



An
Coimisiún
Pleanála

Inspector's Report ABP-321231-24

Development

Application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended) for repairs to concrete slipway & gravel pathway.

Location

Lands at Ballinkillew, Whitegate, Co. Clare.

Local Authority

Clare County Council

Type of Application

Application for approval made under Section 177E of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)

Applicant

Declan Lyons

Prescribed Bodies

None

Observer(s)

None

Date of Site Inspection

8th December 2025

Inspector

Ciara McGuinness

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1.0 Introduction

- 1.1. This is an application for substitute consent under Section 177E of the Planning and Development Acts 2000-2011 as amended. It follows a preapplication consultation meeting held by An Bord Pleanála, on 16th May 2024. ABP-319187-24 refers.
- 1.2. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections 10 to 21, sections 23 to 40 and subsections (8) to (12) of section 41, of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Consequently, and as now required, my assessment of this application for substitute consent that follows includes consideration of 'exceptional circumstances'.

2.0 Site Location and Description

- 2.1. The subject lands are located in a rural area, between Mountshannon and Whitegate, Co. Clare in the townland of Ballyinkillew, on the shores of Lough Derg. The site is accessed via a private laneway, which serves a number of dwellings and agricultural lands. The site, as outlined in red, is located on the lake-side of the access road and has a timber post and rail fence along its perimeter. A gravel path c.65m in length runs from the private laneway to a jetty and slipway located at the water's edge. The gravel path also has a timber post and rail fence on either side.

3.0 Proposed Development

- 3.1. The proposal is for the retention of completed works, which comprise repairs to concrete slipway and adjacent low stone wall & widening and repairs to gravel pathway running to the jetty.
- 3.2. The slip way measures c.4.1m in length. The concrete for the slipway was ready mix concrete, barrowed down to the lakeshore. Approximately 1.7m³ was used on the slipway. The concrete was laid over the existing gravel surface of the slipway, during dry warm weather when the water level was low.
- 3.3. An existing gravel pathway was widened to 3.9cm with the addition of further gravel and repositioning of the timber fence. All works have taken place and are completed.

4.0 Planning History

UD21-112 – Warning Letter issued

R22-84 - Section 5 Referral- Planning Authority determined that repairs to wooden jetty and replacement of wire fencing with timber and post rail constitutes development which is exempted development. Furthermore, the repairs to gravel slipway with concrete and repairs to gravel pathway with gravel constitutes development which is not exempted development, having regard to, inter alia, Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001 (as amended) as the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European Site.

ABP-317045-23 - Application under section 177(c) of the Planning and Development Acts, 2000 (as amended) for Leave to Apply for Substitute Consent (received by ABP in May 2023). Deemed WITHDRAWN (January 2024)

ABP-319187-24 - Pre-application consultation pursuant to Section 177E(1A) of the Planning and Development Act 2000, as amended for the repairs to concrete slipway & gravel pathway. Consultation closed 14/11/2024.

Lands to NW

P18-799: Permission GRANTED for modification and extension of existing bungalow (Declan and Gemma Lyons).

5.0 Legislative and Policy Context

5.1. Clare County Development Plan 2023-2029

- 5.1.1. The following objectives are also considered relevant to the subject site;

Development Plan Objective: Heritage Landscapes CDP14.5 It is an objective of Clare County Council:

To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal - from site selection through to details of siting and design. All other relevant provisions of the Development Plan and the RSES must be

complied with. All proposed developments in these areas will be required to demonstrate;

- I. That sites have been selected to avoid visual prominence
- II. That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads;
- III. That design for buildings and structures minimises height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

Development Plan Objective: European Sites CDP15.3 It is an objective of Clare County Council: (a) to afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters; (b) to require all planning applications for development that may have (or cannot rule out) likely significant effects on European Sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended).

Development Plan Objective: Requirement for Appropriate Assessment CDP15.4 It is an objective of Clare County Council: a) To implement Article 6(3) and where necessary 6(4) of the Habitats Directive and to ensure that Appropriate Assessment is carried out in relation to works, plans and projects likely to impact on European sites (SACs and SPAs), whether directly or indirectly or in combination with any other plan(s) or project(s); and b) To have regard to Appropriate Assessment of Plans and Projects in Ireland – Guidelines for Planning Authorities 2009 or any updated version.

