly, it is contended by the applicant that a previous permission within the subject site (*i.e. PA ref. 98/718*) has established the industrial use on the site and provision of hardstanding for such activity. I note that this permission related to a 626sqm warehouse building for the storage of parts and the servicing of equipment for the construction and mining industry and the site area amounted to 0.4 hectares. Therefore, I am in agreement with the applicant that the principal of the development has previously been approved, however, it is approved within the site of 0.4 hectares. In contrast, the Commission should note that this SC application relates to a site area of 1.23 hectares on lands which were previously in agricultural use.

- 6.26. I also note that there was a subsequent planning application submitted (*PA ref. 07/576*) to extend the existing warehouse building by 326sqm, however, the PA refused permission on the basis of it representing an intensification of use and negative impact on the rural character of the area. Therefore, the Commission should note that the sole permission relating to the site is PA ref. 98/718.
- 6.27. Having regard to the planning history of the site and 0.4 hectare permitted site, to the area of the additional hardstanding amounting to approximately 0.78 hectares and to the extent of encroachment onto what was previously agricultural lands, that this represents a substantial intensification and expansion of the permitted development. Therefore, the material consideration is whether this intensification is acceptable in terms of the proper planning and sustainable development of the area which I will assess below.
- 6.28. Secondly, it is contented by the applicant that the planning history of the adjoining premises to the south of the subject site (*i.e. PA refs. 21/101 and 17/958*) is relevant to this SC case due to the established pattern of development approved by the PA. I note the PA's response to this. The Commission should note that as part of application PA ref. 17/958 the PA requested the reduction in the 3,800sqm area of hardstanding to be retained to 942sqm as it deemed it unsuitable due to the unzoned nature of the lands. Subsequently, under application ref. 21/101, whilst the PA did approve a 150sqm workshop outside the area of the original boundary, it again requested the reduction in hardstanding area in line with what was approved under application PA ref. 17/958. I consider this to be a consistent approach on behalf of the PA. With regards to the permitted workshop, I consider this to be a minor extension in the context of this SC application which relates to the infilling and hardstanding of an area of approximately 0.78 hectares, as well as the removal of a significant amount of roadside hedgerow to accommodate a perimeter fence.
- 6.29. Having regard to the foregoing, and whilst each case is determined on its own merits, I do not agree with the applicant in that the PA has set precedent in what it has approved on the adjoining site. It is my view that the development subject to this SC application does not reflect the established pattern of permitted development in the area due to its scale and nature.

Impact on Visual Amenity and Rural Character of the Area

- 6.30. The applicant considers the proposal to be an acceptable rural enterprise which is directly associated with an already permitted rural enterprise use and in accordance with Objective ECON O35 (Rural Development) of the Limerick Development Plan 2022-2028 (CDP). I note the report of the PA where it considers the application unacceptable from a land use perspective due to the unzoned rural nature of the lands. It contends that the development is contrary to Section 11.6.7 (Small Scale Home-Based Businesses in Rural Areas), Objective ECON O35, Policy CGR P4 (Revitalisation of Towns and Villages), Objective CGR O20 (Town and Village Revitalisation) and Objective CGR O17 (Development within Level 5 settlements).
- 6.31. I note that Section 11.6.7 of the CDP relates to small scale home-based businesses in the rural area located adjacent to and/or within the curtilage of existing houses in the open countryside. I consider that the development subject to this SC application does not represent a home-based business nor is it small scale having regard to the 1.23 hectare area of the site. However, I do note that this provision of the CDP states that, in general, commercial activities should be accommodated in towns and villages where existing services and facilities are available, which I consider relevant to this case. The Commission should note that the subject site is located within a rural area approximately 6.5km from the settlement boundary of Limerick City where I note there are substantial services and facilities available to service a development of this nature and size.
- 6.32. Moreover, Section 5.8.15 and associated objective ECON O35(a) (Rural Development) seek to facilitate the development of acceptable rural enterprises and outlines that the PA will balance the requirement to protect the sensitive nature of the rural area with the requirement to enable enterprise development. The development permitted under application ref. 98/718 was clearly deemed an acceptable rural enterprise by the PA, however, further expansions were not (ref. 07/576). Having reviewed Google Street imagery from August 2019 which showed the permitted development before the works subject to this SC application were commenced, it is clear that the permitted enterprise did not have a significant impact on the rural character or visual amenities of the area. It had a modest 0.4 hectare footprint and benefited from mature hedgerow/tree boundaries along its northern and western

(roadside) boundaries, which in my view, substantially helped to assimilate the site into the rural area.

