

File With _____

SECTION 131 FORM

Appeal NO: ABP 318510 - 23Defer Re O/H ☐Having considered the contents of the submission dated/ received 8/3/24from Fred Hogue on behalf
of DM Leavy

I recommend that section 131 of the Planning and Development Act, 2000

~~is~~ not be invoked at this stage for the following reason(s): Board to decideE.O.: Karen HickeyDate: 8/3/24.

For further consideration by SEO/SAO

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 318510-23

M _____

Please treat correspondence received on 8/3/24 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP 233. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐

Amendments/Comments

Response to S132 rec'd from
 Fred logue on behalf of DM leavy
~~Case~~ Case Narrative
 Task 37 5545-24 to Fred logue
 DM leavy.

4. Attach to file

(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☐RETURN TO EO ☒

file being held over
 at Bronwyn's window

EO: Karen HickeyAA: Daniel MooreDate: 8/3/24Date: 11/3/24

Karen Hickey

From: Fred Logue <fred.logue@fplogue.com>
Sent: Friday 8 March 2024 17:19
To: Appeals2
Cc: Bord
Subject: RE: ABP-318510-23 - Drumacon, Cornamaddy, Athlone, Co Westmeth
Attachments: 240308 LT to ABP.pdf

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Appeal No: ABP-318510-23

A Chara

We are instructed by the appellant, Ms Leavy.

Please find attached her response to your letter of 23 February 2023

Please confirm receipt

Fred Logue | Partner

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FPLOGUE SOLICITORS

Our Reference: FPL/904/03151
Your Reference: ABP-318510-23

8 March 2024

By email

An Bord Pleanála
appeals@pleanala.ie

Our Client: DM Leavy

Re: Amendments to permitted application. Construction of 70 residential units and all associated site works. The planning application is accompanied by an Environmental Impact Assessment Report and Natura Impact Statement.

Drumacon, Cornamaddy, Athlone, Co Westmeath

A Chara

We refer to the above appeal and to your letter dated 23 February 2024 enclosing a copy of a submission made by Brock McClure on behalf of Marina Quarter Limited (the "applicant"). This submission also included an annex prepared by McCann Fitzgerald LLP.

The Board's letter states that it has examined the appeal and is of the opinion that certain information is necessary for the purposes of enabling it to determine the appeal. It then invokes section 132 and states that our client is "required" to submit certain information on or before 11 March 2024. That information is described as comments with regard to the Brock McClure Submission dated 21 December 2023. The letter goes on to state that if the information is not received the Board will dismiss or otherwise determine the appeal without further notice in accordance with Section 133 of the 2000 Act. The letter does not explain the basis upon which the Board says it will dismiss the appeal.

The submission of Brock McClure, dated 21 December 2023, consists of two elements (i) request to An Bord Pleanála for Appeal Dismissal; and (ii) Applicant Response to DM Leavy Appeal Content. The Brock McClure submission includes a letter from McCann Fitzgerald LLP in support of the request to dismiss the appeal.

It is noted that there are two appellants in this case, the second being Stand With Badgers. It is unclear whether the applicant has also requested the Board to dismiss this appeal. The Brock McClure submission does not address the second appellant's grounds of appeal at all. It is unclear why that is the case.

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Our client has just recently become aware of a letter sent by McCann Fitzgerald acting for Glenveagh Homes Limited ("Glenveagh") to the chair of An Bord Pleanála dated 19 December 2023 (sent two days before the Brock McClure submission) setting out allegations about our client which are similar to those contained in the Brock McClure submission. This letter was not copied to our client and the Board did not contact our client in relation to it. The letter appears to ask the Board to engage in a general investigation of our client's participation in the planning process, and for it to review all of our client's appeals (as well as those of Mr Pat Lynch) in respect of planning applications made by or on behalf of Glenveagh and/or related companies.

Our client expresses very serious concern that malicious and untrue allegations were made against her and that this matter was not brought to her immediate attention at any stage by the Board.

Our client makes the following observations on the Board's letter.

