Our Case Number: ACP-324272-26

Your Reference: One Stop Motor Shop Ltd.

An Coimisiún Pleanála

Genesis Planning Consultants
Dean Swift Building
Hamiltonsbawn Road
Armagh
BT601HW
Northern Ireland

Date: 24 July 2026

Re: Proposed TEN-T Priority Route Improvement Project
all routed along the electoral divisions of Dooish, Stranorlar, Convoy, Lettermore, Magheraboy, Letterkenny Rural, Manorcunningham, Kincraigy, Treantaghmucklagh, Feddyglass, Clonleugh North, and Clonleigh South, all in County Donegal

Dear Sir / Madam,

An Coimisiún Pleanála has received your recent submission in relation to the above mentioned proposed road development and will take it into consideration in its determination of the matter.

Please note that the proposed road development shall not be carried out unless the Commission has approved it or approved it with modifications.

If you have any queries in relation to this matter please contact the undersigned officer of the Commission at laps@pleanala.ie

Please quote the above mentioned An Coimisiún Pleanála reference number in any correspondence or telephone contact with the Commission.

Yours faithfully,

pp Lauren

Eimear Reilly
Executive Officer
Direct Line: 01-8737184

HA02C

Teil	**Tel**	(01) 858 8100
Glao Áitiúil	**LoCall**	1800 275 175
Facs	**Fax**	(01) 872 2684
Láithreán Gréasáin	**Website**	www.pleanala.ie
Ríomhphost	**Email**	communications@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

GENESIS PLANNING CONSULTANTS

AN COIMISIÚN PLEANÁLA
LDG-
ACP-
09 JUL 2026
Fee: € Type:
Time: 10'57 By: Hand

An Coimisiun Pleanala
Marlborough Street
Dublin 1

9th July 2026

Re: Compulsory Acquisition of Land, Ten T Priority Route Improvement Project, Co Donegal

Dear Sir/Madam,

Please find enclosed the land-owner's objection to the CPO entitled 'Donegal County Council (Ten T Priority Route Improvement Project, Donegal.

If you require any further information in the interim or wish to arrange procedures for the CPO hearing please contact this practice.

Yours sincerely,

Ronan Woods
Director

Office UK: Dean Swift Building, Armagh Business Park,
Hamiltonsbawn Road, Armagh, BT60 1HW
Email: info@genesisplanning.co.uk

Tel: (+44) 28 30493 001
Tel: (+353) 45 571 682

GENESIS
PLANNING
CONSULTANTS

Enclosures

- Grounds of objection
- Copy of CPO Orders received

Our Reference: 1036-2026-L-14669

13th May 2026

One Stop Motor Shop Ltd c/o Charlie Doherty
Oakland
Church Brae
Fahan
Co. Donegal

Landowner Ref: 2064

Re: Donegal County Council - TEN-T Priority Route Improvement Project, Donegal Compulsory Purchase Order 2026

A Chara,

Donegal County Council (the **"Council"**) has submitted an application under Section 51 of the Roads Act, 1993 (as amended) in relation to the TEN-T Priority Route Improvement Project, Donegal to An Coimisiún Pleanála and will be submitting the associated application for confirmation of the TEN-T Priority Route Improvement Project (Donegal) Compulsory Purchase Order 2026 (the **"CPO"**) in the coming days. You have been identified as an owner, lessee or occupier of, or have rights over or an interest in land referred to in the CPO.

A number of documents relating to the CPO are enclosed for your attention. They comprise the following:

- Statutory landowner/interested party notice
- Extracts from the Schedules to the CPO describing the location and extent of the impacted lands and/or rights relating to you;
- Server map(s) showing the location and extent of the impacted land(s) and/or rights; and
- A copy of the DCC privacy statement.

We recommend that you consider these enclosures carefully.

Further information relating to the TEN-T Priority Route Improvement Project, Donegal including a copy of the Environmental Impact Assessment Report, Natura Impact Statement and CPO documentation can be found at the Donegal County Council website for the TEN-T Priority Route Improvement Project, Donegal at www.donegal-ten-t.ie.

Should you have any queries or require any clarity, please contact Brian Reid, Senior Executive Engineer, NRDO who is dealing with this matter.

Mise le meas,

Brian Reid
Land Liaison Manager
For on Behalf of Donegal National Road Design Office

FORM OF NOTICE OF THE MAKING OF A COMPULSORY PURCHASE ORDER UNDER SECTION 76 OF AND THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, AS EXTENDED BY SECTION 10 OF THE LOCAL GOVERNMENT (NO. 2) ACT, 1960, TO BE SERVED ON OWNERS, LESSEES AND OCCUPIERS IN ACCORDANCE WITH ARTICLE 4(b) OF THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, AS AMENDED BY THE PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED) AND SECTIONS 212 AND 213 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) AND SECTION 184 OF THE LOCAL GOVERNMENT ACT 2001 (AS AMENDED).

COMPULSORY ACQUISITION OF LAND

DONEGAL COUNTY COUNCIL (TEN-T PRIORITY ROUTE IMPROVEMENT PROJECT, DONEGAL) COMPULSORY PURCHASE ORDER, 2026

To: One Stop Motor Shop Ltd c/o Charlie Doherty

Of: Oakland, Church Brae, Fahan, Co. Donegal

1. Donegal County Council (hereinafter referred to as "the Local Authority") in exercise of the powers conferred upon them by Section 76 of the Housing Act, 1966 and the Third Schedule thereto, as extended by Section 10 of the Local Government (No.2) Act 1960 as substituted by Section 86 of the Housing Act, 1966 and as amended by Section 6 and the Second Schedule to the Roads Act, 1993 and the Planning and Development Act 2000 (as amended) and under sections 212 and 213 of the Planning and Development Act 2000 (as amended), and Section 184 of the Local Government Act 2001 (as amended), have made an order ("the Order ") entitled as above which is about to be submitted to An Coimisiún Pleanála (hereafter "the Commission") for confirmation.

2. If confirmed, the Order will authorise the Local Authority to acquire compulsorily the land and/or rights described in Parts IIa, IIb, III and IV of the Schedule to the Order ("the Schedule") for the purposes of a proposed road development consisting of an upgrade of three sections of the national road network, namely (1) N15/N13 Ballybofey/Stranorlar Urban Region. (2) N56/N13 Letterkenny to Manorcunningham, and (3) N14 Manorcunningham to Lifford/Strabane/A5 Link together with all associated amenities including an integrated active travel network and all ancillary and consequential works associated with and known as the TEN-T Priority Route Improvement Project, Donegal.

3. A copy of the Order and of the map referred to in it may be seen at:

   a) The offices of the Local Authority, County House, Lifford, F93 Y622
   b) The offices of the Local Authority, Public Services Centre, Letterkenny, F92 TNY3
   c) Twin Towns Community Library, The Base Enterprise Centre, Stranorlar, F93 VAK6
   d) The offices of the Local Authority, Public Services Centre, Donegal Town, F94 DK6C
   e) The offices of the Local Authority, Public Services Centre, An Clochán Liath, F94 H4CF
   f) The offices of the Local Authority, Public Services Centre, Carndonagh, F93 YV1N
   g) An Coimisiún Pleanála, 64 Marlborough Street, Dublin 1, D01 V902,

   on working days during normal working hours at each venue from the **15th May 2026 to 10th July 2026**.

4. A copy of the Order and of the maps referred to in it are also available on the following website www.donegal-ten-t.ie.

5. The Housing Act, 1966, as amended, provides that if an objection is made to the proposed compulsory acquisition of land and/or rights, the land and/or rights in respect of which an objection is duly made by any of the persons upon whom notices of the making of the order are required to be served shall not be acquired compulsorily unless the Commission makes an order to confirm the compulsory purchase order, unless:-
   a) the objection is withdrawn, or
   b) the Commission is satisfied that the objection relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation may have to be assessed.

6. The Commission cannot, however, confirm: -
   a) a compulsory purchase order in respect of the land if an objection is made in respect of the acquisition by an owner, lessee or occupier of the land, and not withdrawn;
   b) an order which authorises the extinguishment of a public right of way if there is an objection to the extinguishment, which is not withdrawn;
   c) an order which authorises the acquisition of a private right of way if there is an objection to the acquisition of the private right of way by an owner, lessee or occupier of the private right of way which is not withdrawn,

   until it has considered the objection.

7. The Commission has an absolute discretion under Section 218 of the Planning and Development Act 2000 (as amended) to hold an oral hearing.

8. Before making its decision on an application to confirm the Order, the Commission must consider any objection made and not withdrawn, any additional submissions or observations made pursuant to a request by the Commission under Section 217A of the Planning and Development Act 2000 (as amended) and any report of the person who held the oral hearing, if such an oral hearing takes place.

9. Any objection to the Order must state in writing the grounds of objection and be sent addressed to **An Coimisiún Pleanála at 64 Marlborough Street, Dublin 1, D01 V902**, so as to reach the said Commission before **5.30 pm on the 10th July 2026.**

10. An Environmental Impact Assessment Report, and a Natura Impact Statement have been prepared in respect of the development which it is proposed to carry out on the land for which separate public notice has been given. Copies of the Environmental Impact Assessment Report and the Natura Impact Statement are available for inspection at locations listed at Point 3 above and on the following website www.donegal-ten-t.ie and can be purchased at the offices listed at a) – f) at Point 3 above.