Development Plan Objective: Inland Waterways and River Corridors CDP15.16 It is an objective of Clare County Council: a) To work with all relevant stakeholders to protect from degradation and damage and manage inland waters, river corridors and their floodplains, turloughs, lakes, fens and other water bodies, and to recognise and promote them as natural assets and key elements in the green infrastructure network in the County; b) To protect riparian areas, where appropriate, in the Plan area; c) To ensure that, where development occurs within a riparian zone, it does not have a

negative impact on associated habitats and species and to have regard for Inland Fisheries Ireland guidance 'Planning For Watercourses In The Urban Environment' and any updated versions; d) To work with all relevant stakeholders to protect and improve appropriate access to waterways and river corridors whilst ensuring their conservation and the protection of the resource and water quality; e) To encourage development proposals to I. Maintain an appropriate width for the riparian zone to be protected; II. Improve appropriate access and compatible leisure activities; III. Maintain and enhance the fishing potential for both local interests and tourism by protecting the natural spawning beds of trout and salmon; and f) To protect the County's valuable inland fishery resource and support its sustainable development through the protection of water quality and facilitation of ancillary infrastructure at appropriate locations

5.2. Natural Heritage Designations

Lough Derg SPA (Site Code: 004058) – directly adjacent to the site

Slieve Aughty Mountains SPA (Site Code: 004168) – c.2.3km from the site

5.3. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 Consultations

6.1. Planning Authority Report

- 6.1.1. A request issued to Clare County Council inviting submission of a report pursuant to Section 177I of the Planning and Development Acts 2000 as amended, the planning authority's report is summarised as follows:

- Site description, planning history and development plan objectives are set out.
- Felling works have not been included in the cumulative/in-combination effects set out in the Remedial Natura Impact Statement.
- The Planning Authority considers the extent of the works undertaken as part of the subject development to be greater than that which is indicated in the submitted documents.
- The works undertaken include lighting along the pathway and the provision of electricity pillars at the jetty. No overground wires were observed on the site. The excavation/trenching required to connect structures on the lakeshore with an electricity supply have not been described or considered in the assessment submitted with the application. No light specifications have been provided and the impacts of lighting on the lake margins have not been assessed in the rNIS.
- A large extent of vegetation clearance coincided with the widening of the pathway and other works on the site, and a temporary internal access track was created leading to the shoreline. This is a separate area of clearance not covered by the forementioned felling licence. The impact of vegetation clearance and vehicle access in the lake margins has not been included or considered in the assessment.
- The Planning Authority has no objection to the granting of substitute consent for the development that has taken place on the site. However, any such consent must be based on a full assessment of the overall works that have taken place within the red line boundary of the application, and the impacts of same on the adjoining European site. The Planning Authority is not satisfied that the assessment undertaken to date is adequate to conclude that there were no adverse impacts on European Sites as a result of the development.
- In the event of a grant, it is requested that conditions relating to the following are included

- Landscaping/the replanting of riparian habitat cleared to facilitate construction
- The use of the slipway and associated facilities as a private amenity connected to the dwelling house only. No commercial use of facilities should be permitted.

6.2. **Statutory Consultees**

6.2.1. The application was circulated to the following bodies:

- Minister for Transport, Sport and Tourism
- Minister for Communications, Climate Action and Environment
- National Parks and Wildlife Service (DAU)
- Fáilte Ireland
- Údarás na Gaeltachta
- The Heritage Council
- An Taisce
- An Chomhairle Ealaíon
- Inland Fisheries

No responses have been received.

6.3. **Public Submissions**

6.3.1. None

6.4. **Further Response**

6.4.1. The Applicant prepared a response to the submission made by the planning authority, which can be summarised as follows:

- The submitted documents dealt with what the council deemed unexempted developments and does not address concerns that weren't raised at the time.

