



An
Bord
Pleanála

Inspector's Report SU07.SU0139

Development	Temporary Holiday Accommodation.
Location	Stoneyisland, Portumna, Co. Galway.
Planning Authority	Galway County Council.
Applicant	Ben Bontinck.
Type of Application	Application for Substitute Consent.
Observers	(i) John Murphy and Jacqui Gleeson (ii) Department of Culture, Heritage and the Gaeltacht.
Date of Site Inspection	7 th March, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

An application was lodged with An Bord Pleanála on 28th August, 2017 under the provisions of Section 177E for a substitute consent application for a small wooden holiday chalet/cabin with outdoor compost toilet adjacent to the cabin, and two separate wooden structures accommodating a wash-up area and a small store together with a small jetty at Stoneyisland, Portumna, County Galway. One objection was received in relation to the substitute consent application from an adjoining landowner on the grounds that a grant of substitute consent for the proposed structures is contrary to the proper planning and sustainable development of the area mainly for environmental reasons.

2.0 Site Location and Description

- 2.1. The subject site is located on a narrow peninsula protruding from the north shore of Lough Derg, approximately 4.5 kilometres west of the town of Portumna in south-east Galway. The peninsula is c.500 metres in length and at its widest is almost 200 metres in width. It accommodates approximately a dozen dwellings most of which appear to be holiday homes. The peninsula is substantially covered in mixed broadleaf woodland.
- 2.2. The site itself is rectangular in shape and is located in the eastern side of the peninsula. The site stretches from the access road, which runs southwards to the tip of the peninsula, to the shoreline of Lough Derg to the east. The site is approximately 100 metres in length and 20 metres in width. As in the case of the rest of the peninsula, it is extensively covered in mixed broadleaf woodland. The following structures are located on the site.

- Cabin.

The cabin comprises of a timber structure with a corrugate iron roof. The stated floor area of the cabin is 16.5 square metres. It is located centrally within the site with some informal paving has been provided to the front of the cabin. A single doorway provides the only entrance to the cabin and a large

window is also provided in the front elevation. A solar panel is also located on the front elevation. The cabin also accommodates a small pot- belly stove. The cabin is used for sleeping accommodation and is able to accommodate c.4 persons, according to the information submitted.

- A partially enclosed timber structure accommodating a basic toilet is located to the immediate west of the cabin. It has a stated area of 5 square metres. The toilet comprises of a basic (homemade) dry compost facility.
- Two smaller wooden structures are located in the eastern portion of the site nearer the entrance. These structures accommodate a small wash-up area together with an internal clothes line. This timber structure incorporates a corrugated Perspex roof. It has a stated area of 9 square metres. A smaller store area also comprises of a timber structure with a corrugate iron roof and has a stated area of 4 square metres.
- The jetty is also approximately 4 square metres and protrudes into the shoreline at the eastern end of the site. It is suspended over rocks and constructed on a concrete capping with a concrete debris foundation.

There are a number of residential properties adjacent to the subject site. The property to the north appears to be holiday home and comprises of a single storey structure with an extensive lawn which runs down to the lakeshore. This dwelling also has a timber jetty type structure contiguous to the shoreline.

3.0 Background and Planning History Associated with Subject Site

- 3.1. There are details of two applications contained in a pouch to the rear of the file. Under Reg. Ref. 12/1638 and Reg. Ref. 14/344, retention of planning permission was sought for the structures in question. It appears that both applications were invalidated by Galway County Council on the grounds that the retention of these structures required Appropriate Assessment under the provisions of Section 34(12). Under the provisions of this section of the Act, the Planning Authority shall refuse to consider an application to retain unauthorised development where the Authority considered that the development would have required an appropriate assessment.

- 3.2. Also attached in a separate pouch to the rear of the file are details of enforcement proceedings under (EN12/114).
- 3.3. Under LS07.LS0028 An Bord Pleanála granted leave to apply for substitute consent for the works undertaken on site. The Board considered that exceptional circumstances exist including:
- The fact that the regularisation of the development would not circumvent the purpose or objectives of the Habitats Directive.
 - That the applicant could have reasonably had the belief that the development was not unauthorised.
 - That the ability to carry out an AA and provide for public participation has not been substantially impaired.
 - And the limited nature of the actual/likely significant effects on a European Site resulting from the development all constituted exceptional circumstances.

The decision was dated 12th April, 2017. It required that an application for substitute consent would be made within 12 weeks of the Board's decision.

- 3.4. Under SH07.SH0237 (see file attached) the Board granted an extension for a period of 4 weeks to make the application. The Board's decision was dated 10th August, 2017.
- 3.5. Also attached is appeal file no. PL07.231137 which relates to the contiguous site to the north of the subject site. Under this application permission was sought to extend an existing house, to retain a garage and to upgrade the wastewater treatment plant together with the raising of the lawn and the replacement of a wooden jetty. The Board granted planning permission for the proposed development on 27th March, 2009.

