

Planning Report
Application for Substitute Consent

Planning Authority
Galway County Council

Applicant
Coleman Rock

Description of Development

The retention of (i) extension to existing workshop previously granted under 01/393, (ii) two new building operating as storage structures, and (iii) associated site works

Location

Knockauntouk, Gort, Co. Galway.

Chronology of relevant events on site

Date	Reference	Description
14/06/2001	P01/393	Permission granted for dwelling house and steel fabrication work shop at Knockauntouk, Gort
14/04/2016	EN16/021	Enforcement notice ¹ requires removal of unauthorised sheds, removal of garage and removal of fill on lands within 14 days.
11/08/2016	16/834 Refused	Application for retention permission for the workshop extension and storage sheds, including cleaning and processing on site. Application included a screening for Appropriate Assessment, which concluded no impact on the adjacent SAC associated with the works undertaken.
18/01/2017	07.247214	Retention permission refused by An Bord Pleanala
28/06/2018	18/905	Application lodged for retention of buildings and ancillary works, and a continuation of operations for 10 years. Application deemed incomplete August 2018
11/02/2022	EN 16/021	Requires removal of unauthorised structures (reactivation of the 2016 enforcement notice)
24/11/2022	Enforcement proceedings	Applicant required to apply for substitute consent for retention of development works on site before March 23 rd 2023.
20/03/2023	LS07.316112	Application for Leave to Apply for Substitute Consent to An Bord Pleanala
15/01/2024	LS07.316112	Application withdrawn due to statutory amendments in the substitute consent process
15/05/2024	ABP-319156-24	Pre-application consultation between agents for applicant and An Bord Pleanala (see Appendix F)

¹ Activated on foot of a complaint relating to the development works undertaken on the R& K Engineering site

1. Introduction

We confirm that Grealish Glynn Associates have been appointed by Coleman Rock of R& K Engineering, Knockauntouk, Gort, Co Galway to make this application for Substitute Consent, under the provisions of Part XA of the Planning and Development Act, 2000 (as amended) and specifically under the provisions of Section 177C(2)(b). The applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development under an application for substitute consent. The development in this instance relates to development works undertaken at Knockauntouk, Gort Co Galway, including the provision of sheds and yard area at an existing (permitted) steel fabrication workshop.

The site is located in close proximity to the Coole Garryland Complex SAC boundary. The planning status of the site is unauthorised and has been subject to two separate applications for permission to regularise the development works on the site. The works on site continue to be subject of an Enforcement Notice EN16/021, with the agreement provided to Galway Co Council Planning Authority to make this application for Substitute Consent on or before March 23rd 2023. An application for Leave to Apply for Substitute Consent was made to An Bord Pleanala on 20/03/2023. However, amendments to the Substitute Consent application process ensued (making the process a single step application) under the provisions of Section 3 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 and also new substitute consent regulations which were commenced in December 2023. Accordingly, the application for Leave to Apply for Substitute Consent was withdrawn.

2.0 Site Location and Description

2.1. The site is located c. 4 km west of Gort in the townland of Knockauntouk, which is situated to the south west of the wooded Coole Demesne. This site lies in an area of open countryside that is punctuated by one-off dwelling houses and farmsteads. Field and roadside boundaries are denoted by either hedgerows or dry stone walls. It is accessed by means of a gated entrance off the L-45160, which runs on a north south axis to the west of the site and which forms part of the local road network to the west of the M18/N18 and to the north of the R460.

2.2. The site forms part of the landholding of Mr Coleman Rock (with 20 acres in ownership around the family home). The yard area associated with the steelwork business is in place since 2001. The surrounding landscape is characterised by limestone pavements and dry stones walls. The main body of the site to which this application refers is roughly rectangular in shape, and accessed directly from the established site entrance, off the L45160. This site is slightly elevated above the local road to the west. Otherwise, it is level and it extends over an area of 0.544 hectares. The site accommodates the originally permitted light engineering workshop in its south eastern quadrant. This shed, denoted as No. 1, has been extended to the front and rear. It also accommodates a wholly new shed, denoted as No. 2, which is sited within the south western quadrant of the site and a storage structure (denoted as No.3) which is sited within the current north western quadrant. A yard area, with portions of sealed surface, lies between these buildings and it extends into the remaining north eastern quadrant. The northern section of the site is an extension of the overall site area, as permitted under P01/393.

2.3. At the southern section of the site lies the applicant's dwelling house and garage. The site boundaries are generally dry stone walls, which have not been disturbed.

2.4 The sheds, as constructed, were selected in the belief that the agricultural buildings were typically associated with the landholding and were exempted development. The intended use of the sheds as part of the steel fabrication business is clear, but the applicant undertook construction works to address an urgent need in the business operation and reasonably believed that the agricultural style sheds were exempted development.