    Submissions or observations in relation to (i) the likely effects on the environment of the proposed development, (ii) the implication of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the proposed development and (iii) the likely significant effect of the proposed development on European Sites, may be made in writing to the Commission before the **5.30 pm on the 10th July 2026.** Evidence in relation to (i) the likely effects on the environment of the proposed development, (ii) the implication of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the proposed development and (iii) the likely significant effects of the proposed development on European Sites may be heard at any oral hearing, that may take place.

11. The Commission has an absolute discretion at any time before making its decision to request further submissions or observations in relation to the proposed development and/or to hold meetings with the Local Authority in relation to the proposed development in accordance with Section 217A of the Planning and Development Act 2000 (as amended).

12. The Commission, if it thinks fit, may confirm the compulsory acquisition or any part thereof, with or without conditions or modifications, or may annul the Order or any part thereof.

13. If no objection is received to the proposed compulsory acquisition of land and/or rights, the objection is withdrawn or the Commission is satisfied that the objection relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation may have to be assessed, the Commission shall inform the Local Authority, which may then confirm the Order with or without modification, or refuse to so confirm it.

14. If the land and/or rights to which the Order, as confirmed by either the Commission or the Local Authority relates is acquired by the Local Authority, compensation for the land and/or rights will be assessed in respect of the acquisition as the value of the land and/or rights at the date that the relevant notice to treat is served.

15. In the opinion of the Local Authority, no part of the land in which you have an interest consists of a house or houses which is/are unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense. If the land to which the Order relates is acquired by the Local Authority, compensation will be assessed in accordance with Part II of the Fourth Schedule to the Housing Act, 1966, and the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 as amended by the Acquisition of Land (Reference Committee) Act, 1925, the Property Values (Arbitrations and Appeals) Act, 1960, and the Local Government (Planning and Development) Act, 1963 (as applied by section 265(3) of the Planning and Development Act, 2000), subject to the modifications contained in the Third Schedule to the Housing Act, 1966 (as amended).

16. Any dispute in relation to compensation shall be referred to and be determined by a property arbitrator appointed under the Property Values (Arbitration and Appeals) Act, 1960.

17. A claimant for compensation may at any time after the expiration of the fourteen days from the date on which the relevant notice to treat is served, send to the Secretary, the Reference Committee, Four Courts, Dublin an application in writing for the nomination of a property arbitrator for the purpose of determining the compensation to be paid. The application should be made in accordance with the Property Values (Arbitrations and Appeals) Rules, 1961 (S.I. No. 91 of 1961).

18. An extract from the Schedule and Map indicating lands and/or rights in which you may have an interest is attached.

19. If you have any questions or queries in relation to the above or attached map, or if you no longer have an interest in this property or are aware of anyone else who has an interest in this property, please contact us at Brian Reid, Senior Executive Engineer, NRDO, Drumlonagher, Donegal Town, at design@dnrdo.ie or on 074 9724500.

Dated this 13th **day of** May **2026**

Brian Reid
Senior Executive Engineer
For and on behalf of the Local Authority

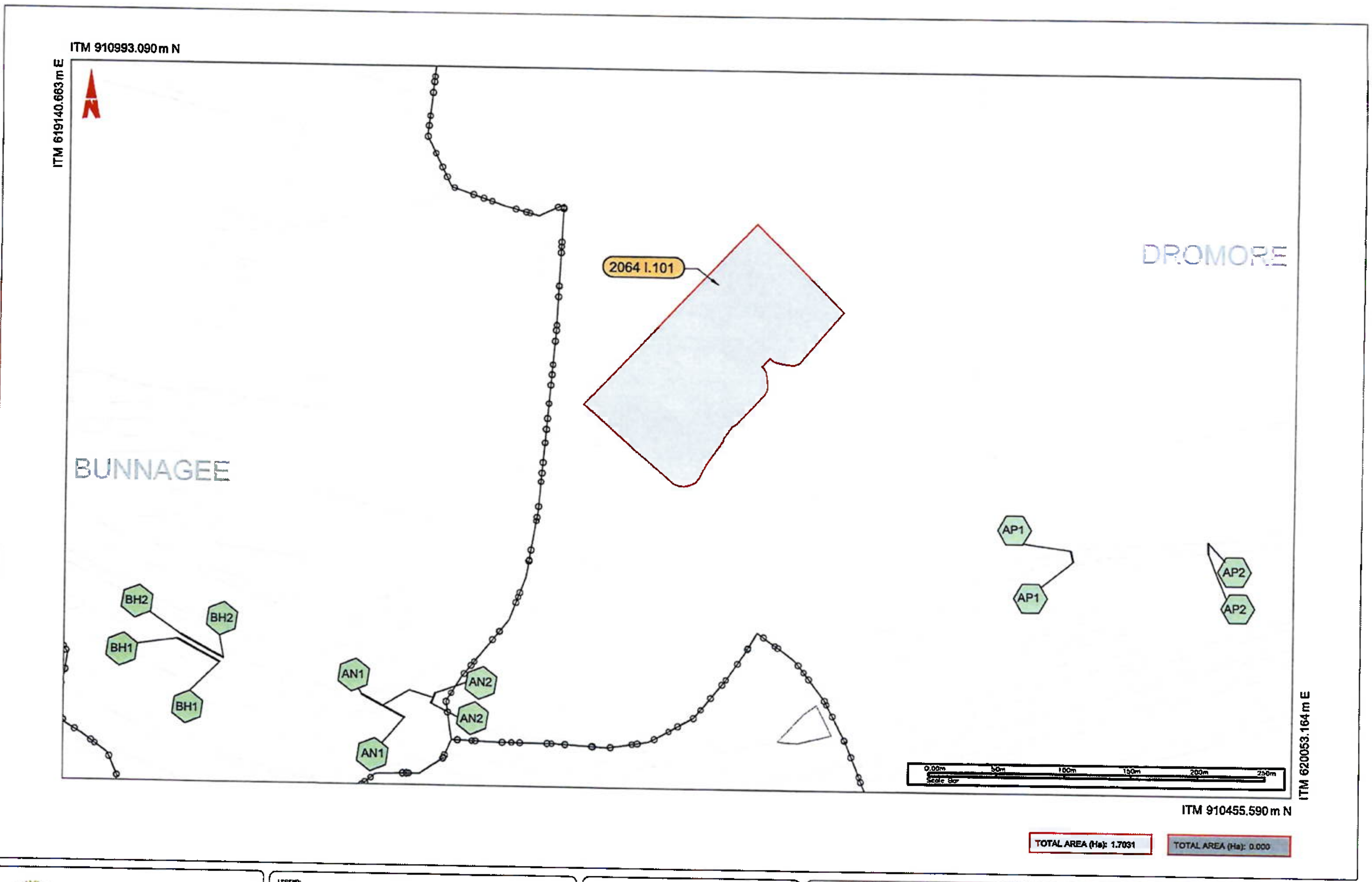
Donegal County Council (TEN-T Priority Route Improvement Project, Donegal) Compulsory Purchase Order 2026

EXTRACT FROM CPO SCHEDULE - Part IIa

Section 2 - N56/N13 Letterkenny to Manorcunningham

Land other than Land consisting of a House or Houses unfit for Human Habitation and not capable of being rendered fit for Human Habitation at reasonable expense to be acquired Permanently

Number on map deposited at the offices of the Local Authority	Quantity, Description and Situation of the Land			Owners or Reputed Owner	Lessees or Reputed Lessees	Occupiers
	Area in Hectares	Location	Description of Property			
2064 l.101	1.7031	Dromore Letterkenny Co Donegal	Plot of Land	Charlie Doherty	None	One Stop Motor Shop Ltd



Comhairle Contae Dhún na nGall
Donegal County Council

Donegal County Council
County House
Lifford
Co. Donegal
F93 Y622

LEGEND:

Schedule Part IIa
Lands to be Permanently Acquired

Schedule Part IIb
Lands to be Temporarily Acquired

Townland Boundary

Schedule Part III
Public Rights of Way proposed to be extinguished

Schedule Part IV
Private Rights of Way proposed to be acquired

Lands to be Acquired from: Charlie Doherty
Oakland
Church Brae
Fahan
Co. Donegal

CPO Reference Number: 2064

Rev	Date	Drawn	Description	Chk'd	App
P02	18.12.25	KT	ISSUE FOR PLANNING	LB	EC
P01	18.11.25	KT	ISSUE FOR PLANNING	LB	EC

Project Title: TEN-T PRIORITY ROUTE IMPROVEMENT PROJECT, DONEGAL SECTION 2 - N56/N13 LETTERKENNY TO MANORCUNNINGHAM

Drawing Title: SERVER MAP LANDOWNER REF. 2064

Status: A3

Designed: SS
Drawn: AB
Approved: EC
Checked: SS

Date: SEP 2021
Scale @ A1: 1:1250
@ A3: 1:2500
Sheet: 01 of 01

Model File Identifier: N/A

File Identifier: TT_MGT0337-RPS-P3-S2-DR-C-SM0001

Rev: P02

Our Reference: 1036-2026-L-14669

13th May 2026

Charlie Doherty
One Stop Motor Shop
Dry Arch Business Park, Dromore
Dromore
Letterkenny
Co Donegal

Landowner Ref: 2069

Re: Donegal County Council - TEN-T Priority Route Improvement Project, Donegal Compulsory Purchase Order 2026

A Chara,

Donegal County Council (the **"Council"**) has submitted an application under Section 51 of the Roads Act, 1993 (as amended) in relation to the TEN-T Priority Route Improvement Project, Donegal to An Coimisiún Pleanála and will be submitting the associated application for confirmation of the TEN-T Priority Route Improvement Project (Donegal) Compulsory Purchase Order 2026 (the **"CPO"**) in the coming days. You have been identified as an owner, lessee or occupier of, or have rights over or an interest in land referred to in the CPO.