4.0 The Application

- 4.1. An application for substitute consent under the provisions of Section 177E was made on foot of the Board's decision under LS07.LS0028 on 28th August, 2017.
- 4.2. The application is accompanied by the following:
- The planning application form.

- The appropriate planning fee of €330.
- Public notices.
- Copies of all maps and drawings.
- A copy of a remedial Natura Impact Statement.
- A Flood Risk Assessment.
- A Planning Report.

4.3. The documentation which accompanies the application is briefly summarised below.

Planning Report – the planning report was prepared by David Mulcahy Planning Consultants. The report states that the site is being used for temporary holiday use since the 1960s by different members of the applicant’s family. The report goes on to describe the site location and description and details of the structures for which substitute consent is currently being sought. It is stated that the structure is used on a temporary basis for approximately 20 days a year. In relation to the compost toilet, reference is made to a number of decisions where An Bord Pleanála granted planning permission for similar facilities. It concludes that the development in question represents a very small-scale lightweight and low environmental impact of the use of the lands in question.

The planning report goes on to outline alleged works that were undertaken in properties in the vicinity including land reclamation and a deposition of dredged material for harbours etc.

The report then goes on to outline the planning history associated with the site and the planning policy as it relates to the site. It concludes that the principal of the proposed use is acceptable on the subject site, the visual impact is negligible and the potential impact on Natura 2000 sites is not significant and this is supported by the remedial NIS submitted.

4.4. A **Remedial NIS** was also submitted which was prepared by Niamh Ní Bhroin B.Sc, Ph.D. It sets out details of the Natura 2000 sites in the vicinity (the Lough Derg SPA and the Lough Derg cSAC). Details of the qualifying interests were also set out and the potential impacts associated with the proposed development are identified as follows:

- The treatment of human waste at the site.
- The disposal of grey water.
- The erection and construction of buildings at the subject site.
- Human disturbance by human activity on wetlands.

4.5. The NIS goes on to assess the impact on the conservation objectives associated with the Natura 2000 sites. It is concluded that there would be no direct impact arising from the development and there is not likely to be any indirect impacts. In terms of cumulative impact, it is noted that there has been some degree of change to the shoreline historically to the present day. These impacts mainly comprise of the formation of jetties. By way of mitigation it is stated where there is concern that pathogenic micro-organisms may not have been killed by the composting process the owner could install a branded composting toilet or the installation of a proprietary chemical or cassette toilet system. Where the waste would be disposed of off site. In conclusion it is considered that the works undertaken on site can be categorised as 'low impact' as potable water is used in a sustainable manner, faecal waste is composted, and electricity used at the site comprises of a solar power and the pruning of surrounding trees. Ecologically the site has a positive impact as the trees which are allowed colonise the site, will provide riparian refuge for insects essential to the ecosystem of Lough Derg. Hence the proposal would not significantly impact on surrounding Natura 2000 sites.

4.6. Also submitted is a **Flood Risk Assessment**. It states that flood records from the OPW website indicate that there is no historic evidence of fluvial flooding in Stoneyisland. The only recorded flood events are located 5 kilometres to the north-east and 2 kilometres to the south-west of the subject site. Both the 1% AEP and the 0.1% AEP flood extent indicate that there is no risk to the subject site. While the 1% and 0.1% AEP flood extent "just clips" the eastern lake shoreline. It poses no risk to the building structures proposed to be retained.

5.0 Observations on Substitute Consent Application

- 5.1. An observation was received from Jacqui Gleeson in respect of the application made for substitute consent. The observer lives in the dwellinghouse directly north of the subject site. The grounds of the observation are set out below.
- 5.2. Reference is made to the fact that the planning notices refer to the fact that the application may be inspected of the offices of An Bord Pleanála and of South Tipperary County Council. The observer points out that this is obviously incorrect as the subject site is located in Galway. Furthermore, it is stated that the newspaper notice is 'camouflaged' in the legal notices and not under the planning section. It is also stated that there are further discrepancies in relation to the site area stated (0.2215 hectares and 0.1141 hectares). It is also inappropriate to suggest that the proposal constitutes temporary accommodation as the chalet structure is permanent.
- 5.3. Despite what is stated in the submission, the toilet is 60 centimetres from the common boundary between the applicant and appellant's site and is a mere 15 metres from a well which is the source of the appellant's drinking water.
- 5.4. It is noted that the site is located in an area designated as a landscape sensitivity Class 4 rating which is a 'special landscape value rating' and is also located within Lough Derg, a designated Natural Heritage Area and Special Area of Conservation. The observation goes on to set out the background and planning history associated with the site. It notes that planning permission for a dwelling in August, 1977 was refused permission relating to concerns that the septic tank was located only 200 feet from the lake. There was no chalet on the subject site at this time nor was there any, it is alleged, until 2009. The submission goes on to state that the site in question had not been used for the 30 years between the late 1970s and 2009. Post 2009 a large army type tent was erected on site and was not taken down at the end of the summer. Contrary to what is stated in the information submitted with the application, the observer states that the structures in question are not replaceable structures on previous buildings on site. Reference is made to various testaments from owners of neighbouring dwellings which state that there was never previously any chalets on the subject site.