3.0 Current application

3.1. The applicant is seeking substitute consent, under Section 177 C of the Planning and Development Act 2000 (as amended) for retention of the following items:

- The extension to the originally permitted light engineering workshop (Shed No. 1). Part of this extension is a workshop and part is a storage area. The former has a floorspace of 86 sqm and the latter has a floorspace of 120 sqm,
- The new engineering workshop (Shed No. 2), which has a floorspace of 455 sqm, which is used only as storage area for equipment, pending the removal of this dis-used equipment off site. A buyer has been found for this equipment and the expected removal date is likely to be in the third quarter of 2025.
- The additional storage structure (Shed No. 3), which has a floorspace of 340 sqm, This Shed No 3 is in use as an operational storage unit for fabricated steel, and
- Associated site works.

3.2. The workshops and storage extensions to Shed No. 1 are subsidiary in scale to the originally permitted light engineering workshop. The storage shed has an open front. This shed serves as the covered work area for the employees in the facility. The extended space is required to cater for the longer steel beams processed at the facility, as explained below

Shed No. 2 is elongated in form and it has eaves and ridge heights of 3.331m and 4.310m, respectively. A higher portion of this shed, towards its centre, has eaves and ridge heights of 6.250m and 7.400m, respectfully. The northern end and the northern half of the eastern elevation are open. This shed was constructed to house shot blasting and coating equipment associated with the continued operation of the steel fabrication workshop. This process has been discontinued, as a mitigation measure to ensure no adverse impacts on the surrounding environment, and in particular takes account of the proximity of the site to the Garryland Lodge Lesser Horseshoe bat roost. (500m north of the site). Steel is galvanised off site, to meet the stringent requirements of EN1090. Shed No. 2 currently functions to store the shot blasting and coating equipment, pending its removal from the site. A purchaser is currently making arrangements for the removal of this equipment from the site.

Shed No 3 The storage structure has a mono-pitched roof that rises from 3.9m to 6.3m. Its eastern elevation is open. This unit is an essential functioning element of the workshop, as loading and unloading of steel beams, and timber (for roofing) requires this building height for the safe working of the loading and offloading of goods.

The extended yard area on the site serves for turning of trucks and facilitates the safe loading and offloading of steel and trusses on arrival and for movement off the site. Appropriate space around the delivery vehicles is required for the safe operation of a fork lift truck in this activity All the buildings are clad throughout in bottle green coloured, corrugated steel sheeting, resembling farm buildings

There has been no change in the number of employees on the site, and no significant change in the volume of orders processed in the steel fabrication workshop associated with the application. There is no intensification of steel fabrication work on site and the facility continues as a steel fabrication workshop, as permitted on site under P01/393.

4. Background to shed construction and site management

The background to the case has been submitted in the previous planning applications (P16/834, as appealed and P18/905) indicating the works undertaken on site were in response to an urgent requirement to meet the specifications provided under Department of Agriculture Food and the Marine (s.101) July 2016, *Minimum Specifications for the Structure of Agricultural Buildings*-with the critical requirement to provide steel in these buildings conforming with the EN1090 standard and carrying a legitimate CE mark. Farmers rely significantly on grant aid for construction of farm buildings and the grant aided building must meet these specifications.

The buildings provided on the site and the improved yard area for delivery management is based on the demands of the market, which is driven by the changes in the Agri-Food Sector economy since 2010. These changes have been driven by 2014-2020 Rural Development Programme, in an effort to tackle rural depopulation and to improve the age profile in farm enterprises (increasing the number of younger farmers, willing to invest in long term infrastructure to drive an improved management model on farm enterprises).

Ireland is the largest beef exporter in the European Union and the fifth largest exporter on a worldwide scale. Over 170,000 people are directly employed in the agricultural sector, so that the protection of this economy and provision of well designed safe buildings is a critical underpinning element in the economy.

Coupled with this, the Health and Safety Authority noted that over half the workplace deaths in 2010 occurred on farms, with the fatality rate of accidents in agriculture being higher than all other sectors. In these statistics, 20% of deaths were related to poor farm buildings. Improved grant aid for farm buildings (under TAMS and its predecessors), improved education in the agricultural sector, coupled with management of animals (all elements of the 2014-2020 Rural Development Programme) using improved technology is changing the face and the age profile in the agricultural sector. These changes encourage a strong focus on health and safety on farms by delivering up to date and fit for purpose investments in farm infrastructure and investment in physical assets².