A number of documents relating to the CPO are enclosed for your attention. They comprise the following:

- Statutory landowner/interested party notice
- Extracts from the Schedules to the CPO describing the location and extent of the impacted lands and/or rights relating to you;
- Server map(s) showing the location and extent of the impacted land(s) and/or rights; and
- A copy of the DCC privacy statement.

We recommend that you consider these enclosures carefully.

Further information relating to the TEN-T Priority Route Improvement Project, Donegal including a copy of the Environmental Impact Assessment Report, Natura Impact Statement and CPO documentation can be found at the Donegal County Council website for the TEN-T Priority Route Improvement Project, Donegal at www.donegal-ten-t.ie.

Should you have any queries or require any clarity, please contact Brian Reid, Senior Executive Engineer, NRDO who is dealing with this matter.

Mise le meas,

Brian Reid
Land Liaison Manager
For on Behalf of Donegal National Road Design Office

FORM OF NOTICE OF THE MAKING OF A COMPULSORY PURCHASE ORDER UNDER SECTION 76 OF AND THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, AS EXTENDED BY SECTION 10 OF THE LOCAL GOVERNMENT (NO. 2) ACT, 1960, TO BE SERVED ON OWNERS, LESSEES AND OCCUPIERS IN ACCORDANCE WITH ARTICLE 4(b) OF THE THIRD SCHEDULE TO THE HOUSING ACT, 1966, AS AMENDED BY THE PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED) AND SECTIONS 212 AND 213 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) AND SECTION 184 OF THE LOCAL GOVERNMENT ACT 2001 (AS AMENDED).

COMPULSORY ACQUISITION OF LAND

DONEGAL COUNTY COUNCIL (TEN-T PRIORITY ROUTE IMPROVEMENT PROJECT, DONEGAL) COMPULSORY PURCHASE ORDER, 2026

To: Charlie Doherty

Of: One Stop Motor Shop, Dry Arch Business Park, Dromore, Dromore, Letterkenny, Co Donegal

1. Donegal County Council (hereinafter referred to as "the Local Authority") in exercise of the powers conferred upon them by Section 76 of the Housing Act, 1966 and the Third Schedule thereto, as extended by Section 10 of the Local Government (No.2) Act 1960 as substituted by Section 86 of the Housing Act, 1966 and as amended by Section 6 and the Second Schedule to the Roads Act, 1993 and the Planning and Development Act 2000 (as amended) and under sections 212 and 213 of the Planning and Development Act 2000 (as amended), and Section 184 of the Local Government Act 2001 (as amended), have made an order ("the Order ") entitled as above which is about to be submitted to An Coimisiún Pleanála (hereafter "the Commission") for confirmation.

2. If confirmed, the Order will authorise the Local Authority to acquire compulsorily the land and/or rights described in Parts IIa, IIb, III and IV of the Schedule to the Order ("the Schedule") for the purposes of a proposed road development consisting of an upgrade of three sections of the national road network, namely (1) N15/N13 Ballybofey/Stranorlar Urban Region. (2) N56/N13 Letterkenny to Manorcunningham, and (3) N14 Manorcunningham to Lifford/Strabane/A5 Link together with all associated amenities including an integrated active travel network and all ancillary and consequential works associated with and known as the TEN-T Priority Route Improvement Project, Donegal.

3. A copy of the Order and of the map referred to in it may be seen at:

   a) The offices of the Local Authority, County House, Lifford, F93 Y622
   b) The offices of the Local Authority, Public Services Centre, Letterkenny, F92 TNY3
   c) Twin Towns Community Library, The Base Enterprise Centre, Stranorlar, F93 VAK6
   d) The offices of the Local Authority, Public Services Centre, Donegal Town, F94 DK6C
   e) The offices of the Local Authority, Public Services Centre, An Clochán Liath, F94 H4CF
   f) The offices of the Local Authority, Public Services Centre, Carndonagh, F93 YV1N
   g) An Coimisiún Pleanála, 64 Marlborough Street, Dublin 1, D01 V902,

   on working days during normal working hours at each venue from the **15th May 2026 to 10th July 2026**.

4. A copy of the Order and of the maps referred to in it are also available on the following website www.donegal-ten-t.ie.

5. The Housing Act, 1966, as amended, provides that if an objection is made to the proposed compulsory acquisition of land and/or rights, the land and/or rights in respect of which an objection is duly made by any of the persons upon whom notices of the making of the order are required to be served shall not be acquired compulsorily unless the Commission makes an order to confirm the compulsory purchase order, unless:-
   a) the objection is withdrawn, or
   b) the Commission is satisfied that the objection relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation may have to be assessed.

6. The Commission cannot, however, confirm: -
   a) a compulsory purchase order in respect of the land if an objection is made in respect of the acquisition by an owner, lessee or occupier of the land, and not withdrawn;
   b) an order which authorises the extinguishment of a public right of way if there is an objection to the extinguishment, which is not withdrawn;
   c) an order which authorises the acquisition of a private right of way if there is an objection to the acquisition of the private right of way by an owner, lessee or occupier of the private right of way which is not withdrawn,

   until it has considered the objection.

7. The Commission has an absolute discretion under Section 218 of the Planning and Development Act 2000 (as amended) to hold an oral hearing.

8. Before making its decision on an application to confirm the Order, the Commission must consider any objection made and not withdrawn, any additional submissions or observations made pursuant to a request by the Commission under Section 217A of the Planning and Development Act 2000 (as amended) and any report of the person who held the oral hearing, if such an oral hearing takes place.

9. Any objection to the Order must state in writing the grounds of objection and be sent addressed to **An Coimisiún Pleanála at 64 Marlborough Street, Dublin 1, D01 V902**, so as to reach the said Commission before **5.30 pm on the 10th July 2026.**

10. An Environmental Impact Assessment Report, and a Natura Impact Statement have been prepared in respect of the development which it is proposed to carry out on the land for which separate public notice has been given. Copies of the Environmental Impact Assessment Report and the Natura Impact Statement are available for inspection at locations listed at Point 3 above and on the following website www.donegal-ten-t.ie and can be purchased at the offices listed at a) – f) at Point 3 above.

    Submissions or observations in relation to (i) the likely effects on the environment of the proposed development, (ii) the implication of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the proposed development and (iii) the likely significant effect of the proposed development on European Sites, may be made in writing to the Commission before the **5.30 pm on the 10th July 2026.** Evidence in relation to (i) the likely effects on the environment of the proposed development, (ii) the implication of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the proposed development and (iii) the likely significant effects of the proposed development on European Sites may be heard at any oral hearing, that may take place.

11. The Commission has an absolute discretion at any time before making its decision to request further submissions or observations in relation to the proposed development and/or to hold meetings with the Local Authority in relation to the proposed development in accordance with Section 217A of the Planning and Development Act 2000 (as amended).

12. The Commission, if it thinks fit, may confirm the compulsory acquisition or any part thereof, with or without conditions or modifications, or may annul the Order or any part thereof.

13. If no objection is received to the proposed compulsory acquisition of land and/or rights, the objection is withdrawn or the Commission is satisfied that the objection relates exclusively to matters which can be dealt with by the arbitrator by whom the compensation may have to be assessed, the Commission shall inform the Local Authority, which may then confirm the Order with or without modification, or refuse to so confirm it.

14. If the land and/or rights to which the Order, as confirmed by either the Commission or the Local Authority relates is acquired by the Local Authority, compensation for the land and/or rights will be assessed in respect of the acquisition as the value of the land and/or rights at the date that the relevant notice to treat is served.

15. In the opinion of the Local Authority, no part of the land in which you have an interest consists of a house or houses which is/are unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense. If the land to which the Order relates is acquired by the Local Authority, compensation will be assessed in accordance with Part II of the Fourth Schedule to the Housing Act, 1966, and the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 as amended by the Acquisition of Land (Reference Committee) Act, 1925, the Property Values (Arbitrations and Appeals) Act, 1960, and the Local Government (Planning and Development) Act, 1963 (as applied by section 265(3) of the Planning and Development Act, 2000), subject to the modifications contained in the Third Schedule to the Housing Act, 1966 (as amended).

16. Any dispute in relation to compensation shall be referred to and be determined by a property arbitrator appointed under the Property Values (Arbitration and Appeals) Act, 1960.

17. A claimant for compensation may at any time after the expiration of the fourteen days from the date on which the relevant notice to treat is served, send to the Secretary, the Reference Committee, Four Courts, Dublin an application in writing for the nomination of a property arbitrator for the purpose of determining the compensation to be paid. The application should be made in accordance with the Property Values (Arbitrations and Appeals) Rules, 1961 (S.I. No. 91 of 1961).