- The Planning Authority mention that no overground wires were observed on the site and therefore excavation and trenching would have been required. This is not correct as the lights mounted on the fence are supplied by armoured cabling, laid under the gravel or under the jetty itself and in fact no trenching or excavation was required.
- No objection to lighting was made on the original objection and therefore it had not been addressed in the report.
- The vegetation that was cleared by the side of the path was gorse and some willow saplings. The local ranger who advised seeking a felling license, also advised that gorse and willow saplings could be removed without any particular issue.
- The Planning Authority contends that there was a temporary internal access track created to accommodate the works. The applicant states that this is not true. There was no additional pathway other than the long-standing one used to access the jetty.
- The applicant objects to the Planning Authority's request for the proposed landscaping and replanting of riparian habitat that amounted to furze bushes and willow saplings which can be removed without issue.

7.0 **Assessment**

Having assessed the documentation submitted, undertaken a site visit and having regard to the relevant policies pertaining to the subject site in this rural area, the nature of existing uses on and in the vicinity of the site, the nature and scale of the development proposed for regularisation, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

- Exceptional Circumstances
- Proper Planning & Sustainable Development

Appropriate Assessment and Water Framework Directive are assessed separately below.

7.1. **Exceptional Circumstances**

7.1.1. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections 10 to 21, sections 23 to 40 and subsections (8) to (12) of section 41, of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Consequently, and as now required, my assessment of this application for substitute consent that follows includes consideration of 'exceptional circumstances'.

7.1.2. The first matter which the Commission must consider is whether or not exceptional circumstances under 177K(1J) of the Planning and Development Act, as amended, exist to allow the Commission to grant permission, i.e.:

(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 Board considers relevant.

(a) Would regularisation of the development circumvent the purpose and objectives of the Environmental Impact Assessment Directive?

7.1.3. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations

2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Carrying out the development did not, therefore, circumvent the purpose and objectives of the Environmental Impact Assessment Directive.

- 7.1.4. The application does relate to development that is informed by a rNIS, and so it is subject to the Habitats Directive. This rNIS, and its assessment, provides the opportunity for the purpose and objectives of the Habitats Directive to be upheld. Therefore, I conclude that this application for substitute consent which includes a rNIS and carrying out of AA would not circumvent the objectives of the Habitats Directive.

(b) Could the applicant reasonably have had a belief that the development was not unauthorised?

- 7.1.5. There is nothing on the file to indicate that the applicant had or could reasonably have had a belief that the development was not unauthorised. The applicant acted under the impression that the works were exempted, given the nature of the repair works and that similar repairs had been carried out previously. The planning history of the site is noted, specifically a section 5 referral, R22-84 refers.

(c) Has 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, been substantially impaired?

- 7.1.6. This development does not require the undertaking of a remedial Environmental Impact Assessment. The application is accompanied by a remedial NIS which is included on the application file. In my opinion the ability to carry out an appropriate assessment and to provide for public participation in such an assessment has not been substantially impaired. The applicant advertised their intentions by the appropriate form of public notice and submitted them to the Commission on 8th November 2024. It is noted that there are no third-party submissions to this report.

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

- 7.1.7. These matters are addressed under the heading appropriate assessment below. They are not such as to indicate that exceptional circumstances do not exist in this case.

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

- 7.1.8. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated is not such as to indicate that exceptional circumstances do not exist in this case.

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

- 7.1.9. On-site works undertaken resulted in enforcement action being taken by Clare County Council as outlined in the Planning History Section above. I note the section 5 referral in relation to the works, and I consider that the applicants have sought to engage with the Council relative to enforcement. They submit as noted above that they considered that the works undertaken constituted exempted development, prior to enforcement action being taken. I also note the applicant sought and acquired the appropriate licenses for the felling of trees on lands within the wider site. In any event, it must be noted that enforcement is a matter for the Council and is not within the remit of the Commission. In my opinion, the applicant is making appropriate efforts to regularise the status of the existing development on the site through the substitute consent procedure.