1. Our client has filed her appeal using her real name and actual address. The applicant is well aware of this and is seeking to make something out of the fact that she uses her initials sometimes and has an unusual way of spelling her name. How our client chooses to write her name and/or spell it is completely irrelevant.
2. Our client wishes to emphasise that she denies all of the allegations made by Brock McClure and/or McCann Fitzgerald LLP on behalf of the applicant and/or by Glenveagh in its letter of 19 December 2023. All such allegations are fully denied unless expressly accepted by her in this letter. The allegations set out in the Brock McClure submission are not objective and are untrue, misleading, and incomplete and are clearly malicious in nature.
3. The Board has misused its power under section 132. Section 132 is clearly concerned with the submission of documents, particulars or other information that is necessary to determine an appeal. This does not include the solicitation of comments. The Board's power to request comments on a matter is to be found in section 131. It is unlawful for the Board to use section 132 to solicit comments from our client on the submission received from Brock McClure as it is attempting to do here.
4. It appears that the Board has invoked section 132 rather than 131 because it has already decided to dismiss the appeal and wishes to rely on section 133 which only provides for a power to dismiss following a section 132 notice and does not so provide in relation to a section 131 notice. It is grossly unfair to seek unspecified information from our client failing which the Board has indicated that it will dismiss the appeal for unspecified reasons and/or has indicated that the mere failure to respond will result in dismissal. In our client's view this is a clear case of pre-judgment with the Board misusing its powers with a view to achieving a particular outcome. Fair procedure issues will be dealt with in more detail later in this letter.
5. Our client notes that the Board does not have jurisdiction to carry out a general investigation into an individual's participation in the planning system. Our client is concerned that following a request for it to carry out an unlawful general investigation of our client which was not disclosed to her, it is now using this appeal as cover for such an investigation and in essence has acceded to Glenveagh's extraordinary demand. This is grossly unfair and involves the Board acting outside of its jurisdiction. Insofar as the Board acts outside its jurisdiction and defames our client, or causes her damage or loss, it will not benefit from qualified privilege or any other defence.
6. Our client confirms that she lives at Proudstown Road, Navan, Co Meath. This is approximately the same distance from the development site as the applicant's registered office. The location of our client's residence and/or the fact that it is in a different county to the development site is

irrelevant to the matters raised by Brock McClure. The Oireachtas has provided the public a right to participate in planning matters regardless of where they live in Ireland or indeed internationally.

7. It is untrue that our client has not raised environmental concerns regarding the scheme. Our client's appeal concerned the applicable development plan, zoning and residential density which are very much environmental concerns. In any event the Board is concerned with proper planning and sustainable development which goes beyond "environmental concerns". It appears that Brock McClure has misunderstood even this basic aspect of our planning system.
8. It is denied that the grounds of appeal are not "genuine" regarding the development and that the appeal has been lodged as part of an attack on schemes lodged by Marina Quarter Limited and Glenveagh Homes Limited with the intent of delaying development.
9. The right of appeal is provided by the legislature and does not delay development since an applicant has, by definition, no right to develop until such time as permission is granted.
10. The statement that development will be delayed is a bald assertion, there is no evidence to support this claim and it is denied.
11. There is a second appellant against the same permission, our client's appeal has not caused any delay in the procedure. Glenveagh is in effect attempting to attack our client's grounds of appeal under the cover of section 138, this is an improper use of section 138.
12. The appeal is targeted at the development, this is manifestly clear from the grounds of appeal. It is not possible to target an appeal at an applicant. The nature of the appeal is set out in Section 37(1)(a) which clearly indicates that an appeal lies against the decision of the planning authority.
13. The appeal is not vexatious, it is well founded, and was validated by the Board under section 127.
14. Section 138(1) sets out the matters to which the Board may have regard when considering whether to dismiss an appeal. These are (a) the grounds of appeal; and (b) any other matter to which, by virtue of the Act, the Board may have regard in dealing with or determining the appeal. The Board may not have regard to matters that are not provided for in the Act. The Board is only entitled to have regard to matters that are expressly identified in the Act.
15. There is no provision in the Act which permits the Board, in handling an appeal, to have regard to appeals by an appellant against other decisions. As noted above the Board is not empowered to investigate generally any person's participation in the planning system.
16. There is no provision in the Act which permits the Board, in handling an appeal, to have regard to appeals by a different appellant against other decisions. As noted above the Board is not empowered to investigate generally any person's participation in the planning system.
17. The fact that the appellant may have brought other appeals against decisions involving the applicant or related companies is irrelevant. The applicant's attempt to "paint a picture" and cast the appellant in a bad light because she is an active participant in planning matters is incorrect and irrelevant.