18. An extract from the Schedule and Map indicating lands and/or rights in which you may have an interest is attached.

19. If you have any questions or queries in relation to the above or attached map, or if you no longer have an interest in this property or are aware of anyone else who has an interest in this property, please contact us at Brian Reid, Senior Executive Engineer, NRDO, Drumlonagher, Donegal Town, at design@dnrdo.ie or on 074 9724500.

Dated this 13th **day of** May **2026**

Brian Reid
Senior Executive Engineer
For and on behalf of the Local Authority

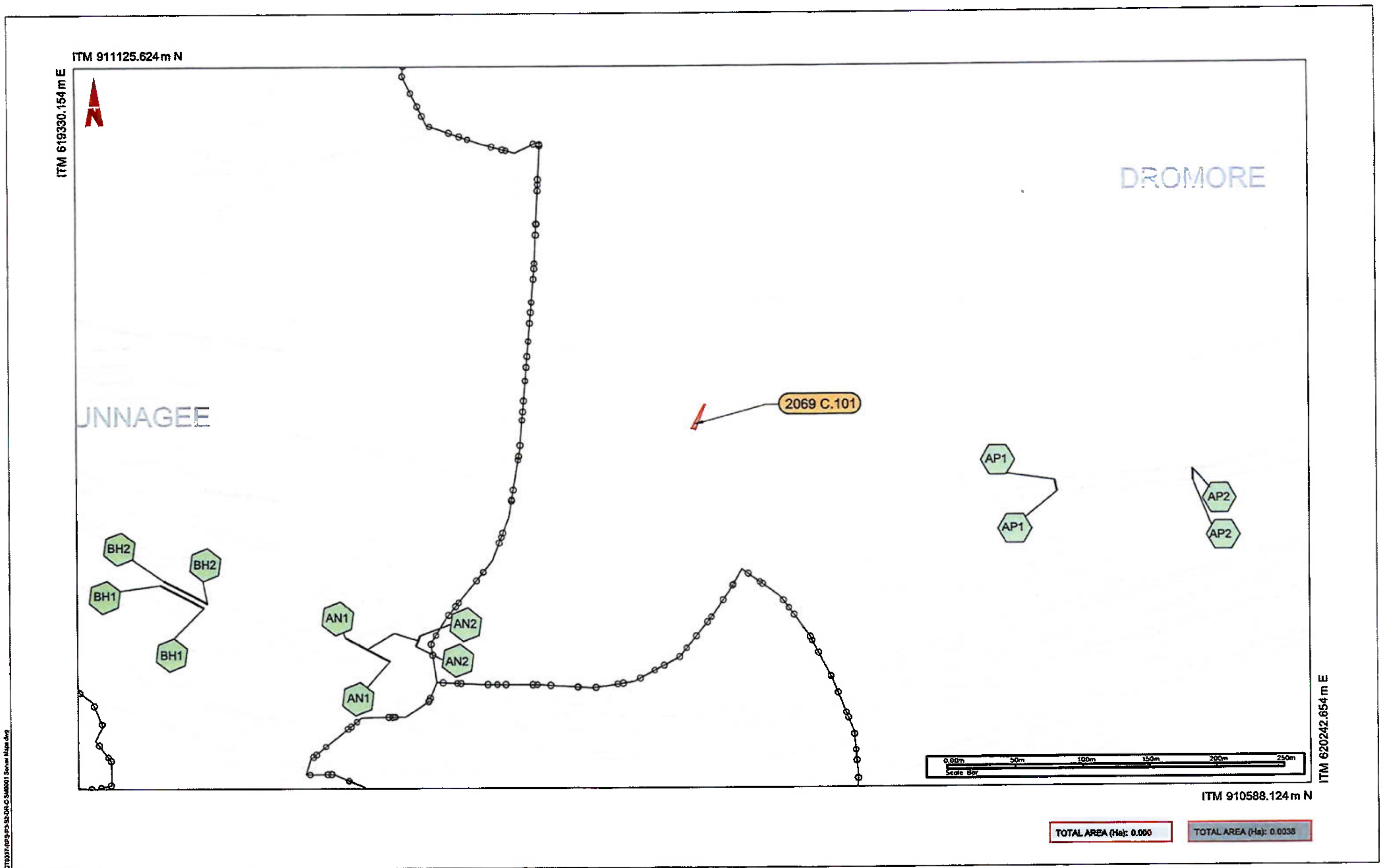
Donegal County Council (TEN-T Priority Route Improvement Project, Donegal) Compulsory Purchase Order 2026

CPO SCHEDULE - Part IIb

Section 2 - N56/N13 Letterkenny to Manorcunningham

Land other than Land consisting of a House or Houses unfit for Human Habitation and not capable of being rendered fit for Human Habitation at reasonable expense to be acquired Temporarily

Number on map deposited at the offices of the Local Authority	Quantity, Description and Situation of the Land			Owners or Reputed Owners	Lessees or Reputed Lessees	Occupiers
	Area in Hectares	Location	Description of Property			
2069 C.101	0.0038	Dromore Letterkenny Co Donegal	Commercial	One Stop Motor Shop Ltd c/o Charlie Doherty	None	One Stop Motor Shop Ltd c/o Charlie Doherty



Comhairle Contae Dhún na nGall
Donegal County Council

Donegal County Council
County House
Lifford
Co. Donegal
F93 Y622

LEGEND:
Schedule Part IIa — Lands to be Permanently Acquired
Schedule Part IIb — Lands to be Temporarily Acquired
Townland Boundary
Schedule Part III — Public Rights of Way proposed to be extinguished
Schedule Part IV — Private Rights of Way proposed to be acquired

Lands to be Acquired from: One Stop Motor Shop Ltd. c/o Charlie Doherty, Ros House, Dry Arch Business Park, Letterkenny, Co. Donegal

CPO Reference Number: 2069

Rev	Date	Drawn	Description	Chk'd	App
P02	18.12.25	KT	ISSUE FOR PLANNING	LB	EC
P01	19.11.25	KT	ISSUE FOR PLANNING	LB	EC

Project Title: TEN-T PRIORITY ROUTE IMPROVEMENT PROJECT, DONEGAL SECTION 2 - N56/N13 LETTERKENNY TO MANORCUNNINGHAM

Drawing Title: SERVER MAP LANDOWNER REF. 2069

Status: A3

Designed: SS
Drawn: AB
Approved: EC
Checked: SS
Date: SEP 2021
Scale @ A1: 1:1250
@ A3: 1:2500
Sheet: 01 of 01
Vault File Identifier: N/A
File Identifier: TT_MGT0337-RPS-P3-S2-DR-C-SM0001
Rev: P02

GENESIS PLANNING CONSULTANTS

GROUNDS OF OBJECTION

In respect of

**CPO ORDER RE LANDS AT DROMORE
LETTERKENNY, CO. DONEGAL**

Prepared by

GENESIS PLANNING CONSULTANTS

On behalf of

CHARLIE DOHERTY & ONE STOP MOTOR SHOP LTD

CPO Order re

**Donegal County Council (TEN-T Priority Route Improvement
Project, Donegal)
Compulsory Purchase Order 2026**

JULY 2026

Office UK: Dean Swift Building, Armagh Business Park,
Hamiltonsbawn Road, Armagh, BT60 1HW
Email: info@genesisplanning.co.uk

Tel: (+44) 28 30493 001
Tel: (+353) 45 571 682

GENESIS
PLANNING
CONSULTANTS

Document Control Sheet

Job Title: Lands at Dromore, Letterkenny

Job Number: 2026-68

Report Ref: Lands at Dromore, Letterkenny CPO

Author: R Woods

Date: July 2026

Client: Charles Doherty & One Stop Motor Shop Ltd

Document Status				
Rev	Purpose of Document	Authored by	Approved by	Review Date
1	Draft	N Carr	R Woods	06/07/26
2	Final	R Woods	R Woods	08/07/26

Approval for Issue		
Ronan Woods	R Woods.	08/07/26

The report has been prepared for the exclusive use of our client unless otherwise agreed in writing.

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1 INTRODUCTION

1.1 Overview

1.1.1 Donegal County Council has made, and is seeking confirmation from An Coimisiún Pleanála of a Compulsory Purchase Order in respect of lands at Dromore, Letterkenny, Co. Donegal, in which Charlie Doherty as owner and Director One Stop Motor Shop Ltd hold an interest, for the purposes of the TEN-T Priority Route Improvement Project, Donegal.

1.1.2 This practice was engaged by the objector Mr Charlie Doherty as owner and Director of One Stop Motor Stop Ltd and owner of the subject lands to examine and assess the proposed CPO insofar as it affects his lands and interests, and to prepare this statement of grounds of objection to An Coimisiún on his behalf.

1.1.3 It is in this context that we submit this statement to An Coimisiún to demonstrate that the proposed CPO, insofar as it relates to the objector's lands at Map References 2064 I.101 and 2069 C.101, is not justified, either in it's extent or in the manner in which it has been brought forward, and that the established criteria for confirmation of a CPO have not been met.

1.1.4 In preparing this submission, Genesis Planning has undertaken an analysis of the objector's lands and interest in the context of the CPO documentation, project particulars, the Environmental Impact Assessment Report and the relevant statutory and policy framework.