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

- 7.1.10. No other matters arise which the Commission might consider relevant. I am satisfied that exceptional circumstances exist to allow the Commission to grant permission.

Exceptional Circumstances Conclusion

- 7.1.11. I note the submissions received from the applicant with reference to this current application for substitute consent and the exceptional circumstances as they have been set out. Given the foregoing, I am satisfied that the applicant has adequately demonstrated that there are exceptional circumstances pertaining, with specific reference to section 177K(1J) of the Planning and Development Act 2000 as amended.

7.2. Proper Planning & Sustainable Development

- 7.2.1. The application for substitute consent relates to for repairs to concrete slipway & gravel pathway. This is a retrospective application seeking regularisation of planning in that said unauthorised works have already taken place and the works are completed. I consider that the repair works to the existing features of the site are relatively minor in scale.
- 7.2.2. The planning authority have listed out what they consider to be a non-exhaustive list of the relevant policies and objectives of the development plan with respect to this application. I have listed out at section 5, what I consider to be the most relevant. The Planning Authority have outlined that the potential impact on European Sites and inland waterway will be determined through the consent process. In all other respects it is considered that the development does not appear to contravene to policies or objectives of the Development Plan.
- 7.2.3. Having regard to the above, the planning history associated with the site, the context to the site and extent of works carried out in the past, I am of the view that the development the subject of this application would not interfere with the existing land uses and would not injure the amenities of the area. I consider that the development would be in accordance with the proper planning and sustainable development of the area. This is contingent on ensuring that the effects on the environment of the development which took place, by itself or in combination with other development in the vicinity, was and is acceptable and that the integrity of European sites were not adversely affected, in view of the site's conservation objectives. I have set out my consideration of these and other relevant matters in the following sections of this report.

8.0 Appropriate Assessment

The application for the proposed development was accompanied by a Remedial Natural Impact Statement (rNIS) which scientifically examined the proposed development and the European site. The rNIS identified and characterised the possible implications of the proposed development on the European site, in view of the site's conservation objectives, and provides information to enable the Commission to carry out an appropriate assessment of the proposed works.

8.1. **AA Screening**

Refer to Appendix 2 of this report for Appropriate Assessment Screening Determination. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development alone would give rise to significant effects on Lough Derg SPA in view of the sites conservation objectives. Appropriate Assessment is required.

This determination is based on:

- The connectivity between the application site and Lough Derg SPA
- The potential for disturbance arising from construction activities and the potential for degradation of water quality arising from construction activities.
- The nature and extent of the proposed mitigation measures, which may not be implemented in the absence of connectivity to a European Site.

8.2. **AA Determination**

Refer to Appendix 3 of this report for Appropriate Assessment Determination. In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on Lough Derg SPA in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177V was required.

Following an examination, analysis and evaluation of the rNIS and all associated material submitted, I consider that adverse effects on site integrity of the Lough Derg SPA can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- Detailed assessment of construction and operational impacts.
- The development would not affect the attainment of conservation objectives for the relevant qualifying interests of Lough Derg SPA.
- Effectiveness of mitigation measures outlined in the Natura Impact Statement

9.0 Water Framework Directive

The subject site is located directly adjacent to Lough Derg.

The proposed development comprises repairs to slipway, wall and gravel pathway.

I have assessed the proposed development and have 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. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- The scale and nature of the development
- Implementation of standard construction measures

Refer to Appendix 4 below for WFD Impact Assessment Stage 1 & 2: Screening.

Conclusion

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment

10.0 Recommendation

I recommend that the Commission grant substitute consent in accordance with the following Draft Order.

11.0 Recommended Draft Commission Order

The Commission, in accordance with section 177K of the Planning and Development Act 2000, as amended, and based on the Reasons and Considerations set out

below, decided to GRANT substitute consent in accordance with the conditions set out below.

Reasons and Considerations

In coming to its decision the Commission had regard, inter alia, to the following:

(a) the provisions of the Planning and Development Act, 2000, as amended, and in particular Part XA (Substitute Consent) and the provisions of the Planning and Development Regulations, 2001, as amended.