The additional sheds provided at the R & K Engineering facility were also constructed to provide an enclosed area for the activity in accordance with requirements of Safety, Health and Welfare at Work Act 2005 (as much of the work was being undertaken in the open yard prior to the extension of Shed 1), and, to enable the business comply with the aforementioned requirements of EN1090, as implemented in Ireland under S.I. 225 of 2013 (July 2014) making a criminal offence to supply structural metalwork unless it conformed to the EN1090 standard and carried a legitimate CE mark. Compliance with these Regulations was enabled by either shotblasting and coating of steel, or galvanising the steel. Mr Rock purchased the equipment housed in Shed No. 2 as a speedy solution to meeting the regulatory requirements. The sheds were constructed to facilitate compliance with EN1090 were selected to resemble farm buildings. Mr Rock constructed the buildings without appropriate planning permission to meet the market demand- in the mistaken belief that the style of sheds selected were exempted development.

² Ireland-Rural Development Programme (National) www.gov.ie

The sequence of events since 2016 is summarised at the opening of this report. However, taking account of the concerns raised on foot of the planning applications P16/834 (as appealed under ABP07.247214) and P18/905, the shot blasting and spraying of steel has been discontinued at the site. Steel is cut and welded on the R&K Engineering site, then galvanised off site and stored pending delivery to the customer.

The activity on site continues as a steel fabrication workshop (as permitted under P01/393), with 4 employees (inclusive of Mr Rock and his son). The dwelling house on site now caters for 4 persons, with discharge to septic tank (as permitted under P01/393). Employees in the steel fabrication workshop use the toilet facility at the house. There is no sanitary facility incorporated in the workshop. No water is used in the steel fabrication workshop and no run off or discharge is associated with the workshop activity.

As a means of resolving the dilemma with planning permission on the site, subsequent to the November 24th 2022 court appearance, the applicant sought (via consultation with Galway Co Council) to remove the Shed No. 2 and associated equipment, and place Shed No 3 on the footprint of Shed No 2. The storage of steel, after cutting and tailoring to the customer requirements is an essential feature of the works on site, and requires the height of Shed No. 3 for lifting and moving machinery, associated with the loading/offloading of steel. However, Mr Rock is constrained by **the requirement to apply for substitute consent as the favoured option of the Planning Authority** (see email 13/01/2023), taking account of the site planning history. The fact remains that the re-location of shed number 3 to the footprint of shed number 2 (with the removal of the equipment currently housed in Shed number 2) would present the lowest visual impact of buildings on the site.

5. Personal circumstances

Mr Rock initially operated a steel fabrication business in Lowery Lane, (Gort) before moving to the workshop at Knockauntouk in 2001. This move was critical for the delivery of long steel sections, as access was very limited (via an archway) to the workshop at Lowery Lane. The need for a home business became more critical in late 2008, with the accidental death of Mrs Rock. Mr Rock became the sole carer/provider for six children, and conducting business at the home site was essential. From a personal, business, statutory and security context there is ample justification for the need and co-location of the business adjacent to the dwelling house. The family home and the business have been closely linked since 2008, with Mr Rock being the sole carer for the family. The change in the market for agricultural steel has meant that the steel beams provided are longer and require larger area for their management. The overall scope of the business has not changed with the process change, and additional shed units. However, this does not negate the requirement to undertake these operations in compliance with planning legislation and in a sustainable manner, and to protect the local environment, It should be noted that the operation of the activity does not give rise to any loss of amenity in this rural area.

6. Concerns raised under P16/834 as appealed under ABP07.247214

6.1 *Having regard to the provisions of the Galway County Development Plan 2015 – 2021, and in particular Objectives EDT 7 and EDT 11 of this Development Plan, and to the planning history of the subject site, and in particular the previously permitted small scale light engineering workshop (216 m² in area), to which planning permission register reference 01/393 relates, it is considered that the development for which retention is sought would, by reason of the uses carried out therein, and by reason of the scale of the current operation on the site (which is approximately five times the area of the originally permitted development), constitute a substantial scale of development that is not limited to light engineering uses, and that no longer qualifies as a rural enterprise in this rural setting, as provided for in the Development Plan, and would be more appropriately located on serviced zoned lands within an urban setting. The development for which retention is sought would therefore, be contrary to the provisions of the County Development Plan, would create a precedent for similar future developments in the rural area, and would be contrary to the proper planning and sustainable development of the area.*

The reference to “light engineering” is likely to derive from the Planning Act 1963 and associated Regulations which interprets a “light industrial building” as meaning an industrial building (not being a special industrial building) in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. The permission granted for the light engineering workshop in P01/393 refers to the original workshop on site. The processes carried out in the buildings provided at the site today are the same light engineering processes as carried out on site under the original permission. The throughput of orders is not significantly changed or increased. The nature of the raw material **HAS** changed in that the steel beam lengths have changed, as farm buildings changed with time and statutory requirements. The processes on site do not give rise to noise, vibration, smell, fumes, smoke , soot, ash, dust or grit. No loss of amenity is associated with the operation of the activity.