1.1.5 The analysis undertaken by this practice identifies a number of areas of interest and concern for the objectors against the CPO. These are set out in this report.

1.2 Legal Interest

1.2.1 As per the CPO Order, public notices and the Schedule extract served under cover of the National Roads Office's letter dated 13th May 2026 (Ref. 1036-2026-L-14669), Mr Charlie Doherty and One Stop Motor Shop Ltd are stated as owner and occupier of the lands at Map Reference 2064.L.101, Dromore, Letterkenny, extending to 1.7031 hectares and also lands as per Map Reference 2069 C.101.

1.2.2 Article 4(b) of the Third Schedule to the Housing Act, 1966 (as amended) requires the Local Authority, in making a Compulsory Purchase Order, to serve on every owner, lessee and occupier of land to which the Order relates a notice stating the effect of the Order. Section 75(e) of the Act defines an "owner" as:

'a person who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, and includes a person holding or entitled to the rents and profits of the land under a lease with an unexpired term exceeding three years.'

1.2.3 Accordingly, the objector being persons upon whom notice of the making of the Order has been served as owner and occupier respectively, have legal standing to make this objection to the Coimisiún.

1.3 **Background to the submission**

1.3.1 As can be seen from the local context the area has been developed in recent years, most notably by the objector's established business directly adjacent and south-east. Of relevance the CPO order seeks to directly acquire the means of access to the existing business and also lands owned that are intended for future business purposes.

1.3.2 We also highlight for the Coimisiun the previous planning approval to develop the subject lands which details how this is an ideal site for a new urban quarter incorporating commercial units in a suburban location that comprises zoned lands.

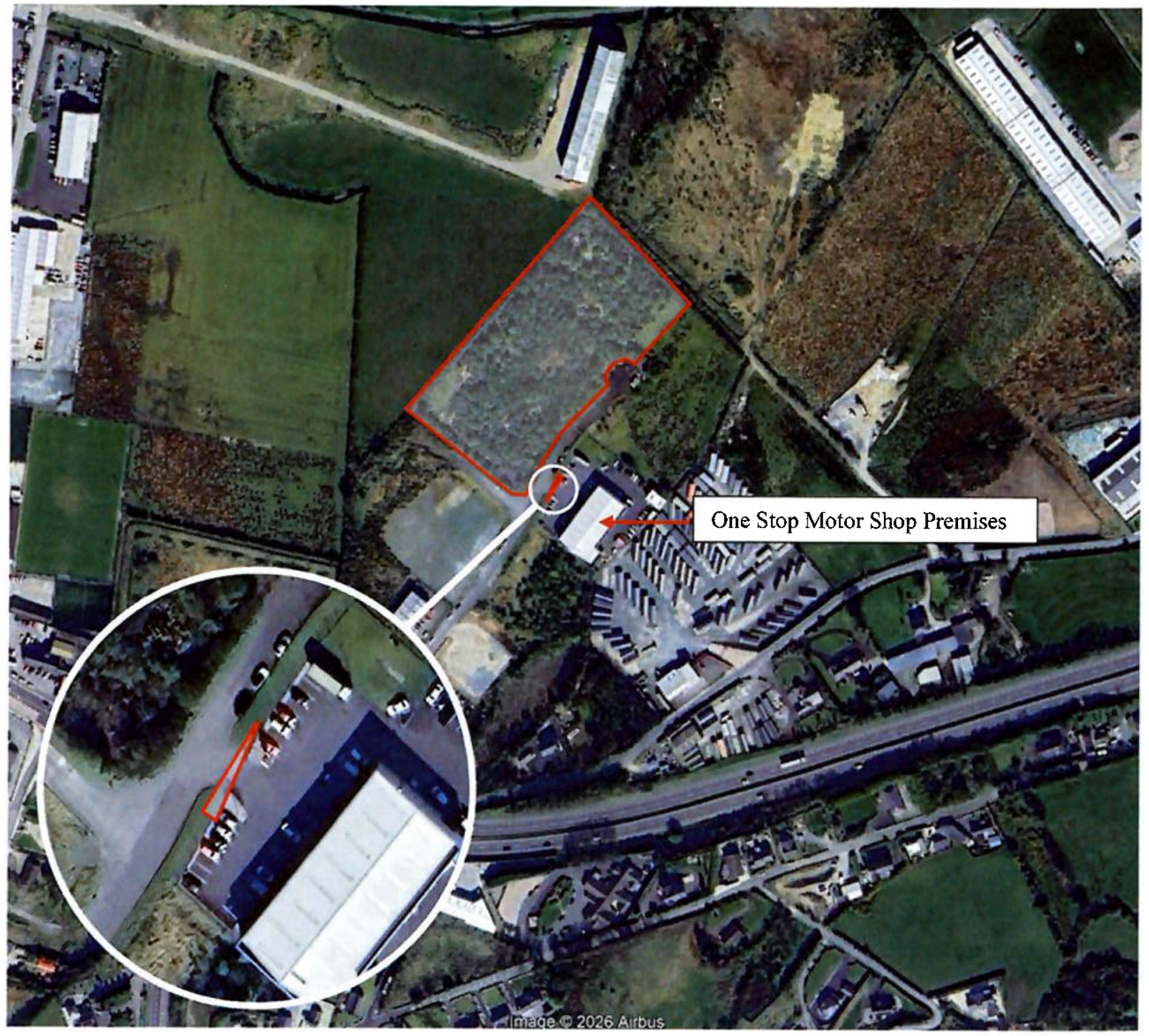

Figure 1 Subject lands denoted in red as per CPO Schedules

1.4 **Format of submission**

1.4.1 This submission set outs the justification on how the CPO is not appropriate in planning and land use terms:

- Section 2 sets out the grounds of objection
- Section 3 sets out the summary and conclusion

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2 GROUNDS OF OBJECTION

2.1 Overview of the TEN-T Priority Route Improvement Project

2.1.1 The scheme comprises the upgrade of three sections of the national road network: (1) N15/N13 Ballybofey/Stranorlar Urban Region; (2) N56/N13 Letterkenny to Manorcunningham; and (3) N14 Manorcunningham to Lifford/Strabane/A5 Link, together with an integrated active travel network and all associated and ancillary works.

2.1.2 The objectors' lands at Map Reference 2064.1.101 fall within Section 2 of the Scheme (N56/N13 Letterkenny to Manorcunningham) and are described in Part IIa of the Schedule to the CPO as land, other than land consisting of a house or houses unfit for human habitation, to be acquired permanently.

2.1.3 The works in the Ten T project comprise a new offline dual carriageway realignment of the N13, identified as Option 2D (the Preferred Option) in Donegal County Council's Phase 2 Option Selection Report (December 2019), commencing approximately 2km south of the existing Dry Arch Roundabout and re-joining the existing N13 corridor approximately 600m to the east of Dry Arch Roundabout, in the townland of Dromore. The objectors' lands lie at this eastern tie-in point of the realignment, in the vicinity of the proposed Dromore Junction and Dromore Local Roundabout shown on Drawing TT_MGT0337-RPS-P3-S2-DR-C-DG0045 (Sheet 02 of 07).

2.1.4 We note the drawing set also shows a separate new link road connecting the realigned N13 to the existing N56/R245 junction north of Letterkenny, via the Dry Arch Roundabout, Bonagee Junction, Bonagee Link and Ballyraine Junction (Sheets 02, 03, 06 and 07), providing a new crossing of the River Swilly SAC/SPA. This link was a common element of all route options considered at Options Selection stage and is not itself determinative of the extent of the take from the objectors' lands, which arises instead from the mainline realignment and associated junction works at Dromore.