(b) the applicable national, regional and local planning policy including in particular, the provisions of the Clare County Development Plan 2023-2029

(c) the remedial Natura Impact Statement and supporting documentation submitted with the application;

(d) the report and the opinion of the planning authority and the applicant's response to the report;

(e) the planning history of the subject site and adjoining lands;

(f) the nature, scale, characteristics and location of the development;

(g) the Inspector's assessment as set out in the Inspector's Report;

It is considered that the proposed development, subject to the conditions set out below, would be appropriate in scale and nature, would not seriously impact on habitats or local amenities, and would otherwise be in accordance with the proper planning and sustainable development of the area

Environmental Impact Assessment

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination.

Appropriate Assessment

Appropriate Assessment Stage 1 Screening

The Commission agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Lough Derg SPA (Site Code: 004058), is the only European Sites in respect of which the development has the potential to have a significant effect.

Appropriate Assessment Stage 2

The Commission considered the remedial Natura Impact Statement and associated documentation submitted with the application for approval, the submissions on file, and the Inspector's assessment. The Commission completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Lough Derg SPA (Site Code: 004058), in view of the site's conservation objectives. The Commission considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the assessment, the Commission considered the likely direct and indirect impacts arising from the development, both individually or in combination with other plans or projects, the mitigation measures set out in the remedial Natura Impact Statement and the conservation objectives for the European Site.

In completing the appropriate assessment, the Commission accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the subject development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives.

Proper Planning and Sustainable Development

Having regard to the nature, scale and extent of the development, noting that the integrity of European Sites were not adversely affected, in view of the relevant sites' conservation objectives, as set out above, and subject to compliance with the conditions set out below, the Board is satisfied that to grant substitute consent to the development accords with the proper planning and sustainable development of the area.

12.0 Conditions

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Coimisiún Pleanála with the application on the 8th November 2024 except as may otherwise be required in order to comply with the following conditions.

(b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development on the subject site.

Reason: In the interest of clarity.

2. The slipway and associated facilities shall be used as a private amenity connected to the associated dwelling house only. No commercial use of the facilities shall be submitted.

Reason: To restrict the use of the slipway in the interest of residential amenity and environmental protection.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Ciara McGuinness
Planning Inspector

5th February 2026

Appendix 1 - Form 1 - EIA Pre-Screening

Case Reference	321231-24
Proposed Development Summary	Application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended) for repairs to concrete slipway & gravel pathway.
Development Address	Lands at Ballinkillew, Whitegate, Co. Clare.
	In all cases check box /or leave blank
1. Does the proposed 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)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed 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?	
☒ 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. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

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 ☐	Screening Determination required (Complete Form 3)
No ☐	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____

Appendix 2 - AA Screening Determination

Screening for Appropriate Assessment Test for likely significant effects				
Step 1: Description of the project and local site characteristics				
Brief description of project	Repairs to concrete slipway & gravel pathway			
Brief description of development site characteristics and potential impact mechanisms	The site is located directly adjacent to Lough Derg. The development relates to retention of completed works for repairs to a slipway, wall and pathway on the shore of Lough Derg. The work has not resulted in any changes to the types of activities carried out at the site or the number of people present at the site or its environs. A site survey was undertaken in February 2023. The area of development comprises Buildings and Artificial Surfaces (BL3). Habitats in the surrounding lands consist of species poor wet grassland (GS4) and Woodlands (WN6). A bird survey was undertaken in conjunction with the site survey in February 2023. Birds recorded within the waters of Lough Derg were limited to Mallard and Little Grebe.			
Screening report	Yes - prepared by Greenleaf Ecology			
Natura Impact Statement	Yes – Remedial Natura Impact Statement prepared by Greenleaf Ecology			
Relevant submissions	None			
Step 2. Identification of relevant European sites using the Source-pathway-receptor model				
Two European sites are identified as being located within a potential zone of influence of the proposed development as detailed in Table 1 below. I have only included those sites with any possible ecological connection or pathway in this screening determination.				
European Site (code)	Qualifying interests¹ Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections²	Consider further screening³ Y/N

Lough Derg SPA (Site Code: 004058)	CO004058.pdf	Directly Adjacent	Potential direct connectivity for	Y
Slieve Aughty Mountains SPA (Site Code: 004168)	CO004168.pdf	2.3km	No connectivity (groundwater drains in opposite direction)	N

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

Sources of impact and likely significant effects are detailed in the Table below.

