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13th April 2026

Case Number: 324153

Bessborough, Ballinure, Blacrock, Co. Cork

Permission for a Large-Scale Residential Development (LRD): Demolition of 10 agricultural buildings /sheds and the construction of a residential development of 140 no. residential apartment units. Development is situated within the curtilage of Bessborough House which is a Protected Structure (Reference: RPS 490).

I wish to make an observation on the decision to permit this residential development.

Context

I hold a personal and professional interest in this case, as I was the Irish Minister for Children who held responsibility for oversight of the Mother and Baby Home Commission (2016-2020). During my tenure, I received several reports from the Commission, and separately commissioned and received a report from Dr. Niamh McCullagh, whom I appointed in 2017 to lead an Expert Technical Group to assist me in making a decision regarding the kinds of responses that were possible by Government to the findings of juvenile remains in Tuam, Co Galway. Dr. McCullagh is a Consultant Forensic Archeologist. On the basis of the options laid out by Dr. McCullagh, I recommended to Government the option of a full excavation, exhumation and attempt to identify the remains in Tuam, Co. Galway. The Government accepted my recommendation and one of the first tasks was to write a new law to enable the Government to proceed with this option. While this law – Institutional Burials Act 2022—became enacted subsequent to my tenure, I was the Minister to initiate work on the bill that proceeded it. Of note here was my direction that the Act should apply not only to Tuam, but should also apply to all other potential burial sites at the various mother and baby institutions throughout the country.

Bases for my Appeal

There are three bases for my appeal, two are related to law and the third is more pragmatic having to do with a process I will recommend, that flows from this law. Underneath this rationale, though, is my passionate belief in the human dignity of the 19 mothers and 859 infants associated with Bessborough whose burial places are not known.

1. A Transitional Justice approach by the State to the horror of its historical treatment of mothers and children, especially those who did not receive a dignified or known burial. Within the United Nations Human Rights system, a transitional justice

approach to the reality of mass burials is based on five pillars – the right to truth, justice, reparation, non-recurrence and memory processes.

I was informed by this approach in everything I did with regard to my oversight of the Commission's work. It helped me to grasp the gravity of what had happened, and how to begin to appropriately respond from a deeply human, heart-felt and ethically-based place.

With regard to the issue at hand, a transitional justice approach requires appropriate and effective efforts by the State to investigate the possibility of mass burials on the 60 acres where planning permission has been granted in Bessborough.

As the Irish Human Rights and Equality Commission has said, 'The State is under a legal duty [the European Convention on Human Rights, Articles 2, 3 and 8] to investigate mass burials and to preserve and protect evidence at sites ...and those families who mourn those buried in these mass graves, must be treated with dignity, with respect for their human rights ...' (during their commentary on the 'Institutional Burials' Bill).

A Transitional Justice approach also brings victims/survivors to the centre of the process of responding to devastating historical atrocities. As they say themselves, 'nothing about us, without us'. In 2018, I established a Collaborative Forum for survivors and families, to request their views on a number of matters. Forum members were carefully selected by members of my department to ensure a fullness of representation. One of their recommendations, with regard to the 'protection of burial sites, data research and related matters' was:

'3.6 Archeological surveys to be undertaken at Mother and Child Institution sites to ascertain location and scale of burials of non-religious in such grounds.'

There were modest efforts to do so at Bessborough by the MBH Commission, but they were not sufficient nor similar to the efforts made at Tuam. I agree with human rights experts and others that these initial efforts do not meet the threshold of the state's legal duty in this regard. They do not represent a transitional justice approach, nor do they meet the formal recommendations of a broadly representative group of survivors established by the state itself.

2. The Institutional Burials Act 2022

As outlined above, it was my ministerial intention that such an act could be drawn on for the possible burials of children and mothers in any mother and baby institution setting. We would begin with Tuam. We would learn lessons from Tuam. These would be uncharted waters. But there could be no human, logical or ethical reason to draft a bill that would exclude all sites bar Tuam. I am aware –

perhaps more than most—of the issue of cost. That loomed large with regard to the Government's decision on Tuam. Ministerial decision making then should be relevant to the State's actions now.