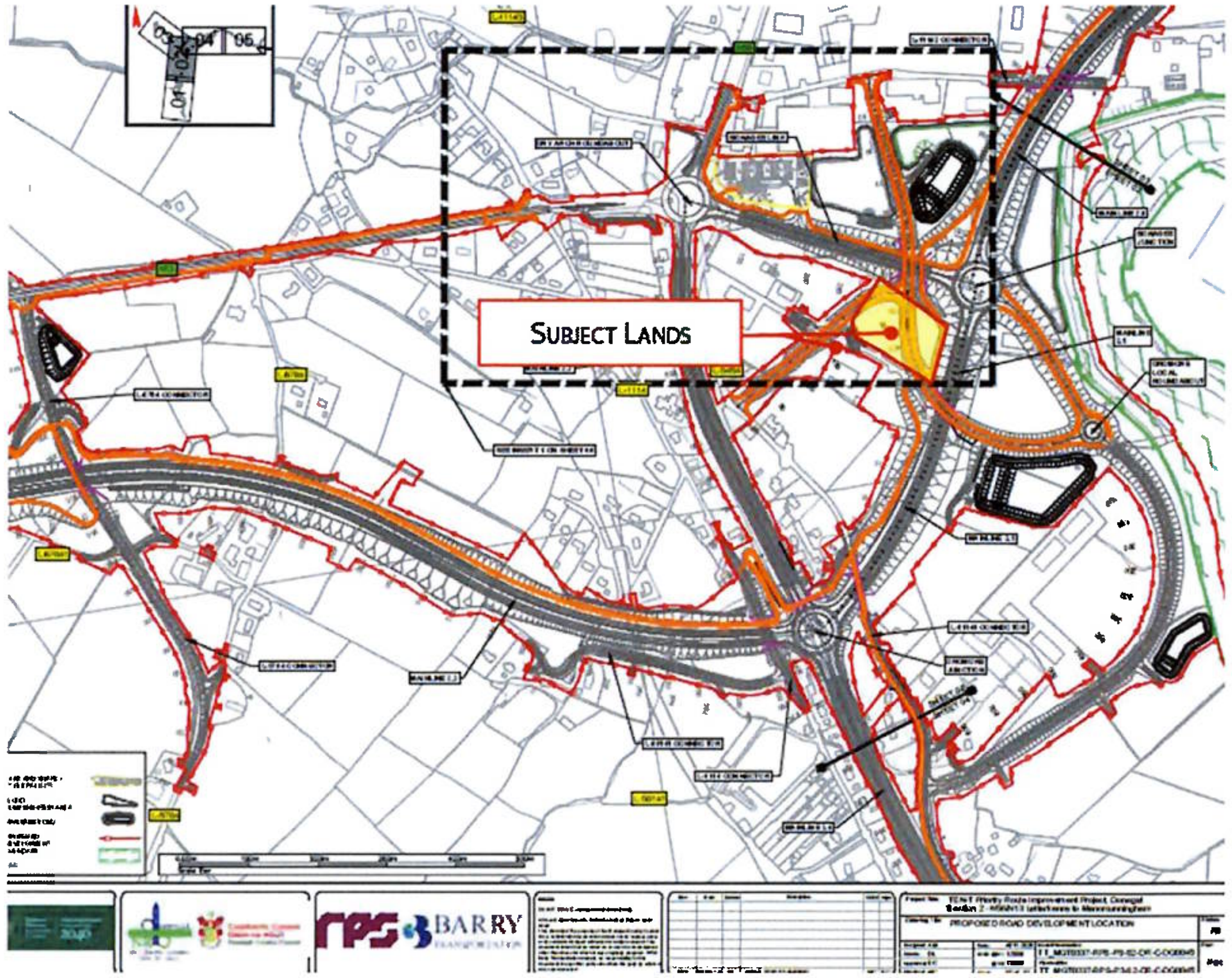

Figure 2 Proposed road development layout with subject lands outlined

2.2 The Test for Justification of a Compulsory Purchase Order

2.2.1 It is well established, as documented in 'Compulsory Purchase and Compensation in Ireland: Law and Practice', that four criteria should be applied in considering whether it is appropriate to exercise powers of compulsory purchase to acquire land or property:

- Point 1: There is a community need which is met by the acquisition of the property in question;
- Point 2: The particular property is suitable to meet that community need;
- Point 3: The works to be carried out accord with the Development Plan; and
- Point 4: Any alternative method of meeting the community need has been considered but is not available.

2.2.2 We address each of these criteria below by reference to the objectors' lands specifically. For the avoidance of doubt, our clients do not dispute the general public need for improvement of the national road network in this part of Donegal; the objection is directed to the necessity, extent and manner of acquisition of their particular lands and interest.

2.3 Point 1: Community Need

2.3.1 While a general community need for national road improvement works in the Letterkenny to Manorcunningham corridor may be accepted in principle, the objector does not accept that the Council has demonstrated that the acquisition of the entirety of his lands as identified in the CPO Schedules enclosed is necessary to meet that need.

2.3.2 In terms of background we have reviewed the Council's Phase 2 Option Selection Report (dated December 2019), which records that the Preferred Option (2D) was selected over the shortlisted online option (2A) substantially on Safety and Physical Activity grounds, arising from the sub-standard geometry, steep vertical gradient (up to 8.7%) and absence of vulnerable road user facilities on the existing N13 approximately 2km to the south of the Dry Arch Roundabout, in the vicinity of Lurgybrack and St. Patrick's National School. Indeed, the Report itself records that the online option would have required "minimal land-take compared to other options" and resulted in "lower overall environmental impacts and construction cost."

2.3.3 The safety deficiencies relied upon to justify the offline realignment therefore relate to a location approximately 2.5-3km from the objectors' lands at Dromore. However we highlight no evidence has been provided to Mr Doherty to demonstrate that those safety considerations, in themselves, establish the necessity for the specific extent and configuration of the junction works and land-take required at the eastern tie-in point of the realignment.

2.3.4 We further note that the Option Selection Report is a strategic, corridor-level assessment dated December 2019, more than six years prior to the detailed design now shown on the Issue for Planning drawings (dated April 2026).

2.3.5 Furthermore no evidence has been provided to the objectors that the detailed design process undertaken in the intervening period specifically examined means of reducing the extent of the take from this holding, whether by refinement of the Dromore Junction/Dromore Local Roundabout layout, boundary adjustment, or use of a lesser interest in lieu of outright CPO acquisition.

2.3.6 In the absence of such evidence, we submit the community need criterion has not been adequately demonstrated in respect of the specific quantum of land and rights being acquired from this holding. Indeed it can be stated the design underlying the CPO now under consideration is outdated.

2.4 Point 2: Suitability of the Land

2.4.1 The subject lands are owned by the objector and represent a strategic land-holding owned at this location that are planned to facilitate future expansion of the business 'One Stop Motorshop Ltd, which is an established automotive business serving the area. By way of background the business provides a range of motor-related services and operates from a purpose-built commercial site comprising buildings, customer areas, circulation space, parking and an external operational yard.

2.4.2 The lands proposed to be acquired form part of the lands which the business has for future expansion plans. The acquisition would therefore affect not merely surplus or undeveloped land, but land which contributes directly to the future and commercial viability of the business.

2.4.3 The suitability of this particular land for the scheme must therefore be considered not only from an engineering perspective, but also having regard to its existing lawful commercial use, the investment made in the acquiring the site, and the practical consequences of removing operational land and future expansion lands from an established business.

2.4.4 The business currently employs a local workforce and serves customers from across County Donegal and the wider North West. Photographs of the site and the operational areas affected by the proposed acquisition are shown opposite.

2.4.5 It is submitted that the Council has not adequately considered, as part of it's assessment of land suitability, whether an alternative alignment or reduced take would avoid or reduce the impact on this established business, notwithstanding that such matters go directly to the suitability of this land, as opposed to any other available option, for meeting the Scheme's requirements.

Figure 3,4 and 5 Existing business context and access road

2.5 Point 3: Accordance with the Development Plan

2.5.1 We highlight the Coimisiún is required to be satisfied that the works to be carried out accord with the relevant Development Plan. In this context the subject lands are predominantly zoned General Employment, with only a small area identified as Open Space.

2.5.2 The purpose of this zoning is to facilitate employment-generating and commercial development in support of the strategic growth of Letterkenny and businesses.

2.5.3 Quite simply we highlight the compulsory acquisition of these lands would result in the loss and significant impairment, of expansion plans for the landowner. This is a material planning consideration which goes directly to the question of whether the Scheme accords with the Development Plan.

2.5.4 In these circumstances, it is incumbent on the acquiring authority to demonstrate why the acquisition of these particular lands is necessary, proportionate and consistent with the proper planning and sustainable development of the area.

2.5.5 We would also note the Development Plan seeks not only to provide lands for employment but also to protect and promote established economic activity. Insofar as the preferred alignment would adversely affect an existing lawful business operating from lands specifically zoned for employment and commercial use, it is submitted that the Scheme has not adequately demonstrated accordance with the Development Plan.

2.5.6 Furthermore no evidence has been provided that alternative design solutions were examined which would avoid, or materially reduce, the impact on these strategically zoned employment lands while still achieving the objectives of the Scheme. This is a matter which the Coimisiún must consider before being satisfied that the statutory test of accordance with the Development Plan has been met.