- 5.5. The observation also contends that the subject site is used in excess of 20 days a year and that more than four people have been observed staying on the site. The incorporation of a stove also indicates that the site is used throughout the year. It is suggested that the accommodation provided at the site is for working tourists. Thus, it is contended that the site facilitates possible commercial usage for which there is no planning consent.
- 5.6. Concerns are expressed in relation to sewage infiltration to the observer's well which is located c.15 metres from the site. When purchasing the site in 2007, it is stated that the well water was unpolluted. However, having had the water tested on a number of occasions since then, traces of e-coli and coliforms were found.
- 5.7. It is suggested that the toilet essentially comprises of a toilet seat and it was only after complaints were made to the Planning Authority that buckets and lids were provided to collect waste. However, it is suggested that the buckets and lids do not fit within the toilet seat. It is also suggested that the buckets in question are not sufficient to deal with the volume and frequency of waste generated from the visitors to the site. The proposed toilet facilities would not comply with EPA standards. The planning inspector's report in respect of the application for leave for substitute consent, highlighted concerns in relation to the method of effluent disposal on site. It is noted that the planning report submitted with the application makes reference to examples where permission was granted for similar compost type toilet facilities. However, it is argued that none of the examples referred to are applicable to the site in question.
- 5.8. It is also argued that an outdoor shower is used on the subject site. The shower is fed by harvested rainwater which is collected in buckets. It is stated that this grey water together with soaps etc. drain into the ground. It is argued that the toilet facilities on site are not fit for purposes and constitute a threat to the drinking water on which the observer is reliant on.
- 5.9. It is stated that the substantial timber jetty was constructed in 2011 without planning permission. It is also contended that there was no prior jetty on the subject site. It is also stated that there are gaps in the remedial Natura Impact Statement. The rNIS suggests that the site is not suitable for pine martin, however the observer states that pine martin have been sited in the area on several occasions.

Finally, the observation raise concerns in relation to decimation of trees and site clearance works which have taken place on the subject site. It is suggested that the proposed clearance of the site flies in the face of the applicant's philosophy of ecologically sustainable low-impact living.

6.0 Applicant's Response to Observation

- 6.1. In relation to the site notice it is accepted that there was a typographical error in the reference to Tipperary instead of Galway County Council. However, it is suggested that this typographical error is not material for various reasons. However, should the Board consider that a new site notice is necessary the applicant is happy to comply with such a directive. In relation to the newspaper notice it is noted that the legal notices and planning notices are both on the same page of the newspaper. There is no legal requirement to place an ad under a specific section of the newspaper and this was a decision of the paper, not the applicant. However, should the Board consider it appropriate to readvertise, the applicant is happy to do so. Any issues in relation to site boundaries and site sizes are a matter for the courts and not the planning system.
- 6.2. It is stated that the original structure on site was a mobile home along with a cabin, fridge, store and toilet. The mobile was removed and replaced with the current structure including cabin. It is not credible to suggest that the observers were not aware of the applicants visiting the site during holiday periods.
- 6.3. In relation to the planning history, it is stated that the applicant is not an Irish resident and when he became aware of planning issues associated with the site the actions to date clearly demonstrate his genuine efforts to address all planning issues. The applicant simply wants to ensure that he and his extended family can continue to use this small area of land for fishing and relaxation. It is the applicant's intention only to use the site for 20 days a year. It is fully accepted that friends of the family helped prepare and build the structures in 2009/2010. They mostly stayed in local B&Bs and only one or two were camping on site at different times. It is totally refuted that the proposal constitutes a tourist facility.