18. Insofar as the applicant implies that our client has only ever made observations and/or appeals on Glenveagh applications, this is untrue. Glenveagh has presented selected information which is incomplete. Its submission is self-serving and not objective.
19. The fact that Mr Lynch, a third party, may also have brought appeals is irrelevant for the same reasons *a fortiori*.
20. The information presented by the applicant is incomplete and misleading, self serving and malicious.
21. Insofar as Glenveagh asserts or implies that our client has only ever made observations and/or appeals on Glenveagh applications, this is untrue. Glenveagh has presented selected information which is incomplete and misleading.
22. There is nothing in the Act or elsewhere which prevents an appellant appealing against different grants of planning permission to the same developer or to developers connected to each other. The Oireachtas gave the public a right to appeal with the only qualifying criteria that they had made a submission or observation to the planning authority. There is no limit to the number of appeals any person may bring. A member of the public is fully entitled to take a view about a developer's style or approach and to make those views known by way of public participation in as many procedures as they see fit. In general, public participation leads to better development overall.
23. The applicant fails to mention that in appeals no 314242, 314744, 313091 and 317923 it or its parent company made almost identical requests for dismissal under section 138 and in each case the Board held that the grounds of appeal were valid and refused to dismiss the appeals. The applicant in those cases did not judicially review the Board's decision. There is no material difference between the applicant's submission in this case and in the ones above. The Board is required to be consistent in its decision making. Given that the four decisions cited above are final and that there is no material difference between them and this case, the Board may not lawfully dismiss this appeal.
24. The applicant fails to mention that all of the appeals cited were accepted as valid and were decided on their merits. The applicant seems to be relying on the mere fact of the appeals rather than the grounds of appeal and/or the Board's decision in each case.
25. There is no orchestrated attack against the applicant and/or Glenveagh. Public participation in the planning system is aimed at the common good, and all of our client's submissions have raised specific legitimate planning concerns aimed at improving development. The applicant hasn't explained who is doing the "orchestrating" and who it believes is being "orchestrated". The delays in An Bord Pleanála were not caused by our client, the Board is well aware of the origin of the delays. Our client has not abused the appeals system but has simply exercised her right to make submissions and appeal against decisions that she disagrees with.
26. There is no evidence that our client's appeals are delaying the development of any units. As pointed out many of the appeals involve a second appellant. In fact, Glenveagh itself appealed 318403. This just serves to illustrate the inaccurate and misleading information presented to the Board by professional advisers Brock McClure and McCann Fitzgerald. Given these manifest inaccuracies which are clearly designed to deceive the Board and to paint an unfavourable picture of our client, these submissions are not objective and are unreliable.

27. The applicant has no expectation that planning permission will be granted on appeal. Therefore, by definition, development cannot be delayed. In any event there is no evidence that development will follow permission. There is a wealth of information in the public domain to show that the activation rate of planning permissions is generally low and that a very large proportion of granted permissions have not commenced.
28. Our client is not acting "in combination" with Mr Lynch. Although they know each other and share an address our client has made her appeals in her own name.
29. It is true that Glenveagh has issued plenary proceedings against our client and Mr Lynch. The Board is aware of this and representatives of the Board attended the hearing on 5 March 2024 of our client's motion to have the proceedings struck out as bound to fail and/or an abuse of process. These proceedings are SLAPP proceedings and are part of Glenveagh's campaign of intimidation and harassment of our client for using her right of public participation. It appears that the issues the Board is being asked to decide are also pending before the High Court. The Board through its attendance at the hearing is aware of this.
30. The Board as a public authority has a duty to protect our client from being penalised, persecuted or harassed in any way for her involvement in exercising her right of public participation. The Board's obligations arise by virtue of Article 3(8) of the Aarhus Convention. Glenveagh's repeated attempts to have our client's appeals dismissed (none of which succeeded), its undisclosed attempt to have the Board carry out an unlawful investigation of our clients; and the SLAPP litigation reveal a pattern of harassment against our client for exercising her rights and are aimed at preventing the Board exercising its statutory functions as the appeals board to ensure that there is proper planning and sustainable development in respect of Glenveagh development proposals.
31. The appeal is not frivolous or without substance or foundation. If that were the case the Board would have invalidated the appeal under Section 127. In any event the fact that the applicant has had to rely on lengthy submissions from a planning consultant and a top-tier law firm shows that this claim is untrue.
32. In relation to zoning, our client is absolutely correct in her concerns involving the applicable development plan. The Athlone Town Development Plan was adopted in 2014 and remained in force following the dissolution of the Town Council whose functional area was amalgamated with those of Westmeath and Roscommon. The effect of sections 11A to 11C of the Act was that this plan remained in force until the adoption of new development plans in Westmeath and Roscommon. It appears when Westmeath County Council adopted its new development plan it did not adopt zoning policies for land within Athlone. Nevertheless, when the new development plans were adopted the Athlone Town Development ceased to have effect, including in relation to its zoning. Athlone is also a town for which a Local Area Plan is mandatory. In addition, RPO 4.4 of the EMRA RSES requires a Joint Urban Area Plan to be prepared by Westmeath and Roscommon County Councils for Athlone. It appears that almost five years on, this Joint Urban Area Plan has yet to be adopted. It is not for our client or the Board to fill the gap left by a failure of a planning authority to comply with its statutory obligations to make a Local Area Plan. It is clear that our client has made a valid observation on this issue.
33. The Board will be aware that a ground of judicial review relating to the legal consequences for a grant of planning permission arising from the failure to adopt a Joint Urban Area Plan for Drogheda was granted leave in the case of *Trinity Gardens Residents Association v An Bord Pleanála* (2023/822 JR) and the Board did not move to set aside leave on this ground and in fact