- 6.33. In contrast, with regards to the existing environment, having inspected the site, I observed an enterprise that did not appear rural in nature and which represented a more industrial like appearance. The natural boundary to the north that previously softened the visual impact of the permitted development has been removed as well as approximately 70 metres of established roadside hedgerow/trees which has been substituted by an industrial type security fence. The footprint of the enterprise has increased from 0.4 hectares to 1.23 hectares and has resulted in the encroachment into previous greenfield agricultural lands. It is my view that this encroachment has had a detrimental impact on the rural character of the area. Furthermore, the enterprise is now highly visible from the adjoining public road network and I do not consider the applicant's proposals to plant native hedgerow along the north and roadside boundaries to be an acceptable compensatory measure to the removal of the previous established hedgerow/tree boundaries that were, in my view, helping to protect the visual amenity of the rural area.
- 6.34. Additionally, the Commission should note that I have significant concerns with the extent of hedgerow and tree removal in terms of objective EH O10 (Trees and Hedgerows) of the CDP which seeks to retain and protect the amenity and biodiversity value of the County. Having regard to the extent of the removal which amounts to c. 70 metres along the original north boundary and a further c. 70 metres along the roadside boundary, it is my view that the development contravenes said objective.
- 6.35. Overall, I consider that the expansion and intensification of this business has had a detrimental impact on the visual amenity and rural character of the area and, therefore, does not represent an acceptable rural enterprise in accordance with Section 5.8.15 and Objective ECON O35(a) of the CDP. I am in agreement with the PA, and the previous inspector's conclusions under appeal ref. 310182-21, that such enterprise would be more suited within serviced lands within a designated settlement. Therefore, if the Commission are minded to depart from my recommendation set out within Section 10 of this report, I recommend that the substitute application is refused on these proper planning and sustainable development reasons.

Surface Water Management

- 6.36. The Commission should note that the applicant states that surface water onsite is currently discharged uncontrolled to the boundary watercourses, however, there is no discharge of contaminated commercial materials, substances or operational by-products. There is no fuel, oils, lubricant or contaminant material stored within the filled area. I note that the submitted site layout plan shows the existing fuelling area within the confines of the original permitted boundary.
- 6.37. I note that an 'engineering planning report' accompanies the SC application and outlines that it is proposed for a new surface water system to be installed which will discharge surface water to the existing drain via sustainable drainage system (SuDS) measures at a controlled runoff rate of 3.1 litres per second (l/s). The current rate is outlined as c. 50l/s. I note that the measures will include bio retention areas, filter drains, a petrol interceptor and a forecourt separator. The Commission should note that the applicant has outlined these measures as mitigation measures for the purposes of Appropriate Assessment (AA) as I have assessed below. I have no significant concerns with the principle of these measures and consider the provisions to comply with Objective IN O12 (Surface Water and SuDS) of the CDP.
- 6.38. However, the Commission should note that these additional measures require a Section 37L application to be submitted, which has not occurred. However, it may not deem it necessary to pursue this matter having regard to my reasons and considerations set out within Section 10 of this report.

Flood Risk

- 6.39. The Commission should note that the subject site is located within Flood Zone A for coastal/tidal flooding (CFRAM Mid-Range Future Scenario which takes account of potential effects of climate change using a sea level rise of 500mm). I note that the SC application has been accompanied by a site-specific flood risk assessment (SSFRA).
- 6.40. The SSFRA concludes that the raising of the lands by approximately 5 metres and the change in ground surface from greenfield to hardstanding will not obstruct important flow paths and should an extreme flood event occur, the flood storage volume lost by the subject development is negligible. It notes that the site benefits from the arterial drainage scheme embankments along the River Mague but retains a residual risk of flooding in the unlikely event of an embankment breach. It concludes that the

development is appropriate given the nature of the development being less vulnerable under the 2009 Planning System and Flood Risk Management Guidelines, and to the implementation of mitigation measures such as storing of all fuels and oils within sealed tanks, part of the fill area to return to wild naturally and implementation of the surface water management measures, including attenuation, which I have described within paragraph 6.37.

- 6.41. I note the contents of the PA's report which states that as the predominant flood risk to the development is tidal, the raising of the ground levels is unlikely to have impacted on important flow routes or resulted in a loss of compensatory storage that would increase flood risk elsewhere. Having regard to the foregoing, the Commission should note that I have no significant concerns with the development in terms of flood risk.

Traffic Safety

- 6.42. I note that the applicant has stated that the nature of external activities would not result in a significant growth in traffic to and from the site and it is not an activity that would attract increased traffic generation from a customer bases. I note that the traffic associated with permission 98/718 was two to three deliveries per day. I also note that the inspector's report within appeal ref. 310182 outlined serious concerns regarding the intensification of activities onsite which would likely generate greater volumes of vehicular movements of plant and machinery onto the road network.
- 6.43. The Commission should note that the applicant has not provided any information in relation to the volumes of traffic or types of movement to and from the site. Therefore, in the absence of this information, I am not satisfied to conclude that the development to be retained would not have an adverse impact on traffic safety.