AA Screening matrix

Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
Lough Derg SPA (Site Code: 004058) Cormorant (Phalacrocorax carbo) [A017] Tufted Duck (Aythya fuligula) [A061] Goldeneye (Bucephala clangula) [A067] Common Tern (Sterna hirundo) [A193] Wetland and Waterbirds [A999]	Indirect: Disturbance during construction phase Negative impacts (temporary) on water quality due to construction related emissions/pollution.	Disturbance may cause displacement from foraging and roosting areas Negative effect on habitat quality/ function and prey availability/ undermine conservation objectives related to water quality
	Likelihood of significant effects from proposed development (alone): Yes	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? N/A	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		

It is not possible to exclude the possibility that proposed development alone would result significant effects on Lough Derg SPA from effects associated with water quality and disturbance.

An appropriate assessment is required on the basis of the possible effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at screening stage.

Proceed to AA.

Significant effects cannot be excluded

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development alone would not give rise to significant effects on Lough Derg SPA in view of the sites conservation objectives. Appropriate Assessment is required.

This determination is based on:

- The connectivity between the application site and Lough Derg SPA
- The potential for disturbance arising from construction activities and the potential for degradation of water quality arising from construction activities.
- The nature and extent of the proposed mitigation measures, which may not be implemented in the absence of connectivity to a European Site.

Appendix 3 - AA Determination

Appropriate Assessment

The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Taking account of the preceding screening determination, the following is an appropriate assessment of the implications of the proposed development in view of the relevant conservation objectives of Lough Derg SPA based on scientific information provided by the applicant.

The information relied upon includes the following:

- Natura Impact Statement prepared by Greenleaf Ecology
- Conservation objectives for the European Sites and supporting documents from the NPWS.ie.

I am satisfied that the information provided is adequate to allow for Appropriate Assessment. I am satisfied that all aspects of the project which could result in significant effects are considered and assessed in the rNIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness.

Submissions/observations

A submission from the Planning Authority was received.

The Planning Authority contends that excavation/trenching was required to connect structures on the lakeshore with an electricity supply and that this has not been described or considered in the assessment submitted with the application. The applicant has responded stating that the electricity is supplied by armoured cabling, laid under the gravel or under the jetty itself and in fact no trenching or excavation was required. Pictures of cabling is included. I am satisfied with the bona fides of the application and do not consider that excavation/trenching was required.

I have considered the use lights and the clearance of vegetation, as referenced by the Planning Authority within their submission.

Lough Derg SPA (SITE CODE 004058):

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

- (i) Displacement/Disturbance (construction and operation).**
- (ii) Water quality degradation (construction and operation)**

Qualifying Interest features likely to be affected	Conservation Objectives Targets and attributes (summary-inserted)	Potential adverse effects	Mitigation measures (summary) rNIS SECTION 6
Cormorant (Phalacrocorax carbo) [A017] Common Tern (Sterna hirundo) [A193]	Restore favourable conservation condition Breeding population and size – long term SPA population trend is stable or increasing; Productivity rate – sufficient to maintain a stable or increasing population. Distribution, extent of available nesting options within the SPA – sufficient availability of suitable nesting sites throughout the SPA to maintain a stable or increasing population; Forage spatial distribution, extent, abundance and availability – sufficient number of locations, area of suitable habitat and available forage biomass to support the population target.	A significant impact on water quality could indirectly impact upon these QIs by causing a reduction in prey populations and availability. Potential disturbance during construction to foraging and roosting areas	Best practice pollution control measures - No hazardous materials stored within 50m, use of spill kits, drip trays and other appropriate equipment on site, all equipment kept in good condition, careful handling and storage of fuels, lubricants and hydraulic fluids for equipment. No vehicle washing on site, works were undertaken in dry weather.