conceded the case. The Board is bound by the High Court's finding that the legal consequences of the failure to adopt a Joint Urban Area Plan is a substantial ground and is therefore, by definition, not frivolous or without substance or foundation.

34. The Board will also be aware that a ground of judicial review relating to the Board having had regard to an expired plan was granted leave in *Stokes v An Bord Pleanála* (2022/819 JR) and the Board did not move to set aside leave on this ground and in fact conceded the case. The Board is bound by the High Court's finding that allegations of having regard to an expired ground is a substantial ground and is therefore, by definition, not frivolous or without substance or foundation.
35. The applicant's submission in relation to the density ground of appeal are incorrect. Our client is fully entitled to argue for higher densities, since this is a more efficient form of development and indeed one often mandated by the Board itself. National policy from the NPF down is aimed at compact growth and militates against low density sprawl. The Board, as an expert body, is familiar with policies concerning housing density. This is a legitimate concern and not frivolous or without substance or foundation.
36. It is denied that the appeal is vexatious. The grounds of appeal are substantive and are clearly aimed at ensuring proper planning and sustainable development. For an appeal to be vexatious it would have to be baseless or without substance.
37. In relation to the first part of 138(1)(a)(ii), the appeal is not made with the sole intention of delaying development. Clearly an appeal, by definition, delays the ultimate decision on a planning application. Objectively every appeal introduces an element of delay. But the right of appeal is provided for by law and is clearly a political decision taken by the legislature as the price that is worth paying to ensure proper planning and sustainable development.
38. Therefore, to dismiss the appeal based on the sole intention of causing delay, the Board would have to establish our client's subjective intent and no evidence has been identified in that regard. It goes without saying that it is for the applicant to point to the matters which the Board may have regard to as set out in Section 138 to indicate a sole intention of delaying development which it has not done. It cannot simply throw out a baseless allegation and then call on our client to disprove it. In any event it is clear that the grounds of appeal are valid and are aimed at achieving the best result from the perspective of proper planning and sustainable development.
39. In relation to the allegation that our client is using this appeal to secure the payment of money, gifts, consideration or other inducement, our client has never sought this and takes grave exception to this scandalous accusation which is completely untrue.
40. It is true that there were past negotiations for the sale of land but acceptable terms could not be achieved. A buyer and seller are entitled to negotiate and take different views on what is an acceptable price. Our client never sought to use any appeal to secure a better price for land, these allegations are entirely untrue. In fact, the negotiations collapsed not because of disagreement on price, which had been agreed in principle, but because Glenveagh kept adding on other unreasonable conditions including that our client's appeals were to be withdrawn in advance of and as a precondition to agreeing terms. Mr Garvey, a director of the applicant, has sworn on affidavit that it was his company that sought to have previous appeals dismissed. Our client refused to withdraw her appeals.
41. Currently Glenveagh is not in negotiation with our client for the purchase of land which is for sale on the open market, and to the best of her knowledge has indicated that it has no interest in

purchasing land from her. By definition, our client cannot be seeking to achieve a higher price for an asset that Glenveagh doesn't want to buy.