7.0 Appropriate Assessment (AA)

- 7.1. I refer the Commission to Appendix 2 of my report in this regard. In screening the need for Appropriate Assessment, I have determined that the development subject to this SC application could have resulted and could result in significant effects on the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA, in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of Section 177V of the PDA2000 is required.

- 7.2. Following an examination, analysis and evaluation of the remedial NIS and all associated material submitted and taking into account the submission from the PA, I am not satisfied that the information allows for a complete assessment on adverse effects on site integrity of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA in view of their conservation objectives. This is due to the absence of baseline information regarding the source and makeup of the fill material that was imported into the site, the construction methodology of the works to be retained, including the concreting works in proximity to the drainage network.

8.0 Water Framework Directive (WFD)

- 8.1. I note that the subject site is underlain by the Kildimo groundwater waterbody (Code: IE_SH_G_119) which is classed as good ecological status (2019-2024 monitoring programme) and not at risk of achieving the WFD objective. The OPW arterial drain to the east of the site to which the drainage network is connected to is the Tonglegree_010 waterbody (Code: IE_SH_24T240890) which is classed as poor ecological status (2019-2024 monitoring programme).
- 8.2. The Commission should note that my concerns outlined within Section 7 and Appendix 2 of this report are also related to this section. I consider that further information is required from the applicant regarding the source and types of infill material that were imported into the site, as well as further information on the construction methodology of the works to be retained. In the absence of this information, and having considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration, I am not satisfied to conclude that the construction works have resulted in there being no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

9.0 Recommendation

It is my recommendation to the Commission that it is precluded from granting substitute consent as per Section 177K(1A)(a) of the Planning and Development Act 2000, as amended, for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the provisions of Section 177K(1J) of the Planning and Development Act 2000, as amended, to the planning history of the site; in particular to application planning register reference 19/267 which related to permission to import soil and stone to raise an agricultural field and which was later withdrawn by the applicant, to the submission of a Natura Impact Statement as part of this withdrawn application, and to the explanation provided by the applicant as part of its case that exceptional circumstances exist, the Commission is not satisfied that exceptional circumstances exist that would justify the grant for substitute consent.

Firstly, it is considered that the submission of a previous Natura Impact Statement, which included for infilling works within the subject site, was an acknowledgement and understanding on behalf of the applicant that there was a hydrological connection to the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165), that there could likely be significant effects on the European site in the absence of mitigation measures. The granting of substitute consent after the subsequent undertaking of the infilling and hardstanding works and without the implementation of the mitigation measures during the construction phase, including the non-implementation of the 5 metre buffer zone from the drainage network, would circumvent the purpose and objective of the Habitats Directive. Therefore, it is considered that the development in this case does not fall within the scope of exceptional circumstances under Section 177K(1J)(a) of the Planning and Development Act 2000, as amended.

Secondly, it is considered that the explanation provided by the applicant in terms of its belief that the development was not unauthorised as per Class 22 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, is not adequate. Having regard to the fact that this exempted development class provision relates to the storage of materials within the curtilage of an industrial building, and which is subject to a condition/limitation that such storage shall not be visible from the adjoining public road, to the nature of the development to be retained which goes beyond the act of storage

and which involved the importation and infilling of agricultural lands and part concreting of same, to the location of the said works beyond the permitted curtilage of the site, as permitted under planning authority register reference 98/718, to the visibility of the site from the adjoining public road L-8038, and to the absence of any Section 5 exempted development declaration on file, it is considered that this is not a reasonable explanation that would justify the development to fall within the scope of exceptional circumstances under Section 177K(1J)(b) of the Act.

Overall, to conclude, the Commission is precluded under Section 177K(1A)(a) of the Planning and Development Act 2000, as amended, from granting substitute consent in this case.

Declaration

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Gary Farrelly
Planning Inspector

18th December 2025

Appendix 1: EIA Preliminary Examination

Form 1 - EIA Pre-Screening

Case Reference	ABP-320050-24
Development Summary	Retention of the raising of ground levels by filling of land, the provision of concrete surface on part of that filled area with the use of the filled area for storage of vehicles and materials and all associated site works. The associated works include the retention of the provision of security fence and lighting. The expansion works to be retained were accommodated through the removal of field boundaries and roadside hedgerow.
Development Address	Court, Kildimo, County Limerick
	In all cases check box /or leave blank
1. Does the development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
2. Is the development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development	

under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	
<input checked="" type="checkbox"/> Yes, the development is of a Class but is sub-threshold.	<p><i>1(a) Projects for the restructuring of rural land holdings, undertaken as part of a wider proposed development, and not as an agricultural activity that must comply with the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, where the length of field boundary to be removed is above 4 kilometres, or where re-contouring is above 5 hectares, or where the area of lands to be restructured by removal of field boundaries is above 50 hectares.</i></p> <p><i>11(b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.</i></p>