The security of the site is critical and the 24 hour residence on site provides the necessary level of security for the steel goods. The Galway County Development Plan 2022-2028 is now the relevant planning policy document and is broadly supportive of such rural development, provided the matters of operational hours, advertising signage, interference with local environment and amenity is fully addressed. It should be noted that R & K Engineering operate a normal working day, with no night time working. There is no signage associated with the facility. There has been no interference with stone wall boundaries and no loss of habitat associated with the development works on site (see accompanying remedial Natura Impact Statement (rNIS)).

The re-location of the light engineering workshop to an alternative site is not a sustainable solution in terms of costs of re-location of the facility, or provision of around the clock site security. No issues arise with noise, dust or any other polluting emissions from the activity. The type of product (size and finish only) has changed on foot of the requirements associated with provision of farm buildings (including both sizing and finishing). The concerns regarding the use of shot blasting and spraying on site have been taken into account, and this activity is discontinued at the site. The light engineering use associated with cutting and welding steel continues to be the activity on site. The increased yard area and sheds provides workshop cover for the staff, storage

for steel and turning area for delivery vehicles to ensure no build up on the local road. The major increase in the site area is the yard, which is vital for the loading and offloading of steel, and for turning of vehicles, thus minimising impact on the local road.

6.2. *Having regard to the design, bulk, mass and height of the large scale industrial/commercial development on the site, in an open and exposed setting within a Class 4 (Special) rural landscape, as defined in the Galway County Development Plan 2015 - 2021, it is considered that the development for which retention is sought forms a dominant, overbearing and inappropriate form of development in a rural setting, which fails to appropriately fit into or integrate effectively into this sensitive rural landscape. The development would therefore interfere with the character of the landscape, contravene materially Objectives LCM 1 and LCM 2 contained in the Galway County Development Plan and detract from the visual amenity of the area. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.*

Map 8.2 of the Galway County Development Plan 2022-2028 indicates the area of Knockauntouk as an area of low landscape sensitivity. The sheds on site were selected to resemble the finish and design of farm buildings, in the mistaken belief that such structures were exempted development. From the local road L45160, the eye does not detect the buildings as industrial units, but rather as agricultural sheds. Such buildings are located all around the Gort and North Clare area, without detracting from local amenity. The views from the roadside L45160 in the vicinity of the site in an easterly direction are already limited by the inherent topography of the area, and impeded by dwelling houses (with the dwelling house of Mr Rock substantially shielding the view of Sheds 1 and 2). No significant detracting in the overall view is associated with the development. Mr Rock can provide a landscape plan, if required to minimise the visual impact of the Shed No. 3 on the north-south (L45160) approach to the site. No landscaping works have been undertaken since the enforcement proceedings were commenced, as such works could have been deemed additional works on the site.

The solution presented by Mr Rock to relocate shed 3 to the footprint of shed 2 was not accepted by the planning authority. However, this approach would significantly reduce the visual impact of buildings on the site, as the visibility of the activity is then screened from view (on L45160) by the dwelling house.

6.3. *The subject site has been identified as hosting limestone pavement which is protected under Objectives NHB 2 and NHB 4 of the Galway County Development Plan 2015 – 2021. The removal of this limestone pavement in order to facilitate the construction of an extended yard and the additional building denoted as No. 3, materially contravenes these objectives, and the Board is not satisfied, based on the documentation submitted with the planning application and appeal, that this removal of limestone pavement was not carried out subsequent to the original development of this site in 2001. Accordingly, the development for which retention has been sought would be contrary to the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area.*

Examination of the site area, associated bedrock and examination of the rock removed from the site was undertaken, during the site investigation prior to submission of P18/905. No evidence of significant formation of limestone pavement was found to substantiate the concerns raised by the Planning Authority. The elevated shelf on the eastern boundary of the extended yard area can be viewed to support this conclusion. Limestone pavement habitat (gryke formation and shattered limestone pavement) is not significantly evident in this area of the site. The land cover with exposed rock outcrop in the area outside the R & K Engineering site, to the immediate east of the site exceeds 50% and meets the ER2³ habitat description.

Detailed examination of the undisturbed lands adjacent to and immediately due north of the R & K Engineering site has been undertaken. The diversity of plant species is relatively low and appears atypical of limestone pavement plant diversity⁴. In addition, the karst limestone bedrock outcrops on the northern side of the site do not fully conform with the description of the priority habitat limestone pavement (including shattered pavement). Inspection of the lands (on which no development has been undertaken) clearly indicates that limestone pavement habitat is not abundant as traditional block pavement, or, shattered pavement in this immediate area of the site and its immediate environs.