	Disturbance at the breeding site – disturbance occurs at levels that do not significantly impact on birds at the breeding site. Disturbance at areas ecologically connected to the colony – disturbance occurs at levels that do not significantly impact on breeding population. Barriers to connectivity – no significant increase.		
Tufted Duck (Aythya fuligula) [A061] Goldeneye (Bucephala clangula) [A067]	Maintain favourable conservation condition Winter population trend – long term winter population trend is stable or increasing. Winter spatial distribution – sufficient number of locations, area, and availability (in terms of timing and intensity of use) of suitable habitat to support the population target. Disturbance at wintering site – disturbance occurs at levels that do not significantly impact the achievement of targets for population trend and spatial distribution.	A significant impact on water quality could indirectly impact upon these QIs by causing a reduction in prey populations and availability. Potential disturbance during construction to foraging and roosting areas	

	Barriers to connectivity and site use – barriers do not significantly impact the wintering population's access to the SPA or other ecologically important sites outside the SPA. Forage spatial distribution, extent and abundance – sufficient number of locations, area of suitable habitat and available forage biomass to support the population target. Roost spatial distribution and extent – sufficient number of locations, area and availability of suitable roosting habitat to support the population target.		
Wetland and Waterbirds [A999]	Maintain favourable conservation condition Wetland habitat area - No significant loss to wetland habitat within the SPA Wetland habitat quality and functioning - No significant impact on the quality or functioning of the wetland habitat within the SPA	Water quality degradation could impact on wetland habitat quality and functioning Potential disturbance during construction to foraging and roosting areas	

Assessment of issues that could give rise to adverse effects view of conservation objectives

Water quality degradation

The submitted rNIS identifies that there was potential for adverse effect upon water quality, as a result of the proposed works during construction. Surface water runoff from the site during the groundworks phase may have silt laden run-off from excavated materials or from accidental spills of oils, hydrocarbons, concrete etc. from materials and machinery equipment. Degradation of surface water quality could potentially damage some supporting habitats of the Qualifying Features which are associated with the Lough Derg SPA. Mitigation is set out which protected against the occurrence of such events arising and reducing the potential for consequential negative effects with respect to such events. No operational impacts are anticipated.

Disturbance

Noise or dust generated by construction activities could disturb QI species, particularly roosting or breeding colonies, however, this is considered highly unlikely given the minor nature of the works and the short duration of works. Furthermore, in view of the low diversity and number of waterbirds recorded at the site and its wider environs, it is considered that no disturbance impacts on breeding and wintering populations of SCI for Lough Derg are expected to have occurred during the construction of the slipway. Works to the pathway, wall and slipway have not resulted in changes to the type or intensification of activities and it is not considered that the operation of the completed works will result in disturbance/displacement. The Planning Authority has made reference to the lighting located along the fencing. While artificial lighting has the potential to affect birds, I note that the lighting is low level which directs light onto the pathway surface only, ensuring no light spills onto the open water of the estuary/lake. I also note lighting would be emitted from the nearby dwellings and birds would be accustomed to some level of lighting in the surrounding area.

In-combination effects

Section 5.4 of the rNIS identifies projects and plans in proximity to the site. The rNIS concludes that there is no potential for in combination effects with any development that would cause an adverse effect on the Natura 2000 network.

I note that the Planning Authority have noted that the in-combination assessment does not include the felling project on lands within the wider site. I note that the Department of Agriculture, Food and the Marine carried out an Appropriate Assessment Determination for Felling project TFL00741621, at Ballynakillew, Co. Clare. It was found that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Sites, having regard to their conservation objectives, provided the specified mitigation is implemented.

I have considered the subject development in the context of the Felling project which itself was subject to appropriate assessment. I am satisfied that there would be no in combination effect with any development that would cause an adverse effect on the Natura 2000 network.