The Act that passed incorporated the spirit of this decision-making. The Act is not site-specific and allows for excavations and identification programmes at other institutional sites should manifestly inappropriate burials be discovered. However, there is a critical legal threshold problem. The Act requires evidence that burials took place in a "manifestly inappropriate" manner at a specific location before an Office of a Director of Authorised Intervention can be established, to initiate an excavation and exhumation comparable to what is happening at present in Tuam.

The Mother and Baby Home Commission did not request Dr McCullagh (who was their consultant to them on these matters) to do the same kind of initial testing for potential remains as was done in Tuam. No Ground Penetrating Radar was used (as it was in the first phase of testing in Tuam) which led Dr. McCullagh and team to engage in the second phase of pilot testing potential remains through excavation.

I understand that you (An Coimisiún Pleanál) made a determination in 2021 to refuse permission to develop the apartments because it would be premature pending further investigation of burial questions. I agree with that determination. I also understand that the current application for planning incorporates the conditions for a forensic archeologist and an osteoarchaeologist/forensic anthropologist with expertise in skeletal juvenile remains to monitor all excavation, and that work would cease if remains were found. The Expert Technical Group I established also had two professionals such as those.

What I know from the Tuam experience as documented by Dr. McCullagh in her Expert Technical Group report to me, however, is that *there is a great risk to destruction of human remains* in any kind of archeological excavation as would be required for the burials. It would seem logical to conclude that builders/developers who are working on the site would hold even greater potential to destroy the human remains, even with the monitoring, thus potentially obliterating any kind of possibility of DNA identification.

Dr McCullagh's report further states that archeological excavation is inherently destructive. It 'is a destructive process; information is lost if not recorded promptly, accurately and comprehensively in a standardised approach. The approach must satisfy judicial requirements, irrespective of whether for judicial or humanitarian reasons.' I am not convinced that a proper process can be done by archeological professionals standing on the side of builders and their bulldozers.

3. The right way forward and a pragmatic way forward.

There are several ways forward to ascertain if the 60 acre grounds of Bessborough hold human remains, many of which the Government or state actors could commence. I am fully in agreement with other experts, for the reasons outlined above, that the State is obliged under the European Convention on Human Rights to investigate the deaths of children and mothers, and that Article 2 of the ECHR obliges the State to make every effort to search for and identify persons who have been disappeared, including those buried unidentified while in institutional care

The critical point is that these are *positive* obligations — they require the State to *act*, not merely to refrain from interfering. Saying the Government "cannot interfere with planning" treats this as a matter of executive restraint, when the human rights framework actually requires the opposite: active State investigation. This is not to be treated, then, as a standard planning matter.

The best way forward is for the state to order a geophysical survey. This would be the most targeted intervention. A state-commissioned geophysical survey (ground-penetrating radar, etc.) could be conducted relatively quickly and non-invasively. If it revealed evidence of remains, this could both trigger the Institutional Burials Act and provide grounds for refusing planning.

If this is unlikely to happen, there may be a pragmatic way forward that could assist your decision, and might also prompt the state to do the right thing.

You could request further information from Dr Niamh McCullagh, prior to making your decision. You could ask her: 1) why, in her opinion, did the Commission not request her to take a GPR examination of the Bessborough grounds; 2) why, in her opinion, did the MBH Commission nevertheless conclude that burials were 'highly likely' to have taken place on the grounds; and 3) what would be involved in doing a GPR and/or use of other non-invasive techniques (for example, drone-based GPR that may be less costly and need less time) on the Bessborough grounds now? What might be the timeframe and cost?

Her evidence or views, could assist you greatly, I believe, in coming to a decision. It might also provide a relevant professional view that the current Government could draw on to fulfill all of its human rights legal obligations in this regard.

Dr. Katherine Zappone
14th April 2026