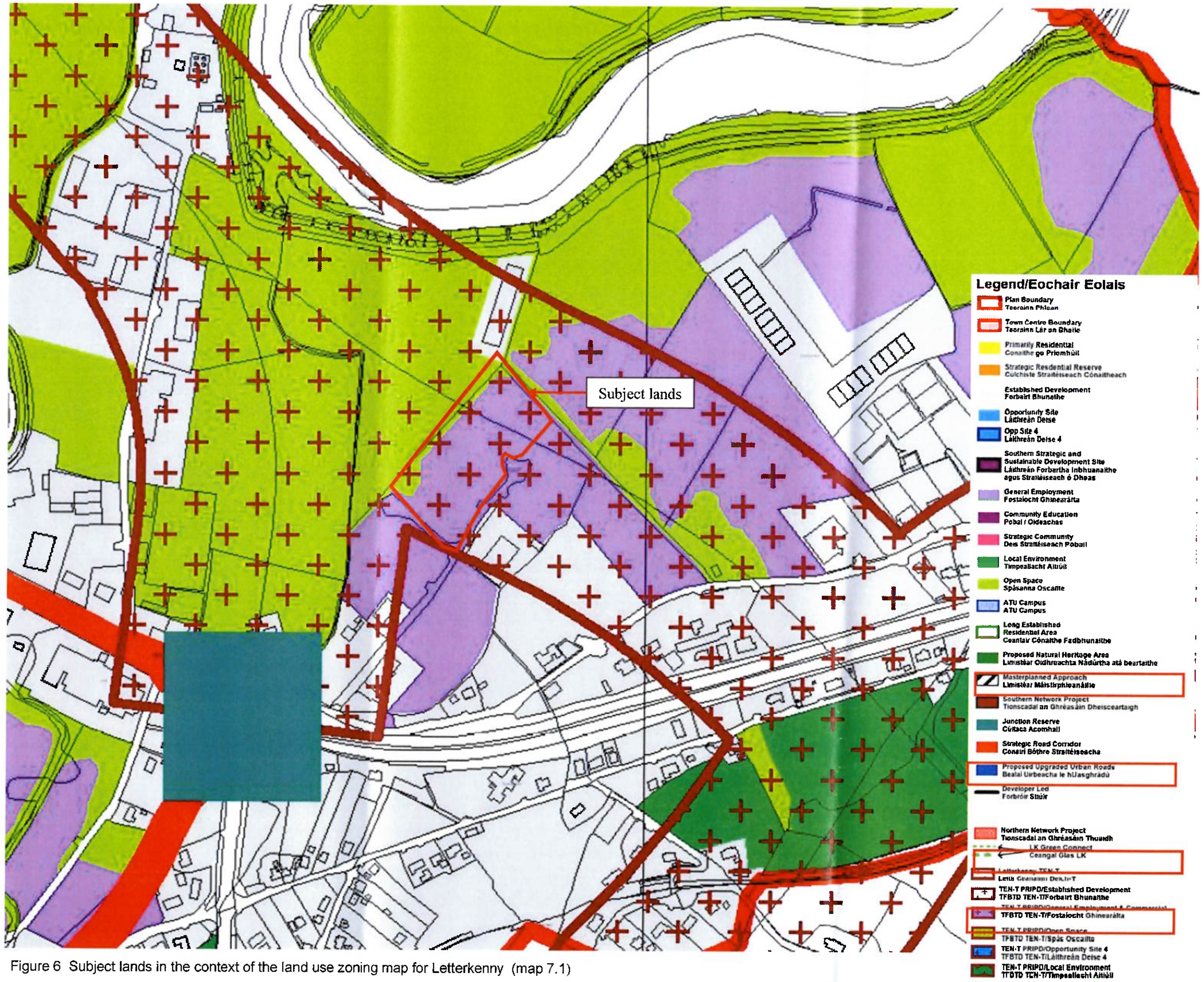

Figure 6 Subject lands in the context of the land use zoning map for Letterkenny (map 7.1)

Point 3: Accordance with the Development Plan (cont.)

Planning History

2.5.7 The planning history of the subject lands also demonstrates a long-established and planning status of the lands for employment and commercial development at this location. By way of background planning permission (Ref. 01/6309) was granted by Donegal County Council in December 2001 for the development of a business park at Dromore, with the Final Grant issuing in January 2002. Historically this demonstrates the Planning Authority were satisfied that the lands were suitable for employment-generating development and that such development represented the proper planning and sustainable development of the area.

2.5.8 The site adjacent to the CPO lands has since been developed and is occupied by One Stop Motor Shop Ltd, an established family-owned business operating from the lands since 1998. The existing use is entirely consistent with both the historic planning permission and the current zoning objectives of the Donegal County Development Plan, which identify the lands as being predominantly for TEN-T Priority Project - General Employment and Commercial purposes.

2.5.9 The attached zoning map above demonstrates that the subject lands are almost entirely identified for General Employment and Commercial uses, with only a very small area designated as Open Space. The Development Plan therefore not only anticipates continued commercial activity on these lands but actively promotes their retention and development for employment-generating purposes.

2.5.10 In this context, the proposed compulsory acquisition would directly undermine the long-established planning strategy for the site by reducing or impairing an established commercial enterprise operating from lands specifically identified for employment purposes. It is submitted that this represents a material planning consideration which requires careful assessment by An Coimisiún when considering whether the Scheme accords with the Development Plan.

2.5.11 We submit the Council has not demonstrated why the acquisition of these particular employment lands is consistent with the objectives of the Development Plan, nor why alternative alignments or design refinements could not have reduced the impact on an established commercial use while still achieving the objectives of the Scheme. In the absence of such assessment, it is submitted that An Coimisiún cannot be satisfied that the statutory requirement that the works accord with the Development Plan has been met.

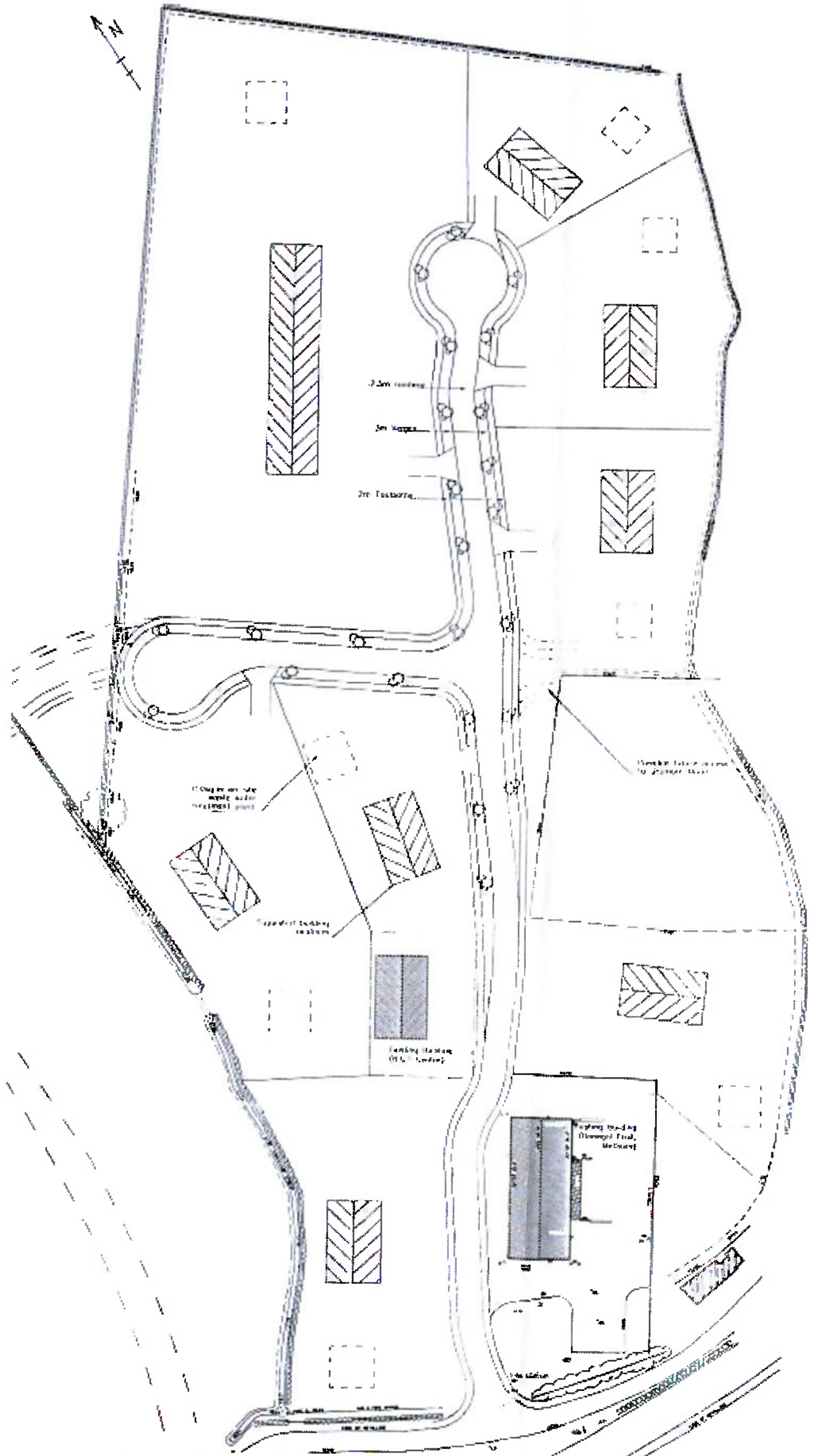

Figure 7 Site layout approved as per 01/6309

2.6 **Point 4: Alternatives**

2.6.1 Having reviewed the Phase 2 Option Selection Report (December 2019), it is noted that a structured options assessment was undertaken for Section 2, in which six alternative mainline corridor options (2A, 2B, 2C, 2D, 2E and 2F1/2F2) were compared using a multi-criteria appraisal, with Option 2D identified as the Preferred Option with an overall score of 106, level with Option 2C, and ahead of Options 2A, 2B, 2E, 2F1 and 2F2.

2.6.2 We note, however, that Options 2D and 2C have near-identical alignments over approximately 90% of their length, differing only over some 1.2km between the townlands of Corranagh, Lurgybrack and Drumany, and that the choice between them was determined by a pairwise comparison based on marginal differences in impact on residential properties, agricultural land, and Benefit-to-Cost Ratio - not by reference to impacts on established commercial premises such as the objector's lands.

2.6.3 No evidence has been provided to the objectors that the detailed junction design and land-take at Dromore, as now shown on the issue for drawings was itself the subject of a specific alternatives or minimisation exercise having regard to the objectors' business, as distinct from the strategic corridor-level comparison carried out in 2019.