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Form 2 - EIA Preliminary Examination

This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The site subject to this retention application measures 1.23 hectares. A volume of approximately 2,257m³ of material was introduced to the site as fill material. This is not considered excessive in terms of the EIA directive.</p> <p>It is noted that the expansion works required the removal of roadside and field boundaries, however, having reviewed the aerial maps of the Historic Environment Viewer (2013-2018), the removal of the northern boundary amounted to c. 76 metres and the roadside boundary c. 70 metres. This is not considered a significant restructuring in terms of the EIA directive.</p>

<p>Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The subject site is not located within any designated ecological sensitive site, however, is indirectly hydrologically connected to the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA, approximately 2km downstream. I consider that these issues under the Habitats Directive can be adequately dealt with within my appropriate assessment under Appendix 2 of this report as there is no likelihood of other significant effects on the environment.</p> <p>The subject site is located within a coastal flooding zone of medium probability where there is a 1 in 200 chance of a flood event occurring (or an annual exceedance probability (AEP) of 0.5%). The submitted SSFRA noted that the site benefits from the arterial drainage scheme embankments along the River Maigue. Having regard to the SSFRA and PA report from the flooding department that considers that the development is unlikely to impact on important flow routes or result in a loss of compensatory storage that would increase the risk of flooding elsewhere, I consider that there is no likely significant effect on the environment in terms of flood risk.</p>
<p>Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Having regard to the type and characteristics of the development to be retained, I consider that there is no potential for significant effects on the environment in terms of the EIA directive.</p>
<p style="text-align: center;">Conclusion</p>	
<p style="text-align: center;">Likelihood of Significant Effects</p>	<p style="text-align: center;">Conclusion in respect of EIA</p>
<p>There is no real likelihood of significant effects on the environment.</p>	<p style="text-align: center;">EIA is not required.</p>

Inspector: _____
Gary Farrelly

Date: _____

Appendix 2: AA

Stage 1: Screening for Appropriate Assessment	
Test for likely significant effects	
Step 1: Description of the project and local site characteristics	
<i>Brief description of project</i>	The project involves the retention of raising of ground levels by infilling of land, the provision of a concrete surface on part of that filled area and the use of part of the filled area for hardstanding storage of vehicles, materials and plant. Remedial and mitigation measures include the cessation of use of part of the filled area to facilitate the natural regeneration of that area and the provision of surface water management measures to improve the quality of the existing discharge of surface water to the existing boundary surface water drains. These measures include the provision of interceptor surface water drains, petrol interceptor, full retention forecourt type separator, attenuation tank and introduction of controlled rate of discharge.
<i>Brief description of development site characteristics and potential impact mechanisms</i>	The site comprises of an existing business operated by O'Carroll Haulage and Crane Hire. The activity includes the use of the building and storage of equipment consisting of crane vehicles, crane parts and associated equipment. The north, east and west boundaries of the site are defined by drainage ditches which provide a hydrological connection between the site and the River Maigue which forms part of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA designated sites. The drainage network flows north traversing the N69 public road before discharging into the River Maigue to the northeast of the site.

<p><i>Remedial Natura Impact Statement (rNIS)</i></p>	<p>A remedial screening report and rNIS have been carried out by Altamar Marine and Environmental Consultancy. The rNIS is submitted in accordance with Section 177G of the Planning and Development Act 2000, as amended. I note that the rNIS is required to contain the following information:</p> <ul style="list-style-type: none"> • A statement of the significant effects, if any, on the relevant European site which have occurred or which are occurring or which can reasonably be expected to occur because the development subject of the application for substitute consent was carried out; • Details of any appropriate remedial or mitigation measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy or mitigate any significant effects on the European site; • Details of the period of time within which any such proposed remedial or mitigation measures shall be carried out by the applicant.
<p>Step 2: Identification of relevant European sites using the Source-Pathway-Receptor model</p>	
<p>Two European sites are potentially within a zone of influence of the development as detailed within Table 1 below. I note that the screening report considered a further three sites in a wider area (within 15km) including Askeaton Fen Complex SAC, Tory Hill SAC and Curraghchase Woods SAC but rules these out for further examination due to no potential source-pathway-receptor linkage. I am satisfied that these sites can be excluded from further consideration.</p>	