We are advised by Mr Rock of the following

- An Environmental Technician (David O Connell, Galway Co Council) called to the site in April 2015, on foot of a third party complaint from Mr Rock's neighbours (on the northern side of the land holding). Mr O Connell made no observations (either at the time of the inspection or in subsequent reports) regarding the any limestone pavement habitat, or works being undertaken at the site. The yard area had been cleared at that stage. No warning or enforcement notice was issued on the activity until April 2016. If there were concerns regarding the works undertaken or priority habitat disturbance, Mr O Connell (a well informed member of Galway Co Co Environment staff) would have raised these concerns both with the land owner (Mr Rock) and with the Planning Authority. No consideration of planning requirements was raised during the site visit, or in the aftermath of the site visit.
- Mr Rock consulted with the NPWS warden (Mr R Stephens) on 9th March 2015 for the area prior to the clearing of the yard area. The NPWS warden visited the site and no concern was raised regarding limestone pavement habitat. Text messages to this effect can be provided if required. Clearly there was no intention on the part of the applicant to cause environmental damage in this sensitive area. No consideration of planning requirements was raised in the site visit
- Mr Rock's observation of the importance of the Limestone pavement habitat and the proximity to the SAC is evidenced from an application in 2011 (File Reference NA0156, see Appendix A) requesting a derogation to instal a wind turbine adjacent to the site.

³ Exposed calcareous rock ER2 (A Guide to Habitats in Ireland by Julie A. Fossitt October 2000) refers to all natural and artificial exposures of calcareous bedrock and loose rock, and any other exposures of basic rock, with the exception of unstable scree and areas of rocky coastline. It occurs in upland and lowland areas and can include inland cliffs and crags, limestone pavement, and rock surfaces that are exposed by excavation. There may be some patchy cover of vegetation but the total area of bare rock, with or without lichen cover, should exceed 50% for inclusion in this category. Limestone pavement is a notable inclusion in this category, includes areas of level, gently-sloping or terraced limestone bedrock that are fissured, broken or weathered along natural joints and faults to produce classic 'clint and gryke' features. Areas of loose limestone rubble known as 'shattered pavement' are also included

⁴ Irish Wildlife Manual No. 73. Scott and Fernandez National Survey of Limestone Pavement and associated habitats in Ireland 2013

- No mechanical breaking of stone was undertaken in the extended yard area. The stone covering this area was loosely deposited over the site, and arose from the original construction works (associated with the P01/393 permission) for the dwelling house and the steel works workshop. This excavated stone was deposited on the site area due north of the dwelling house (currently identified as the yard area subject of this application)

In summary these observations do not support the concern expressed by the Planning Authority regarding the status of the habitat in the extended yard area (north eastern side of the site) prior to commencement of works. There has been no interference with the lands outside the site, and in particular the lands associated with the Coole Garryland SAC. Mr Rock's derogation application (Ref NA0156) is also an indication of the attention to appropriate permission and need to comply with statutory requirements.

The examination of the slight embankment area between the driveway and the western side of the site shows some characteristics of limestone pavement, including a section of exposed karstified bedrock. However, there is no significant evidence of formation of horizontal bedding planes and vertical joints, or gryke formation in this area. There is rock outcrop, but no immediate continuous evidence of limestone pavement at this location. In conclusion, the desk study and site examination, including examination of the vegetation and embankment area on the eastern boundary of the site and anecdotal evidence from the applicant, does not provide evidence of classic or shattered limestone pavement habitat in the lands within the applicant site (See rNIS and site photographs associated with this application).

The exposed bedrock to the north and east of the site is undisturbed and will continue to be undisturbed. In this regard the potential impact of the development work undertaken at the site would not have directly or indirectly impacted on the limestone pavement habitat in the Coole Garryland Complex SAC. As the development works at the site are outside the area of the SAC, there was no potential for direct or indirect impact on the limestone pavement priority habitat associated with the SAC area.

6.4 *The subject site is served by a local road network which is narrow and has a limited carrying capacity, and by an entrance that is inherently unsuited to use in a safe fashion by articulated lorries. The Board is not satisfied, based on the documentation submitted with the application and appeal, that the applicant has demonstrated that the expanded engineering use on the site has not and does not generate an increase and intensification in traffic movements over that authorised by planning permission register reference number 01/393, and that such increase and intensification would be within the carrying capacity of the road and could be achieved without serious risk to traffic safety and convenience. Accordingly, the development for which retention is sought would endanger public safety by reason of traffic hazard or obstruction of road users. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.*

The references to expanded engineering use can only refer to the expansion of site area, but not to an expansion of business throughput. An examination of records of orders for steel from R & K Engineering was undertaken, and shows no substantial increase in order throughput. Similarly,

there is no increase in staffing of the activity. No intensification in traffic movement is associated with the development. The expanded yard area provides a safe turning area for deliveries.