- 6.4. Grey water is collected in a bucket and disposed of on site. However, if the Board have concerns over the current arrangement the applicant is prepared to remove the grey water by container to Portumna Harbour.
- 6.5. With regard to the toilet facility, it is stated that there is no hole in the ground and therefore the proposal poses no risk to groundwater. The 30 litre buckets do fit within the toilet and the toilet seat sits directly on the bucket and acts as a sealant. The amount of foul waste will be minimum giving the 20-day use per annum. If the composting is not considered to be appropriate, the applicant is fully prepared to take both grey and foul wastewater off site for disposal at the Portumna Harbour facility. This would remove all potential concerns. Reference is also made to odours from the observer's septic tank.
- 6.6. It is stated as there is no hole in the ground there is no risk to the neighbour's well. The toilet is close to the neighbour's site but critically all foul matter is fully contained within the bucket. The compost area is located at the west end of the site and is further away from the neighbour's well. It is also suggested that the water in the neighbour's well is not fit for consumption due to the proximity of the lake and this is possible.
- 6.7. The composted waste is deposited at the western end of the site and this area is not prone to flooding as alleged in the submission. It is also contended that the site itself has never flooded even in the extensive floods of 2009. Any grey water discharge occurs very occasionally as the shower facilities are only used during the summer period.
- 6.8. The rubble material under the original jetty has been removed from the site. It is not accepted that the jetty has not been replaced with its original size. The applicant states that he would be prepared to replace the jetty with a small floating jetty should the Board deem this to be appropriate.
- 6.9. With regard to the NIS it is stated that there is no need for percolation tests to be done giving the minute amount of foul waste generated. Any reference to the siting of pine martins cannot be substantiated one way or another.
- 6.10. Any assertion that the applicant is trying to denude the site by removing vegetation is totally rejected.
- 6.11. There are a number of letters and documents enclosed including:

- Extracts from Waterways Ireland regarding facilities at Portumna Harbour.
- Affidavits from the applicant's extended families who have intimate knowledge of the site.
- A personal letter from the applicant responding to the issues raised in the submission.
- Legal documents showing the applicant's ownership of the site.
- A copy of the letter sent to investigate the source of the foul odour coming from the observer's house to the south.
- A tree report from an arborist that was carried out on behalf of the applicant.

7.0 Planning Authority's Report on Substitute Consent Application

- 7.1. The planner's report sets out the planning history and the enforcement notices in respect of the application and also outlines the planning policy context as it relates to the subject site with specific reference made to the county development plan. It is also noted that the site is located in an area identified as a flood risk area.
- 7.2. The conclusions in respect of the remedial Natura Impact Statement is noted. In the opinion of the Planning Authority the substitute consent application should be refused as the development is not in accordance with the policies and objectives set out in the County Development Plan and the proper planning and sustainable development of the area and would set an undesirable precedent for similar further development in the area and may be prejudicial to public health. The Planning Authority may also have concerns over the validity of the application owing to the reference to South Tipperary County Council in the site notice.

8.0 Submission from the Department of Culture, Heritage and the Gaeltacht Development Applications Unit

This submission notes that the application area encroaches on part of the Lough Derg North East Shore SAC (Site Code: 002241) and Lough Derg (Shannon) SPA (Site Code: 004058) along its eastern margin and may also be subject to flooding on the margins of the lake. The submission goes on to highlight that the SAC has been

selected for the conservation of a number of Annex 1 Priority and Annex 1 Habitats and also outlines the Planning Authority's obligations in relation to appropriate assessment. The Department also notes that an Appropriate Assessment Screening Report accompanies the current application. It notes that the screening report includes no consideration of the likely effects of the existing and proposed development under special conservation interests of the SPA. While it is noted that a habitats survey was carried out, the Department considers that the justification or reasoning for discounting the presence of any Annex 1 habitats is not presented, leaving reasonable scientific doubt as to the absence of effects on these habitats. The species *fraxinus excelsior*, *rhamnus cathartica* and *salix cinerea* which were recorded occur in wet woodland types that may correspond to Annex 1 priority woodland habitat above. Similarly, justifications for reaching conclusions in Table 2.11 particularly in relation to "any likely changes to the site" are not presented and the existing changes appear not to have been taken into account.

9.0 Applicant's Response to the Planning Report submitted by Galway County Council and the DoCH&G Submission

- 9.1. Specifically, in relation to the Galway County Council's submission, it is stated that this submission is essentially a repeat of the planner's report which accompanied the most recent planning application to the Council which was returned to the applicant. With regard to the various objectives referred to in the Development Plan in the planner's report, it is submitted that the proposed development is not for a permanent dwelling but for a continued temporary use of a long-established low impact camping type accommodation by the applicant and his extended Irish family which are based in Wicklow. In this regard Objective RH03 does not apply. In relation to the need for a visual impact assessment, it is stated that the subject site is heavily wooded and none of the structures on the site are visible from the public realm.
- 9.2. Any policies in relation to tourism are not relevant in this instance as the proposal is not a tourist development in the conventional sense.
- 9.3. With regard to the wastewater treatment system it is stated that a conventional on-site treatment system would not work due to the infrequent use of the site. A

compost toilet has been used since the inception of the development and has worked. The low environmental impact and sustainable nature of the proposed development is reiterated. The compost toilet is considered the most environmentally friendly method of on site disposable available. The applicant's ecologist considers that it would be acceptable and would not have a material impact on any Natura 2000 habitats.