Table 1

European Site (Code)	Qualifying Interests (QIs)	Distance from development	Ecological connections	Consider further in Screening (Y/N)
Lower River Shannon SAC (002165)	21 QIs	The closest direct point via air is 750 metres to the east of the site. A hydrological connection exists via a network of drainage ditches which eventually outfall into the River Maigue approximately 2km downstream from the site.	There is an existing open drain to the west and north of the site which flows into the OPW arterial drain to the east. This outfalls into the River Maigue approximately 2km downstream.	Yes
River Shannon and River Fergus Estuaries SPA (004077)	21 QI bird species Wetland and Waterbirds [A999]			Yes

Step 3: Describe the likely significant effects of the project (if any, alone or in combination) on European sites

Site Name Qualifying Interests	Possibility of significant effects (alone) in view of the conservation objectives of the site	
	Impacts	Effects
<p>Site 1: Lower River Shannon SAC (002165)</p> <ul style="list-style-type: none"> • Sandbanks which are slightly covered by sea water all the time [1110] • Estuaries [1130] • Mudflats and sandflats not covered by seawater at low tide [1140] • Coastal lagoons [1150] • Large shallow inlets and bays [1160] • Reefs [1170] • Perennial vegetation of stony banks [1220] • Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] 	<p><u>Construction Phase</u></p> <p>The previous works onsite involved the introduction of ‘compacted fill material’ and the concreting of the western portion of the fill area. As a result, soil disturbance, ground fill and concrete surfacing works could have entered the drainage network.</p> <p><u>Operational Phase (Existing arrangement)</u></p> <p>Surface water from the site currently discharges to the drainage network unmitigated. There is potential for silt or pollutants to enter the existing drainage network.</p>	<p><u>Construction Phase</u></p> <p>I note that the screening report outlines that any silt or pollutants that may have entered the drainage network during the construction phase were dispersed or diluted within the existing drainage ditch network and did not cause any likely significant downstream impacts. This is due to the dense nature of the vegetation within the drainage ditches, to the scale of works and to the distance to the SAC. However, I note that no information is provided regarding the materials and source of materials that were imported into the site or the construction methodology of the works in such proximity to the</p>

<ul style="list-style-type: none"> • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] • Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation [3260] • <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] • <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] • <i>Petromyzon marinus</i> (Sea Lamprey) [1095] • <i>Lampetra planeri</i> (Brook Lamprey) [1096] • <i>Lampetra fluviatilis</i> (River Lamprey) [1099] • <i>Salmo salar</i> (Salmon) [1106] • <i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349] • <i>Lutra lutra</i> (Otter) [1355] 	<p>Given the separation distance to the SPA via air, no significant noise and vibration or dust emissions would have likely occurred or are currently occurring that would significantly effect the conservation objectives of the QIs. I consider that no ex-situ effects were likely as a result of the construction works due to the distance to the SPA and the amount of intervening lands between the sites.</p>	<p>drainage ditch along the western boundary. Due to the proximity of the works to the drainage network, the nature of the works, and the nature of the qualifying interests of the SAC, in particular the water quality dependent species, I consider that these works cannot be screened out from AA.</p> <p><u>Operational Phase</u></p> <p>Additionally, going forward, and in the absence of mitigation and remedial measures, there could potentially be a deterioration in water quality during the operational phase as a result of pollutants entering the drainage network unmitigated.</p>
<p>Site 2: River Shannon and River Fergus Estuaries SPA (004077)</p> <p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p>		

<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Scaup (<i>Aythya marila</i>) [A062]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Lapwing (<i>Vanellus vanellus</i>) [A142]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Curlew (<i>Numenius arquata</i>) [A160]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Greenshank (<i>Tringa nebularia</i>) [A164]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Wigeon (<i>Mareca penelope</i>) [A855]</p> <p>Shoveler (<i>Spatula clypeata</i>) [A857]</p> <p>Wetland and Waterbirds [A999]</p>		
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	Likelihood of significant effects from development (alone)	YES
	If No, is there a likelihood of significant effects occurring in combination with other plans or projects?	
Step 4: Conclude if the development could have resulted or could result in likely significant effects on a European site		
<p>Based on the information provided in the screening report, site visit, review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures, the development would have had/could have potential to result in significant effects on the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA.</p> <p>On the basis of the information provided, I do not concur with the applicant's findings regarding the construction phase that the development could not have had a likely significant effect on the European sites due to dilution or dispersion within the existing ditch network, in the absence of mitigation measures.</p>		

Stage 2: Appropriate Assessment

The requirements of Article 6(3) as related to appropriate assessment of a project under Part XAB, Section 177V of the Planning and Development Act 2000, as amended, are considered fully in this section. The appropriate assessment is based on the remedial Natura Impact Statement (rNIS) submitted by the applicant in accordance with Section 177G of the Act.

Taking account of the preceding screening determination, the following is an appropriate assessment of the implications of the project in view of the relevant conservation objectives of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA based on scientific information provided by the applicant.