No objection is raised by the Local Authority Roads Area Engineer to the application. The granting of permission will not give rise to an increase in traffic at the site. There is no customer associated traffic, and two of the four employees (Mr Rock and his son) reside on site. No objection was raised by the Galway Co Co Environment Section, or NPWS in relation to the site works or activity on the site

A Road Safety Audit (Tuesday 29th May 2018) was undertaken⁵ and provided with the application P18/905. A Transport Statement (based on traffic survey Wednesday 30th May 2018) was also provided by TTRSA (Appendix B). All recommendations of the safety audit accepted and implemented including set back of the entrance gate to provide sufficient length of holding area for vehicles prior to exit from the site. This resulted in the improved management of delivery vehicles at the R & K Engineering site to take account of the local road users safety and ensure no vehicle parked outside the site. This amended layout of the entrance area did not require permission, but simply provides improved management of the entrance area for vehicles delivering/moving steel off site.

6.5 The subject site immediately adjoins the Coole-Garryland Complex Special Area of Conservation (Site Code 00252), for which limestone pavement is listed as a qualifying interest and Annex I priority habitat, and whose conservation objective is to maintain or restore the favourable conservation conditions of the Annex I habitat(s) and/or the Annex II species for which the Special Area of Conservation has been selected. Having regard to the lack of information provided in relation to the habitats present on site prior to the development taking place, the potential flood risk concerns identified, the lack of adequate information in relation to wastewater and surface water disposal, and the lack of information provided in relation to the management of hydrocarbons and waste management generally on the site, the Board cannot be satisfied, in the absence of a comprehensive Natura Impact Statement, that the development for which retention is sought has not had, and would not have in the future, either individually or in combination with other plans and projects, a significant effect on the Coole-Garryland Complex Special Area of Conservation (site code 00252). In such circumstances, the Board is precluded from considering a grant of planning permission.

The lack of information on the status of the lands prior to the clearing of the yard area has been addressed under Point number 4 above. A remedial NIS is provided to accompany this application. This report examines the development on site, the works undertaken and potential direct impacts on local habitats and species, as well as indirect impacts on habitats species hydrologically connected with the site, or potentially impacted by noise or dust emissions.

This report concludes that subject to prescribed mitigation measures, no impacts are likely to be associated with the works undertaken at the R & K Engineering facility on the designated European site network in the catchment of the site. The report takes account of the nature of the risk to the SAC species and habitats and concludes the construction works undertaken or the ongoing activity does not present any risk to the species and habitats associated with designated sites in the zone of influence of the site⁶.

⁵ By Traffic, Transports, Road Safety Associated Ltd (TTRSA)

⁶ This takes account of the permitted status of the septic tank serving the development (under P02/393), the published ongoing good status of the Coole Lough and the significantly increased counts of Lesser Horseshoe Bats associated with the Garryland Lodge

The activity on site, as observed and inspected on numerous occasions, is inherently an extremely low / negligible risk to the habitats and species of the adjacent SAC. The risk associated with shot blasting and spray coating of the steel has been removed, as this process is discontinued on the site. Storm water arising from roofs discharges to a soakaway, and does not give rise to any on site or down gradient impacts.

In any event, the regulatory process of septic tank registration⁷ and the inherent requirement for maintenance addresses ongoing compliance with the permission granted under P01/393, with the system being the same as the other existing residential units in the locality. The Galway County Council Planning Authority accept that there has been no history of flooding at the site. No flood risk arises for the existing (permitted) development at the site, and consequently no flood risk arises for the unauthorised development at the site.

7. Planning Authority Decision P18/905

The Planning Authority (by letter dated August 2018-sic) consider that the unauthorised development which retention has been sought, has not been screened out for Appropriate Assessment and requires a full Appropriate Assessment.

Therefore, the Planning Authority under Part III, Section 34(12) of the Planning and Development Act 2000 (as amended) cannot consider the application in this instance.

The letter was not accompanied by a fee refund and no fee refund has been processed since the letter dated “August 2018”.

Under the application P01/393, the septic tank serving the dwelling house is shared by the steel fabrication workshop, permitted 23/07/2001. There has been a reduction in overall loading to this unit since 2001, given the reduction in family number, and no change in the number of employees in the steel fabrication workshop. The septic tank, granted under P01/393, did not form part of the application P18/905 (albeit the Planning Authority included its consideration in the overall file review), and does not form part of the current application, based on the material “no change” status in loading to the system.

8. Planning Policy

The National Planning Framework (NPF) acknowledges that rural areas have a major role to play in Ireland and encourages Local Authorities to ensure that connectivity gaps are addressed and that planning and investment policies support job creation in the rural economy. The location of the permitted light engineering workshop (P01/393) and the ongoing use of this workshop (without intensification of throughput) is consistent with the ethos of protection of small rural based activity. A number of policies in the Galway Co Development Plan (2022-2028) refer to, and are supportive of rural enterprise development.

⁷ Waste Water Services Act 2017 and associated Regulations

RD 1 Rural Enterprise Potential

To facilitate the development of the rural economy through supporting a sustainable and economically efficient agriculture and food industry, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism. Development of Cafes, Art Galleries, Hot Desk Facilities etc. which are important to the rural economy.