- 9.4. In terms of use, the applicant would be prepared to accept a condition of planning that the annual record of visits to the development would be submitted to the Council. It is reiterated that the applicant is willing that both grey and black wastewater would be transferred to the facilities at Portumna Harbour should the Board deem it appropriate.
- 9.5. A separate letter was received from the ecological consultant. It states that the Development Applications Unit refer to a screening for appropriate assessment report where in fact a remedial Natura Impact Statement was submitted as part of the substitute consent application. It states that the remedial Natura Impact Statement addresses all the conservation aspects of both Natura 2000 sites and Section 7. The conservation aspects were identified, based on the site synopsis and other material published by the NPWS. Wetlands were assessed based on Ramsar definitions and the wild birds Assessment was based on Birdwatch Ireland classifications. The main items identified in the two documents from the Development Applications Unit are listed in an Appendix attached.

10.0 Further Submission from Third Party Observer

- 10.1. Concerns are expressed that it will be very difficult to ensure that the usage of the site will be restricted as proposed. Concerns are reiterated in relation to the site notice and the newspaper notice.
- 10.2. In relation to the site size, it is reiterated that the site is very restrictive and may contravene DM Standard 7 of the county development plan. There are also discrepancies in respect of the site area in information contained on file.
- 10.3. Reference to temporary accommodation is disputed as it is stated that the buildings are permanent structures and are generally in use in excess of 20 days per year. The fact that the consultant previously worked as a planning inspector with An Bord

Pleanála, it would be considered appropriate that he would declare any conflict of interest.

- 10.4. The facilities at Portumna Harbour is to provide washing and toilet facilities for boats and caravan users and not the owners of local properties. In relation to the planning history associated with the site, it is contended that the applicant has not been proactive in regularising the planning application but has merely reacted to enforcement notices and warning letters issued by the local authority.
- 10.5. In terms of number of people visiting the site information provided in relation to flights only confirmed that the applicant spent specified days in Ireland. It does not make any reference to the applicant's extended family in County Wicklow.
- 10.6. Concerns in relation to the proximity of the toilet facilities to the appellant's well are reiterated. Concerns in relation to flooding are also reiterated. Further photographs are submitted indicating that the site is prone to flooding.
- 10.7. In relation to the remedial NIS, it is stated that this document only deals with usage of the site during the summer months. The site is used throughout the year. Concerns in relation to falling branches and denuding the site of vegetation are also reiterated.
- 10.8. Two appendices are attached, one from Waterways Ireland which states that the pump out at Castle Harbour is designed and designated for the use of boats only. It cannot accommodate any other use.
- 10.9. Appendix 2 provides further details in relation to the potential of falling branches from the subject site onto adjoining sites. It notes that the arbitor's report submitted on behalf of the applicant does not indicate whether Galway County Council has been contacted with regard to the proposed tree felling and whether such permission has been received given the SAC and SPA status of the area.

11.0 Development Plan Provision

- 11.1. The site is governed by the policies and provisions contained in the Galway County Development Plan 2015 – 2021. The subject site is located in an area designated as a Class 4 designated landscape with Class 1 being the least restrictive and Class 5 being the most restrictive.

- 11.2. Section 3.9 of the development plan sets out rural housing policies and objectives. The relevance of these policies and objectives have to be assessed in the context of the proposal in question which relates to a small wooden cabin less than 20 square metres in size as opposed to a typical rural house which is of a large scale and magnitude.
- 11.3. Perhaps of greater relevance is Objective EDT19 which relates to holiday accommodation in the open countryside.
- 11.4. The reuse of existing buildings for holiday homes/guest accommodation outside settlements will be permitted where it can be demonstrated that there is a justified tourist product/demand. The Planning Authority will also consider the provision of short-stay accommodation (glamping/camping etc.) outside settlements where it can be demonstrated that there is a justifiable tourist product/demand. The need to develop a particular area must be balanced against environmental, social and cultural impacts of the development and the benefits to the local community. In each cases documentary evidence shall be submitted to substantiate the proposed development and each individual application will be assessed on its merits.
- 11.5. Chapter 13 sets out development management guidelines. Section 13.4 specifically relates to rural residential considerations. DM Standard 7 relates to site size for single houses using individual on site wastewater treatment systems. It is stated that a minimum size of 2,000 square metres is generally required for a single house so as to provide adequate effluent treatment, parking, landscaping, open space and maintenance of rural amenity. For house sizes greater than 200 square metres a site size shall be increased by 10 square metres for each square metre of house area above 200 square metres.
- 11.6. DM Standard 13 relates to tourist infrastructure development and holiday villages. While seeking to ensure that most tourist development locates in or close to towns and villages, the Council recognises by its nature some tourist development may require other locations. Developments that maybe open to consideration outside settlement centres include indoor and outdoor recreational facilities and tourist related leisure facilities including walking and cycling.