The information relied upon includes the following:

- Remedial Natura Impact Statement (rNIS) prepared by Altamar Marine and Environmental Consultancy.
- National Parks and Wildlife Service (NPWS) Conservation Objectives Supporting Documents for the SAC and SPA and related publications.
- Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).
- Managing Natura 2000 sites, The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (European Commission, 2019).

Deficient Baseline Information regarding construction works

I note that within Section 7.1 of the rNIS it is stated that no construction works are proposed as part of the retention permission element of the project and as a result no construction impacts are foreseen. However, construction works were undertaken during the construction of the retention element and which is required to be analysed under Section 177G(1)(a) of the Act. I acknowledge that it is stated within page 11 of the remedial

screening report that onsite drainage ditches were inspected on 3rd May 2024 for any signs of silt or petrochemical contamination and pollution. It is stated that there was no evidence of silt from the construction of the hardstanding and no evidence of petrochemicals within the drainage ditches. However, the Commission should note that I am not satisfied with the level of information provided regarding the construction phase of the works to be retained. There is no information on the source of infill material that was imported to the site, to the makeup of the material and, for example, whether any invasive species checks were carried out. Conversely, I note that within application ref. 19/267, which I acknowledge was withdrawn, the development was for the importation of “inert soil and stones”, however, no such information is provided within this application, only that it is “compacted fill material”. Furthermore, again I note under application ref. 19/267 it was proposed to maintain a 5 metre wide buffer zone from the adjoining drainage ditches, however, as part of the works to be retained, I note that the concrete hardstanding area is directly adjoining the existing filter drain (outlined as Filter Drain D on the site layout plan). Table 9 of the rNIS acknowledges the potential impact of contamination during the installation of the proposed new headwall, however, provides no information of the construction methodology or measures taken regarding the concrete area to be retained.

Having regard to the foregoing, I am not satisfied that adverse effects arising from the development subject to this substitute consent application can be excluded for the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA. It is my recommendation to the Commission that further information is required, however, having regard to my reasons and considerations set out within Section 10 of this report, it may not consider it necessary to pursue this matter.

Submissions/observations

An internal report from the PA’s heritage officer accompanies the PA’s submission which notes the petrol interceptor and forecourt separator mitigation measures are required to contain any fuel spillages but are not yet in place and should be included as part of any condition. It is also

recommended that the area subject to natural re-vegetation should be included as a planning condition to ensure that the area reverts to more natural forms of vegetation.

Lower River Shannon SAC (002165)

Summary of key issues that could give rise to adverse effects (from screening stage):

- Water quality deterioration (construction and operational phases)

Qualifying Interest (QI) features likely to be affected	Conservation Objectives (Targets and Attributes)	Potential adverse effects	Mitigation and Remedial Measures (summary)
Petromyzon marinus (Sea Lamprey) [1095]	To restore the favourable conservation condition which is defined by, including, no decline in extent or distribution of spawning beds.	I note that Table 9 of the rNIS does not provide an analysis of the potential for adverse effects on these water quality dependant species which are highly sensitive to sedimentation and pollution. <u>Construction Phase</u> <u>Deterioration in water quality as a result of sedimentation and pollutants during the infilling and cement works:</u>	<u>Remedial measures:</u> <ul style="list-style-type: none"> • Implementation of SuDS management features, including petrol interceptor, attenuation tank and restricted surface water discharge to the open drain at 3.1 litres per second which will ensure adequate water quality being discharged to the drainage network.
Lampetra planeri (Brook Lamprey) [1096]	To maintain the favourable conservation condition which is defined by, including, no decline in	The remedial screening report (page 16) outlines that any silt or sedimentation	

	extent or distribution of spawning beds.	that entered the drainage network as a result of the works to be retained were dispersed or diluted within the existing drainage ditch network and did not cause any likely significant impacts on downstream European sites. The dense nature of the drainage ditch vegetation would have provided a significant filtering effect on potential silt and petrochemical pollution. Following a site inspection network, Altemar found no evidence to suggest that silt or pollutants are entering the drainage network.	<u>Mitigation measures during construction of remedial measures:</u> <ul style="list-style-type: none"> • Appointment of ecologist • Dust control, stockpiling away from drains • Silt traps • Storage of fuel, oil and chemicals within bunded area, 50 metres away from drains and ditches • Covering, seeding and fencing of stockpiles
Lampetra fluviatilis (River Lamprey) [1099]	To maintain the favourable conservation condition which is defined by, including, no decline in extent or distribution of spawning beds.		
Salmo salar (Salmon) [1106]	To restore the favourable conservation condition which is defined by, including, no decline in extent or distribution of spawning redds due to anthropogenic causes and water quality targets of at least 4 (Q value) at all sites sampled by the EPA.	The submitted remedial screening report and rNIS do not provide any information on the construction methodology of the infilling and concrete works nor any details in relation to the source or types of materials that were introduced onsite. Therefore, in the absence of this information, I consider the potential harmful impacts are unknown and further information is required.	
Water courses of plain to montane levels with the Ranunculus fluitantis and	To maintain the favourable conservation condition which is defined by, including, low concentration of nutrients and no decline in habitat distribution.	<u>Existing Arrangement - Remedial measures proposed to be undertaken</u>	