42. Finally fair procedures have to be addressed. The matters raised by the applicant under section 138 involve an investigation by the Board into our client's behaviour and motivation which has very significant consequences for her right to a good name, right of public participation and right of access to the courts. The essence of the applicant's case is that her pattern of appeals regardless of substance or outcome, all of which were accepted as valid by the Board, means that she should be precluded from appealing this and any future planning decision involving Glenveagh or a group company. While the present submission is framed around a specific appeal, Glenveagh's strategy is revealed in its secret 19 December 2023 letter to the Board which sought an extraordinary free-standing investigation by the Board of our client and Mr Lynch based essentially on the same grounds. The Board has absolutely no jurisdiction or powers to investigate our client in this fashion.
43. The procedural safeguards involved in an investigation of an individual with implications for her good name, right of public participation and right of access to the courts are quite different to those at play in the Board's regular business of deciding on planning appeals which don't involve rights since they are merely administrative procedures.
44. A decision to dismiss this appeal would impugn our client's good name and impute to her a malicious motivation and possible criminality. A dismissal would also negate our client's right to participate in the planning process and would remove her standing to bring judicial review proceedings. Given the reliance by the applicant primarily on the alleged pattern of appeals, a decision to dismiss in this case would in effect mean that the Board had decided our client was permanently precluded from public participation on any future Glenveagh application.
45. In light of the above, the Board is required to act in a way that is fair and to observe Constitutional norms at all stages as set out in *re Haughey* including full and fair notice of the case against her, notice of all relevant evidence, evidence to be on oath, and the right to cross examine. None of these procedural safeguards have been used by the Board which has already decided to dismiss the appeal without setting out the reasons or evidence and without hearing from our client or affording her even basic fair procedures.
46. It is clear that the Board has not acted fairly. It has indicated that it is minded to dismiss the appeal unless it receives unspecified information from our client. It has misused its powers under section 132 when it ought to have used section 131. This indicates prejudice and abuse of power on the part of the Board since it is using the section 132 power in an irregular way to facilitate a particular result.
47. The Board has not set out the basis for its position that it is minded to dismiss the appeal, the evidence to ground it, or how it knows that this evidence is true. It has not provided our client with the opportunity to test the alleged evidence. It appears to be accepting as fact mere assertions adverse to our client and highly damaging to her reputation and to her rights. It has failed to disclose that it was asked to carry out an investigation into our client generally. Our client fears that there is other relevant information that has not been disclosed and that the Board has come under further pressure to investigate our client and to limit her rights. Our client doesn't even have access to the planning file in relation to this appeal, since the Board doesn't permit access to the file in pending cases.

48. Section 138 also involves a restriction on rights, but the provision does not set down clearly the objective served by the limitation, the scope of the restriction, strict necessity and measures to ensure proportionality. As such we have advised our client that the provision is unconstitutional and invalid in light of the Charter of Fundamental Rights of the European Union.
49. What is really going on is that our client is using the planning system precisely as intended, she is making targeted submissions and appeals focussed on ensuring sustainable development. Glenveagh wants to stop her from doing this, presumably for reasons of profit or other improper reasons. Glenveagh is seeking to associate our client with other individuals whose activities were covered on a news programme. Our client has no knowledge of or association with these individuals. Glenveagh's underhand and undisclosed attempt to engineer an unlawful investigation of our client on the back of public controversy concerning other individuals is deceptive and is a clear attempt to manipulate the Board into delivering a result that Glenveagh failed to achieve on at least four occasions in the past. The Board cannot be influenced by sensationalised news reporting and clandestine communications from the likes of Glenveagh.
50. We have advised our client that if the Board dismisses her appeal that she will have no difficulty in having the decision quashed in a judicial review and/or the relevant legislation struck down.
51. In light of the above the applicant's request for dismissal should be rejected.
52. Please acknowledge receipt of this letter and let us know as soon as possible how the Board intends to proceed.

Yours faithfully



FP LOGUE LLP