11.7. DM Standard 14 relates to camping and caravan sites. Any proposed caravan or camping site shall have regard in scale and layout design to existing character and village and its residential amenity.

12.0 Statutory Designations

The jetty for which substitute consent is sought, is located within the Lough Derg (Shannon) SPA (Side Code: 004058) and is also located within the Lough Derg North East Shore SAC (Site Code: 002241). The cabin and other structures for which substitute consent is sought are located adjacent to, but outside the boundaries of the Lough Derg North East Shore SAC and the Lough Derg (Shannon) SPA.

13.0 Legislative Provisions

13.1. Part XA of the Planning and Development Act 2000 (as amended) specifically deals with substitute consent applications.

13.2. Section 177K(2) states that when making its decision in relation to an application for substitute consent, the Board shall consider the proper planning and sustainable development of the area having regard to the following matters:

- (a) The provisions of the development plan and any local area plan for the area.
- (b) The provisions of any special amenity area order relating to the area.
- (c) The remedial environmental impact statement or remedial Natura Impact Statement or both of these statements as the case may be, submitted with the application.
- (d) The significant effects on the environment or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out.
- (e) The report and opinion of the Planning Authority under Section 177L.
- (f) Any submissions or observations made to it in accordance with the Regulations made under Section 177N.

- (g) Any report or recommendation prepared in relation to the application on or behalf by the Board including the report of the person conducting any oral hearing on behalf of the Board.
- (h) If the area or part of the area is in a European site or an area prescribed for the purposes of Section 10(2)(c).
- (i) Conditions that may be imposed in relation to a grant of planning permission under Section 34(4).
- (j) The matters referred to in Section 143 of the Act.
- (k) The views of a member state where the member state is notified in accordance with the regulations under this Act.
- (l) Any relevant provisions of this Act and Regulations made thereunder.

13.3. The conditions referred to in sub-section (1) may include:

- (a) One or more than one conditions referred to in Section 34(4).
- (b) A condition or conditions relating to the remediation of all or part of the site on which the development the subject of the grant of substitute consent is situated.
- (c) A condition or conditions requiring a financial contribution in accordance with Section 48.
- (d) A condition or conditions requiring a financial contribution in accordance with a supplementary development contribution scheme under Section 49.

14.0 **Assessment**

14.1. **Preliminary Matters**

Scope of Application

As pointed out in the previous inspector's report ,the Board's determination of the case can only be made in respect of the development that has already been carried out. i.e. the determination must be confined solely to the works undertaken on site and for which retention is being sought under the current substitute consent application. As such in my view any reference to provisions of chemical toilets being

incorporated into the scheme or alternative methods of wastewater disposal as may be deemed suitable by the Board by way of condition cannot in my view be material consideration in the adjudication of the application. The Board must restrict its deliberations to the works undertaken and whether or not it is appropriate to grant substitute consent for the works undertaken.

Issues raised in the Third-Party Observation

It is my opinion that some of the issues raised in the third-party observation are likewise beyond the scope of the substitute consent application. Reference to whether or not the subject site has been continually (albeit occasionally) used for holiday, camping and fishing for the 30-year period between c.1977 and c.2009 is not strictly relevant to the Board's deliberations. The various testimonies and written submissions which have been made to support each of the contentions on file is not in my view a material consideration in determining the substitute application.

Whether or not the unauthorised structures on site would adversely impact on the integrity of a European site or would for other reasons be contrary to the proper planning and sustainable development of the area are the main considerations together with the various criteria listed under Section 177K of the Act.

With regard to issues raised in the public notices the Board will note that on foot of a request from An Bord Pleanála, new public notices were readvertised on 12th January, 2018. I have inspected the notices and I am satisfied that the notices adequately and reliably inform the public as to the nature of the works and the consent being sought under the current application. I also consider that the notices comply with statutory regulations.

Concerns are also raised in relation to the site area and reference is made to land registry property folios, which it is alleged give rise to disputed land ownership claims. Issues in relation to land ownership are a matter for the Courts and not for the Planning Authority. Section 5.13 of the Department of Environment's Development Management Guidelines clearly state that "*the planning system is not designed as a mechanism for resolving disputes about the title to land or premises or rights over land; these are ultimately a matter for resolution in the Courts*".

The final section of the third party observer's submission expresses concerns in relation to possible future site clearing works and the possibility of cutting back damaged or diseased trees and the potential future implication of such works. Again it is my contention that such matters cannot be dealt with in the current application as the Board is required under a substitute consent application to restrict its deliberations to works that have already been undertaken on the site and not the potential works involving the removal of vegetation at some future date.

