



An
Coimisiún
Pleanála

ACP 324237 Memorandum

To: Daire McDevitt, Assistant Director of Planning
From: Kevin Baneham, Director of Legal Affairs
Re: Landowner consent in ACP 324237
Date: 10 September 2026

This memorandum is further to the memorandum of 23 July. It addresses the submission received on behalf of the development. The memorandum relates to the question of landowner consent in an LRD application currently before the Commission (ACP 324237). Legal privilege does not apply to the memorandum and it can be placed on the public file.

On 12 August 2026, the Commission exercised its powers under Article 73A(1)(a) of the Planning and Development Regulations to ask the applicant for development to confirm that it held the necessary landowner consents to make the application.

I note the reply submitted on behalf of the applicant for development. I note that it states that it held all necessary landowner consents at the time of the making of the application. There are two components; the first that the landowners gave consent and second that this was not withdrawn prior to the making of the application.

The landowner in question here is Ms Jackie Flaherty in respect of Folio GY4809.

Article 22(2)(g) of the Planning and Development Regulations provides that where the applicant is not the legal owner of the land or structure concerned the application must be accompanied by '(i) *the written consent of the owner to make the application.*' For emphasis, I have underlined the words 'to make'.

It is noted that the planning application form indicated that the applicant for development had supplied with the application a letter from the landowner of consent to make the application.

The purported letter of consent is the correspondence of 6 March 2024. This states that the landowner gives consent 'to engage with Galway City Council in relation to a proposed residential development on the above lands'. I note that this would have been issued in the context of possible section 247 pre-planning consultation and the LRD meeting/opinion phase. Engagement must be seen in the context of these pre-application steps.

In this case, the landowner gave consent for engagement with the Council. This is markedly different from consent to make a planning application. First, they are separate statutory processes, the first related to consultation and the second, to the substantive application itself. Second, the words 'engage' and 'make' are not synonyms. They mean different things. 'Engage' means in this planning context, to consult with the planning authority. 'Make' has a different meaning – it means to take the steps required to complete the relevant process.

I note the submission on behalf of the applicant for development: *'Read objectively and in its context, the letter is written consent to the Applicant pursuing the planning process for the identified residential development.'* Pursuing the planning process is not the same as the making of the application. Article 22 requires landowner consent for the latter.

It cannot be said that the landowner in question gave consent to the making of a planning application. As described in *Frascati*, landowner consent is required because the making and deciding of a planning application is an 'intrusion on property rights'. I note the reference to *Grace and Buckley* where consent was withdrawn during the application process and was in place as of the date of application. In *Grace and Buckley*, the Court distinguished *McCallig v An Bord Pleanála* [2013] IEHC 60.

In *McCallig*, the landowner had never given consent. The High Court (Herbert J), held at paragraph 64: *'I find that the facts to which I have adverted establish that the applicant objected in her appeal to the respondent that the second notice party did not have her written consent to include any part of her land within the blue line so that his application for permission for development on or affecting that land was invalid. I am satisfied that the procedure adopted by the respondent in declining to consider this matter, raised specifically by the applicant in her appeal and referred to by the respondent's Inspector in her report at pp. 13, 29 and 30, was unfair and incorrect. The respondent had jurisdiction to consider this. I find that in as much as the respondent considered that the second notice party had established a sufficient interest to make a valid application for development on or affecting the applicant's land it proceeded upon a material error of fact which rendered its procedures unfair.'*

Having decided other environmental grounds in favour of the Board, the Court did not quash the grant of permission but declared that the grant of permission in respect of Ms McCallig's lands were void. This was further to the finding of unlawfulness and unfairness arising from the absence of landowner consent.

From the above and the information available to hand, the landowner in question has not given consent for the inclusion of the folio as part of this application. There is insufficient evidence that the landowner has given consent to this application.

Having concluded that the application did not comply with Article 22 of the Planning and Development Regulations, there is no need to address the other issues, i.e. the issue of withdrawal of consent.

Kevin Baneham

Director of Legal Affairs

10 September 2026