Callitricho-Batrachion vegetation [3260]	<i>Map 13 shows this qualifying interest in the location of where the drainage network outfalls into the River Maigue (Schoenoplectus triqueter)</i>	<p>These potential effects are set out in Table 9 of the rNIS.</p> <p><u>Deterioration in water quality as a result of sedimentation and pollutants</u></p> <p>There is potential for pollutants and silt to enter the drainage network during the construction phase of the remedial measures from the use of plant and machinery, temporary storage of construction materials, oils, fuels and chemicals and the storage of topsoil onsite. The installation of the precast headwall into the drainage ditch to the north of the site could lead to contamination as a result of on-site concrete production, if required, or carrying out of cement works in the vicinity of the drain.</p>	
Lutra lutra (Otter) [1355]	<p>To restore the favourable conservation condition which is defined by, including, no significant decline in the distribution or terrestrial/river habitat.</p> <p><i>Appendix 1 of the submitted rNIS noted no signs of otters inhabiting or foraging within the site during the site inspection (3rd May 2024).</i></p>		
Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]	To restore the favourable conservation condition defined by, including, maintaining the distribution within the Cloon River, Co. Clare, the restoration of the population size to 10,000 adult mussels and restore the	Having regard to the location of this QI upstream within the Cloon River, as shown on Map 15 of the NPWS' Conservation Objectives supporting document, to the significant distance from the site, no significant effects were or are considered likely.	

	water quality to high ecological status with low nutrient concentration.	
Tursiops truncatus (Common Bottlenose Dolphin) [1349]	To maintain the favourable conservation condition which is defined by, including, human activities occurring at levels that do not adversely affect the species population.	Having regard to the nature of the development, to the distance to the QI as mapped on Map 16 of the NPWS' Conservation Objectives supporting document and level of dilution available, and to the threats and pressures associated with this QI as set out in the 2025 NPWS' Article 17 Species Assessment, no significant effects were or are considered likely.
Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]	To restore the favourable conservation condition which is defined by, including, the maintaining of the range of coastal habitats including transitional zones and no significant expansion of common cordgrass. Map 12 of the NPWS' Conservation Objectives supporting document illustrates	There is no information provided regarding the source or make up of the material that was imported into the site and no information on whether it was subject to invasive species check. A potential threat to this QI is the common cordgrass invasive species. Therefore, in the absence of this information, I consider the potential harmful impacts are unknown and further information is required.

	<p>this QI potentially within the mouth of the River Maigue approximately 5km downstream of where the drainage ditch outfalls into the river.</p>	
<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p>	<p>To maintain the favourable conservation condition which is defined by, including, a stable or increasing habitat area and conserving intertidal sands with mixed sediments in a natural condition.</p> <p>Map 5 of the NPWS' Conservation Objectives supporting document illustrates this QI within the River Maigue downstream from where the drainage network outfalls into the River Maigue. Map 9 shows the area of the outfall within the</p>	<p>The submitted remedial screening report and rNIS do not provide any information on the construction methodology of the infilling and concrete works nor any details in relation to the source or types of materials that were introduced onsite. Therefore, in the absence of this information, I consider the potential harmful impacts are unknown and further information is required.</p>

	River Maigue comprising of the subtidal sand to mixed sediment with Nephtys spp. community complex community type.	
Estuaries [1130]	<p>To maintain the favourable conservation condition which is defined by, including, a stable or increasing habitat area.</p> <p>Map 4 of the NPWS' Conservation Objectives supporting document illustrates this QI within the River Maigue.</p>	The submitted remedial screening report and rNIS do not provide any information on the construction methodology of the infilling and concrete works nor any details in relation to the source or types of materials that were introduced onsite. Therefore, in the absence of this information, I consider the potential harmful impacts are unknown and further information is required.
Sandbanks which are slightly covered by sea water all the time [1110], Coastal lagoons [1150], Large shallow inlets and bays [1160], Reefs [1170], Perennial vegetation of stony banks [1220], Vegetated sea	<p>Having regard to the location of these qualifying interests at a significant distance upstream/downstream and to the pressures and threats associated with these QIs as set out in the NPWS' Article 17 Habitat Conservation Assessments 2025, it is considered there was and will be no likely significant effects on the conservation objectives of these QIs.</p>	

cliffs of the Atlantic and Baltic coasts [1230], Salicornia and other annuals colonising mud and sand [1310], Mediterranean salt meadows (*Juncetalia maritimi*) [1410], Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion *caeruleae*) [6410], Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, *Alnion incanae*, *Salicion albae*) [91E0]