Having regard to the above preliminary matters and if the Board are in agreement that such matters should not be used for the basis of deliberation in respect of the substitute consent application, I consider that the following issues are particularly pertinent in determining the application in question.

- Visual Impact.
- Potential Impact on Groundwater and the Appellant's Well.
- Potential Impact on European Sites in the Vicinity.

14.2. Visual Impact

Both the third-party observers and Galway County Council note that the site is located in an area classed as landscape sensitivity 4, which is the penultimate designation in terms of our highest sensitivity in the county. I acknowledge that the site's location on a peninsula on the shoreline of Lough Derg constitutes a very sensitive landscape. However, as the inspector pointed out under LS07.LS0028 the works undertaken are "small scale and rudimentary" and consist of modestly sized timber structures located throughout a densely populated broadleaf woodland. As a result, the works undertaken are imperceptible when viewed from the local access road. Views from the lake, particularly the jetty element may be more apparent. However, wooden type jetties are commonplace along the shores of inland lakes and do not in my view detract from the visual amenities of the area to any material extent.

14.3. Potential Impact on Groundwater and the Appellant's Well

- 14.3.1. An outdoor toilet is located on site. It comprises of a compost/dry toilet where effluent is broken down via composting or managed aerobic decomposition according to the planning report submitted with the application. Waste is mixed with sawdust or

compost or peat moss to assist the anaerobic digestion process. The Board will note from the photographs attached, that the outdoor toilet was inspected during my site visit. It consists of a toilet seat over bare ground. There is no hole in the ground where waste is collected and there is no evidence of any compost or sawdust being used to aid the degradation process. A number of plastic buckets are provided however, it appears as suggested in the third party observation, that the buckets in question do not fit below the toilet seat notwithstanding the fact that the applicant states that the buckets are used for the collection of waste. The applicant in this instant appears to rely on the fact that the holiday home is infrequently used no more than 20 days a year and by no more than four people at a time. This point is disputed by the third party observer where it is stated that the cabin is used more frequently throughout the year and by more people at any given time.

- 14.3.2. The third party observation also contends that the toilet is located within 15 metres and upgradient from a potable water supply which serves the observer's house. This contention is not disputed by the applicant.
- 14.3.3. Notwithstanding the arguments put forward by the applicant, which primarily rely on the contention that the site is infrequently used and therefore the scale of the pollution would be negligible, the observer has supplied details of laboratory tests which were carried out in respect of water sampling for the domestic well in question. These tests indicate traces of e-coli and concentrations of coliforms. Both parameters provide evidence that the water supply has been contaminated by human/animal faecal contamination. This can be most likely attributed to human contamination as the subject site is not used for the grazing of animals. It is a real possibility therefore that the toilet facility notwithstanding the fact that it may be infrequently used, is contributing a source of pollution to the potable water supply on the adjacent site.
- 14.3.4. In spite of the fact that the cabin and associated works can be considered small scale and a low impact development it nonetheless represents a series of permanent structures which are used for holiday accommodation albeit on a temporary basis on a year-in/year-out basis. If planning permission was sought for a holiday home on the subject site and even where the holiday home was used only on an occasional basis, I would be reluctant to recommend permission for such a structure in the absence of a detailed description of the method employed for the proprietary

wastewater treatment unit to be provided on site and in the absence of a detailed site suitability test which demonstrates the percolation quality of the soil and subsoil, details the water regime in the area and also details the potential receptors in the vicinity. These concerns would be exacerbated having regard to the site's location in proximity to a lake shore. Table B3 of the EPA Code of Practice requires that percolation and polishing filters should be between 30 to 60 metres from a domestic well which is downgradient of a percolation area. Thus, notwithstanding the occasional use of the dry toilet, it still poses a threat to the water supply source in close proximity to the said toilet. I do not consider that the Board should grant substitute consent for a development which is clearly in breach of the EPA Code of Practice regarding separation distances and where a proper analysis of the suitability of the site to accommodate discharge from the toilet in question has not been carried out in such close proximity to a source of water supply.

14.4. Potential Impact on European Sites in the Vicinity

14.4.1. The Board concluded in respect of LS07.LS0028 that the development is one where an appropriate assessment is required. On foot of this determination, a remedial Natura Impact Statement was submitted. The NIS correctly indicates that the site is partly located within

- Lough Derg North East Shore SAC (Site Code: 002241).
- Lough Derg (Shannon) SPA (Site Code: 004058).

14.4.2. The rNIS also reasonably concludes in my view, that these two SACs, given their proximity to the site and the relative modest nature of the works undertaken on site for which substitute consent is sought, are the most likely Natura 2000 sites which could be potentially affected by the development undertaken.