Findings and conclusions

The applicant determined that following the implementation of mitigation measures the construction and operation of the proposed development alone, **or in combination with other plans and projects**, will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects arising from aspects of the proposed development can be excluded for the European sites considered in the Appropriate Assessment. No direct impacts are predicted. Indirect impacts would be temporary in nature and mitigation measures outlined to prevent adverse effects have been assessed as effective. No significant in combination effects are predicted.

Reasonable scientific doubt

I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

Site Integrity

The proposed development would not affect the attainment of the Conservation objectives of the Lough Derg SPA. Adverse effects on site integrity can be excluded and no reasonable scientific doubt remains as to the absence of such effects.

Appropriate Assessment Conclusion: Integrity Test

In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on Lough Derg SPA in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177V was required.

Following an examination, analysis and evaluation of the rNIS all associated material submitted, I consider that adverse effects on site integrity of the Lough Derg SPA can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- Detailed assessment of construction and operational impacts.
- The development would not affect the attainment of conservation objectives for the relevant qualifying interests of Lough Derg SPA.
- Effectiveness of mitigation measures outlined in the Natura Impact Statement

Appendix 4 – Water Framework Directive

WFD IMPACT ASSESSMENT STAGE 1: SCREENING			
Step 1: Nature of the Project, the Site and Locality			
An Bord Pleanála ref. no.	321231-24	Townland, address	Lands at Ballinkillew, Whitegate, Co. Clare.
Description of project		Application for substitute consent under Section 177E of the Planning and Development Act 2000 (as amended) for repairs to concrete slipway & gravel pathway.	
Brief site description, relevant to WFD Screening,		Site is located on the shores of Lough Derg. The proposal relates to a gravel path and concrete slipway leading to Lough Derg. The slipway is for private amenity use only. The works have not resulted in any changes to the types of activities carried out at the site or the number of people present at the site or its environs.	
Proposed surface water details		N/A	
Proposed water supply source & available capacity		N/A	
Proposed wastewater treatment system & available capacity, other issues		N/A	

Others?			N/A			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
Lake Waterbody	Adjoining site	IE_SH_25_191a Derg TN	Moderate	At risk	HYMO, IS, Ag	Directly adjoining lake waterbody. Potential for surface run-off during construction
Groundwater Body	Underlying the site	IE_SH_G_236 Tynagh	Good	Not at risk		Poorly drained soils
Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.						
CONSTRUCTION PHASE						

No.	Component	Waterbody receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.
1.	Lake	IE_SH_25_191a Derg TN	Directly adjoining lake waterbody	hydrocarbon spillages, pH (Concrete)	Standard construction practice	Yes	Screened in
	Ground	IE_SH_G_236 Tynagh	drainage	Spillages	As above	No	Screened out
OPERATIONAL PHASE							
3.	NA						
DECOMMISSIONING PHASE							
5.	NA						
STAGE 2: ASSESSMENT							
Details of Mitigation Required to Comply with WFD Objectives – Template							
Surface Water							

Development/Activity e.g. culvert, bridge, other crossing, diversion, outfall, etc	<u>Objective 1:Surface Water</u> Prevent deterioration of the status of all bodies of surface water	<u>Objective 2:Surface Water</u> Protect, enhance and restore all bodies of surface water with aim of achieving good status	<u>Objective 3:Surface Water</u> Protect and enhance all artificial and heavily modified bodies of water with aim of achieving good ecological potential and good surface water chemical status	<u>Objective 4: Surface Water</u> Progressively reduce pollution from priority substances and cease or phase out emission, discharges and losses of priority substances	Does this component comply with WFD Objectives 1, 2, 3 & 4? (if answer is no, a development cannot proceed without a derogation under art. 4.7)
	Describe mitigation required to meet objective 1:	Describe mitigation required to meet objective 2:	Describe mitigation required to meet objective 3:	Describe mitigation required to meet objective 4:	
Construction works	Site specific construction mitigation methods described in the rNIS e.g. works completed in dry weather, hazardous material stored away from water body, use of spill kits etc.	Site specific construction mitigation methods described in the rNIS e.g. works completed in dry weather, hazardous material stored away from water body, use of spill kits etc.	NA	NA	YES