RD 3 Assimilation of Buildings

To ensure that all buildings are appropriately sited and sympathetic to their surroundings in terms of scale, design, materials and colour. The grouping of buildings will be encouraged in the interests of visual amenity. In general, the removal of hedgerows to accommodate agricultural buildings will not be permitted.

Agriculture is by far the biggest influence in rural development in Galway. Although the economic character of rural areas is no longer synonymous with agriculture, the sector remains the single most important contributor to the economic and social viability of rural areas.

Galway Co Development Plan (2022-2028) recognises that agricultural practices are continually changing and modernising (Volume 1, Chapter 4 and recognises the increasing scale of farming and changes in agricultural methods and machinery. The Plan requires that new farm buildings must be functional and efficient, and be sympathetic to their surroundings and should be sited and designed to assimilate with the rural landscape. The Plan policy AD3 refers specifically to the modernisation of agricultural buildings

AD 3 Modernisation of Agriculture Buildings

To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity

The Galway Co Development Plan 2022-2028 recognises the importance of rural enterprise as a source of local employment (Section 4.13) and supports local enterprise requiring that a balance is required between supporting rural based enterprises and projects and protecting the local environment

*Under **DM Standard 17** (Rural Enterprise), the Plan addresses the requirements for such enterprise- including service and repair of farm machinery... and agricultural contracting such that such facilities will not give rise to adverse environmental effects, have safe access and not be prejudicial to residential amenity.*

The ongoing operation of steel work facility operated at Knockauntouk does not conflict with the policies of the Galway County Development Plan 2022-2028, outlined above.

9. Application for Substitute Consent under Section 177C(2)(C)⁸

Section 177C (of the Planning and Development Act 2000, as amended) provides that in the absence of a notice under 177B the owner or occupier of land where development has been carried out where that development would have required an EIA, determination as to whether an EIA was required or an AA may apply to the Board for substitute consent if;

- There is a material defect in a permission as determined by a court within the state, the ECJ because of the absence or inadequacy of an EIA or AA, any error of fact or law, or,
- Where the applicant is of the opinion that exceptional circumstances exist, which would make it appropriate to permit the regularisation of the development by way of an application for substitute consent

Under Section 177D(1)(b) of the Planning Development Act, it is understood that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or appropriate assessment was, or is required, in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

Accordingly, a remedial Natura Impact Statement has been prepared to accompany this application, taking full account of the concerns of the Planning Authority. The exceptional circumstances associated with the developments on site are set out hereunder

1. In 2016 R & K Engineering (owned by Mr Rock) needed to ensure the steel fabricated on site complied with the aforementioned requirements of EN1090, as implemented in Ireland under S.I. 225 of 2013 (July 2014) making a criminal offence to supply structural metalwork unless it conformed to the EN1090 standard and carrying a legitimate CE mark.
2. Mr Rock had an existing permitted steel fabrication workshop at the site, and could not relocate the business due to personal circumstances (one parent family, meeting needs of family living in a rural area)
3. The market driven requirement to provide steel beams with increased length to meet the customer requirements, required improved provisions for deliveries and turning of vehicles
4. Consultation with NPWS undertaken prior to the works and attendance on site by a representative of the Environment Section of Galway Co Council did not indicate that the works presented any risk to the adjacent SAC, or other designated site in the area, and the belief that the works did not offend the Habitats Directive. No indication that the works were unauthorised was raised during these site visits. The sheds provided are agricultural style buildings, which Mr Rock (mistakenly) believed were exempted development
5. The provision of suitable and safe work place accommodation for the employees at the facility, to ensure that the workshop area was covered and enclosed
6. The engineering equipment purchased at a cost greater than €100,000 is no longer being used at the site, to take account of the concerns raised in relation to this activity by the Planning Authorities, and taking a precautionary approach to protection of the local environment

⁸ Planning and Development Act 2000, as amended

7. No change in the overall throughput of orders on site, the change relates to the nature of the buildings required by the same market as was originally served by the workshop provided under P01/393

Furthermore, the regularisation of the development would not circumvent the purpose and objectives of the EIA Directive or Habitat Directive. There would have been no requirement for an EIA having regard to the nature and scale of development and to the definition of development subject to mandatory EIA under Schedule 5, Part 2 of the Planning and Development Regulations 2001 (as amended). The ability to carry out a remedial NIS and to provide for public participation in the Substitute Consent application process has not been impaired.

The Planning Authority considered a Stage 2 Appropriate Assessment would have been required based on the proximity of the site to the adjacent Coole Garryland SAC and the scope of the works undertaken in the extended yard area of the site with potential interference with Limestone Pavement Annex I priority habitat. This remedial NIS has been prepared to accompany this application.