14.4.3. The conservation objectives for the site are generic and relate to the habitat/species and birds that form part of the qualifying interest of the sites in question. These are detailed below:

- *Juniperus communis* formations on heaths or calcareous grasslands.
- *Calcareous fens*.
- *Alkaline fens*.

- *Limestone pavements.*
- *Alluvial forests.*
- *Taxus baccata woods (English Yew).*

14.4.4. The features of interest associated with the Lough Derg (Shannon) SPA include:

- *Cormorant.*
- *Teal Duck.*
- *The Golden Eye.*
- *The Common Tern.*
- *Wetland and water birds.*

14.4.5. The potential impacts associated with the proposed development are identified in the remedial NIS as follows:

- The treatment of human waste at the site.
- The disposal of grey water.
- The erection and construction of buildings at the development site.
- Human disturbance by human activity on wetlands.

14.4.6. A report from the Development Applications Unit of the Department of Culture, Heritage and Gaeltacht states that the Department's nature conservation observations are set out in a submission to Galway County Council dated 6th May, 2014 and should be taken into account by the Board when it considers the current application for substitute consent. This report states that while it is noted that a habitats survey was carried out, the Department considers that the justification or reasoning for discounting the presence of any Annex 1 habitats is not presented leaving reasonable scientific doubt as to the absence of effects on these habitats. Specific reference is made to *fraxinus excelsior*, *rhamnus cathartica* and *salix cinerea* which were recorded occur in wet woodland types that may correspond to the Annex 1 priority woodland habitat above.

14.4.7. The Board should note that the Department's comments specifically relate to the previously completed screening for appropriate assessment submitted to Galway County Council and does not relate to the remedial Natura Impact Statement

submitted as part of the current substitute consent application. The Department submission on the screening report makes reference to wet woodland types that many correspond to Annex 1 priority woodland habitat on the subject site. The remedial NIS submitted states that the site at Stoneyisland does not support alluvial woodland and makes reference to an EU definition which indicates that alluvial forests are associated with river systems as opposed to lakes. It concludes that the site does not pose a threat to the protected habitat of the alluvial woodland. It is also noted that no Yew woodland was observed on the subject site. I found no evidence of Yew Woodland during my site inspection.

14.4.8. In relation to other potential impacts, I would generally concur that any human waste deposited on site would have a negligible impact on the adjoining lake and the qualifying interests associated with the adjoining lake. The Lough Derg North East Shore SAC lists a total of six qualifying interests all of which are habitats. Having regard to the separation distance between the toilet and the lakeshore together with the assimilative capacity of the lake waters in question and the quantum of human waste discharged on site there is no potential for pollution levels that could impact on the habitats which form part of the qualifying interests.

14.4.9. I would form a similar conclusion in respect of any grey water discharge on site. Having regard to the lack of potable water supply on the site and the amount of clean water imported onto the site for washing purposes and the infrequency of washing which would take place on site, grey water discharge on site is highly unlikely to affect the water quality of the lake having regard to the assimilative capacity of the lake and the volumes of grey water discharged.

14.4.10. The erection and construction of buildings on the site are small scale, rudimentary and modest in size. They do not incorporate any concrete aprons or artificial surfaces such as tarmacadam or concrete etc. The structures in question therefore are highly unlikely to have any adverse impacts on the qualifying interests/features of interest listed above.

14.4.11. In terms of disturbance by human activity, I would consider that the scale and frequency of human activity on the subject site is not such that it would significantly lead to disturbance of habitats or bird species associated with the SPA.

- 14.4.12. I consider that the remedial NIS submitted adequately assesses the potential impact arising from the works and activity which is being undertaken on the subject site. On this basis I consider it reasonable to conclude on foot of the information contained on file and specifically in the remedial Natura Impact Statement, which I consider adequate in order to carry out Stage 2 Appropriate Assessment, that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of European Site 002241 or European Site 004058 or any other European Site in view of the site's conservation objectives.
- 14.4.13. I am also satisfied that works undertaken on site would have no indirect effects on the qualifying interests and features of interest associated with the Natura 2000 sites in question and furthermore I am satisfied that no in-combination effects with other plans or projects in the area are likely to arise.

15.0 **Conclusions and Recommendation**

Arising from my assessment above I consider that the Board should refuse to grant substitute consent for the development undertaken and the wastewater treatment arrangements pose an unacceptable risk to water supplies in the area.

16.0 **Decision**

The Board 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 refuse substitute consent to the works undertaken.

17.0 Reasons and Considerations

On the basis of the information submitted in support of the application for substitute consent, the Board considered that the method of treatment of wastewater poses an unacceptable risk to wells in the vicinity and would therefore be prejudicial to public health. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

6th of April, 2018.