River Shannon and River Fergus Estuaries SPA (004077)

Summary of key issues that could give rise to adverse effects (from screening stage):

Water quality deterioration (construction phase)

Qualifying Interest features likely to be affected	Conservation Objectives (Targets and Attributes)	Potential adverse effects	Mitigation and Remedial Measures (summary)
<p>Cormorant (<i>Phalacrocorax carbo</i>) [A017], Whooper Swan (<i>Cygnus cygnus</i>) [A038], Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046], Shelduck (<i>Tadorna tadorna</i>) [A048], Teal (<i>Anas crecca</i>) [A052], Pintail (<i>Anas acuta</i>) [A054], Scaup (<i>Aythya marila</i>) [A062], Ringed Plover (<i>Charadrius hiaticula</i>) [A137], Golden Plover (<i>Pluvialis apricaria</i>) [A140], Grey Plover (<i>Pluvialis squatarola</i>) [A141], Lapwing (<i>Vanellus vanellus</i>) [A142], Knot (<i>Calidris canutus</i>) [A143], Dunlin (<i>Calidris alpina</i>) [A149], Black-tailed Godwit (<i>Limosa limosa</i>) [A156], Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157], Curlew (<i>Numenius arquata</i>) [A160], Redshank (<i>Tringa totanus</i>) [A162], Greenshank (<i>Tringa nebularia</i>) [A164], Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179], Wigeon (<i>Mareca penelope</i>) [A855], Shoveler (<i>Spatula clypeata</i>) [A857], Wetlands [A999]</p>	<p>To maintain the favourable conservation condition of the bird species which is defined by, including, no significant decrease in their distribution.</p>	<p>Deterioration in water quality during the construction phase has the potential to impact the conservation objectives of the QI species.</p> <p>The submitted remedial screening report and rNIS do not provide any information on the construction methodology of the infilling and concrete works nor any details in relation to the source or types of materials that were introduced onsite. Therefore, in the absence of this information, I consider the potential harmful impacts are unknown and further information is required.</p>	<p><u>Remedial measures:</u></p> <ul style="list-style-type: none"> • Implementation of SuDS management features, including petrol interceptor, attenuation tank and restricted surface water discharge to the open drain at 3.1 litres per second which will ensure adequate water quality being discharged to the drainage network. <p><u>Mitigation measures during construction of remedial measures:</u></p> <ul style="list-style-type: none"> • Appointment of ecologist • Dust control, stockpiling away from drains • Silt traps • Storage of fuel, oil and chemicals within bunded area, 50 metres away from drains and ditches • Covering, seeding and fencing of stockpiles

Assessment of issues that could give rise to adverse effects:**Deterioration in water quality**

During construction, I consider that there was potential for water quality deterioration through the release of suspended solids which can result in excessive eutrophication leading to deoxygenation of water and subsequent asphyxia of aquatic species. An increase in sediments has the potential to impact fish species by damaging gravel beds required for spawning, smothering fish eggs and interfering with the gills of fish. The release of hydrocarbons from construction plant and equipment can also affect water quality potentially resulting in toxic conditions for aquatic flora and fauna and de-oxygen of waters. The release of uncured concrete would alter the pH of the waterbody, potentially leading to aquatic flora and fauna mortality. There is no information within the rNIS regarding the construction methodology of the development to be retained, in particular regarding the area of concrete hardstanding adjoining the existing filter drain. In the absence of this information, I am not satisfied that the information allows for a complete assessment on adverse effects on site integrity.

Invasive Species

I note that the submitted rNIS does not include any information on the source or type of “compacted fill material” that was introduced into the site, i.e. whether it was inert soil or stone or other materials. There is no indication on whether it was subject to invasive species checks. Again, in the absence of this information, I am not satisfied that the information allows for a complete assessment on adverse effects on site integrity.

Findings and Conclusions

Whilst I acknowledge the author of the rNIS states that no significant effects are likely due to dilution and dispersion within the drainage system and due to the vegetative nature of the ditches, due to the absence of an analysis of the baseline environment and analysis of the construction works, I cannot reach a conclusion beyond reasonable scientific doubt regarding whether there has been any effects on the integrity of the Lower River

Shannon SAC and River Shannon and River Fergus Estuaries SPA. I therefore recommend that further information is required to determine whether there was any harm done on the qualifying interests of the European site during the construction phase of the infilling and concreting works.