The extent to which the subject site is likely to have significant effects on the environment or adverse effects on a European site has been considered in the remedial NIS. In the applications, P16/834 and P18/905 the applicant submitted Stage 1 Screening for Appropriate Assessment which did not find any works undertaken impact on the adjacent network of Natura sites. This was not accepted by the Planning Authority, hence the requirement for a revised screening report, reviewing the works undertaken, their impact on the Natura 2000 sites in the catchment, and consideration of mitigation measures to ensure no impact arises for the adjacent designated sites, resulting in the completed remedial NIS. No requirement for remedial works arises in the development. Mitigation measures appropriate to the site and the activity have been included in the consideration of the activity.

The applicant seeks to regularise the unauthorised development undertaken at the site and no other unauthorised development is noted. No loss of amenity in the area is associated with the operation of the activity

Accordingly, the Board is requested to regularise the planning status of the activity and grant substitute consent for the Shed 1 extension, Shed 2 and Shed 3. No remediation works are required and no risk is associated with the ongoing operation of the activity. No advertising signage is associated with the site and no noise, dust or light emissions give rise to impact on the receiving environment or loss of local amenity. The concerns raised by the Planning Authority and An Bord Pleanála in the previous applications (P16/834, as appealed under PL07. 247214 and revised application P18/905 respectively) have all been taken into account. The operation of the shot blasting and spraying of steel has been discontinued at the site. The raw material used on site is a pre-treated steel. Deliveries to the site and movements off site have been managed to ensure no parking on the local road L-45160 and consideration of the safety for local road users.

The groundwater catchment definition has been refined in recent years, and the site is clearly not located in the Coole-Garryland turlough catchment. The potential impact of the discharge from the activity was fully taken into account with the grant of permission for the dwelling house and workshop under P01/393. No washing or processing is associated with the steel fabrication workshop. Storm water on site does not impact on the defined percolation area associated with the septic tank serving the dwelling.

During the pre-consultation meeting with An Bord Pleanála (May 2024, see Section 2, Attachment 4, the Bord officers raise the issue of whether the applicant reasonably had a belief that the development was not unauthorised. This has been factually addressed above, describing the selection of the agricultural style buildings at the site. The reasonable belief (and consequent construction activity) of the applicant is probably dominated by his single parent status, with six dependent children- all of whom had suffered the trauma of loss of one parent. It is difficult to encapsulate what is reasonable belief (in planning terms) when one parent meets the ongoing requirements of being self employed, providing both financially and physically (in terms of presence in the business activity and in the home) for a family. The benefit of hindsight (9 years later) allows a more pragmatic, considered approach (in planning terms) to reasonable belief. The approach taken was not to engage in flagrant breach of planning law, and care was taken to ensure no environmental damage ensued. Significant financial loss has been incurred as a result of the actions (then) taken, and the applicant continues to experience significant anxiety about the ongoing operation of the activity.

The options available to the applicant for resolution of this matter can provide for the

- a.** Compliance with EN16/021 (Enforcement notice), remove the sheds, but loss of the business and employment for 4 persons
- b.** Regularise the development works in this application for leave to apply for Substitute Consent for the buildings, with no shot blasting and associated painting of steel, and removal of the shot blasting and spraying equipment associated with this activity
- c.** Grant permission for retention of extension of Shed 1, short term permission for retention of Shed 2, pending removal of equipment stored therein, and (thereafter) retention of a relocated Shed 3 to the footprint of Shed 2 (drawing for this revised site layout is included in the submission.

This application is submitted by Grealish Glynn on behalf of R & K Engineering and includes the following documentation;

This planning report with Attachments.

Attachment 1 : Remedial Natura Impact statement with associated appendices

Appendix A; Noise Survey (May 2018)

Appendix B; TTRSA road safety audit and traffic reports

Appendix C; Site photographs

Appendix D; Copy of Derogation (2011)

Appendix E; Conservation Objectives for Lesser Horseshoe Bat in designated sites Coole Garryland Complex SAC, East Burren Complex SAC and Caherglassaun Turlough SA

Attachment 2: Correspondence from Galway County Council re P18/905 and email regarding application for substitute consent (January 2023)

Attachment 3: Maps and drawings

Attachment 4: Report from An Bord Pleanála subsequent to pre-consultation meeting (ABP-319156-24) of May 15 2024

Based on the refusal of the Planning Authority to validate the application (P18/905) for retention of the buildings, on the basis that the application required a remedial NIS and the more recent response from Galway Co Council, (email dated 13/01/2023), the only options available to the applicant are outlined and hence this application. The Board will note the extensive history associated with this site and the ongoing stress surrounding the operation of the business activity. It should also be noted that the third party complaint associated with the works on site is the only complaint which has been recorded against the activity since the commencement of operations in 2001.