2.6.4 We submit Mr Doherty reserves the right to request, and to review, any such detailed design alternatives assessment, and to make further submissions on this point once same has been provided or otherwise established not to exist, whether pursuant to a request of the Coimisiún under Section 217A of the Planning and Development Act 2000 (as amended) or otherwise.

2.6.5 Also relevant to alternatives we highlight the CPO Map ID 2069-C-101 is wholly inappropriate as it directly impacts the only means of access to the objector's business premises. This is addressed further below under Grounds of Objection.

2.7 Grounds of Objection

2.7.1 In addition to Points 1- 4 aforementioned whereby we submit the proposal does not comply with four criteria to justify a CPO we also raise several grounds of objection below.

2.8 Ground of Objection 1: Business Disruption and Loss of Land for Business Expansion

2.8.1 One Stop Motor Shop Ltd (Mr Doherty's business) operates from the lands adjacent to and directly affected by the CPO lands. The compulsory acquisition of the lands at Map Reference 2064.1.101, whether in whole or in part, will have a direct and material adverse impact on the future operation of that business, including loss of lands for future expansion, disruption during construction, and the practical ability of the business to expand on lands currently owned.

2.8.2 It is submitted that the socio-economic effects of the Scheme on this established business have not been adequately assessed in the Environmental Impact Assessment Report, contrary to the requirement to assess the implications of the proposed development for proper planning and sustainable development in the area in which it is proposed to situate the development.

2.8.3 We also highlight the lands encompassed in Map ID 2069 C.101 directly impact the means of access to Mr Doherty's lands. This would have the practical effect of restricting access to his business premises as operational. This is shown below.

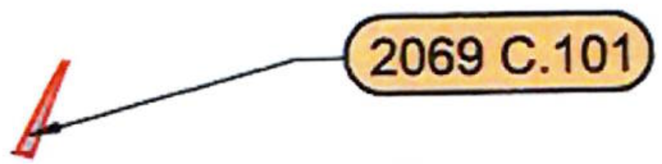

Figure 8 Extract from CPO Map ID 2069 C.101

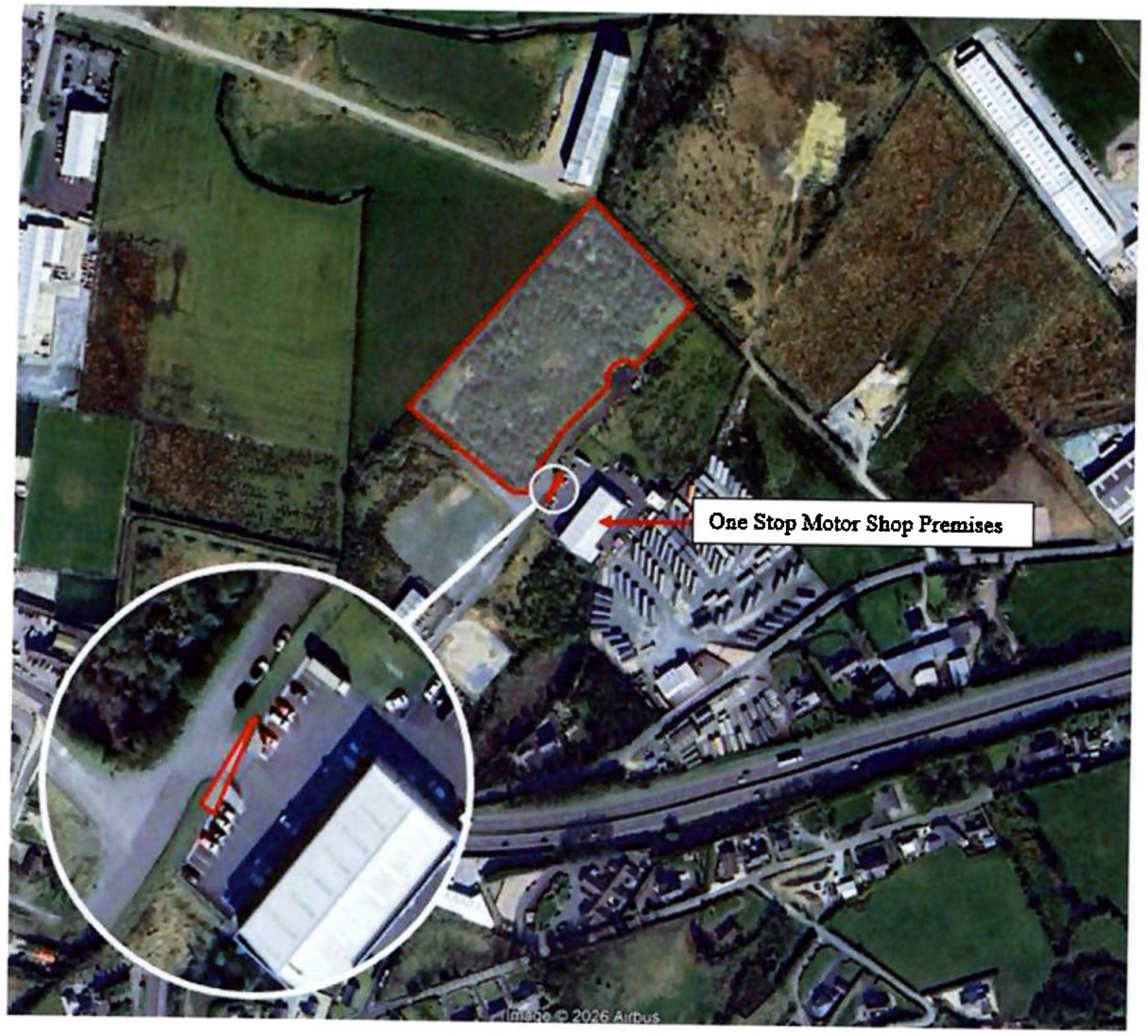

Figure 9 Extract from CPO Map ID 2069 C.101 overlaid onto aerial image

2.9 Ground of Objection 2: Access and Severance

2.9.1 The map accompanying the Order indicates a number of ancillary survey/reference points in the vicinity of the affected lands. Clarification is required as to whether any part of the Scheme, including construction access, drainage or other ancillary works, will result in severance of the remaining lands from the public road network or otherwise restrict existing access to the site.

2.9.2 Without prejudice to the foregoing grounds of objection to the principle and extent of the acquisition, Mr Doherty reserve all rights in respect of compensation for the land and rights acquired, and for all consequential loss including severance, injurious affection, disturbance, loss of profits and diminution in the value of the business, to be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (as amended) and the Property Values (Arbitration and Appeals) Act, 1960.

2.10 Ground of Objection 3: Reliance on Outdated Option Selection Evidence Base

2.10.1 The Scheme's justification for the alignment and extent of the take from the objectors' lands rests substantially on the Phase 2 Option Selection Report (December 2019), addressed at Section 2.6 above, a document now some seven years old by the anticipated date of any confirmation decision.

2.10.2 By way of background we note that An Bord Pleanála's approval of the N6 Galway City Ring Road, granted in December 2021, was quashed by consent of the High Court in proceedings brought by Friends of the Irish Environment, on the ground that the Bord had failed to have regard to the Climate Action Plan adopted by Government some four days prior to its decision (final Orders, January 2023). Of relevance the Bord conceded that a decision-maker cannot rely on an evidential and policy basis that has been superseded by material developments occurring before the date of decision.

2.10.3 We submit that an equivalent obligation applies in this case. No evidence has been provided to the objectors that the Scheme's option selection, need case, or carbon and climate impact assessment has been revisited by reference to the updated National Planning Framework, the Climate Action Plans adopted in the intervening period since 2019, or current Transport Infrastructure Ireland guidance on greenhouse gas assessment in road schemes.

2.10.4 In the absence of such reassessment, we say the Coimisiún cannot be satisfied that the compulsory acquisition of the objectors' lands remains necessary and proportionate by reference to current, rather than historic, policy. The objectors request that confirmation be withheld pending production of an updated assessment addressing this point, or that this deficiency be treated as a material factor going to the necessity of acquiring the objectors' specific landholding.

2.11 Ground 4: Flood Risk

2.11.1 We note that the proposed Scheme passes through lands identified within the OPW CFRAM flood mapping as being subject to fluvial flood risk. The mapped flood extents in the vicinity of the proposed alignment demonstrate that flood risk is a material planning consideration in the design and assessment of the Scheme.

2.11.2 In those circumstances, it is submitted that the Coimisiún must be satisfied that the detailed alignment, earthworks, structures and drainage proposals have been designed in accordance with the requirements of the Planning System and Flood Risk Management Guidelines and that the Scheme will not result in increased flood risk elsewhere or unnecessary encroachment into the functional floodplain.

2.11.3 Notwithstanding the Flood Risk incorporated into the EIAR and project particulars we submit that no evidence has been provided demonstrating that flood risk considerations were taken into account in selecting the detailed alignment affecting the objectors' lands, or that alternative alignments or design refinements capable of reducing impacts on both floodplain and established commercial lands were adequately examined.

2.11.4 This is a material consideration in assessing whether the proposed compulsory acquisition represents the least intrusive and most appropriate solution. It is also contrary to the Flood Risk Management Guidelines wherein it has not been detailed or modelled to demonstrate works incorporated into the Road Scheme will not adversely impact lands in the area which are outside of the CPO process. This is a fundamental consideration.

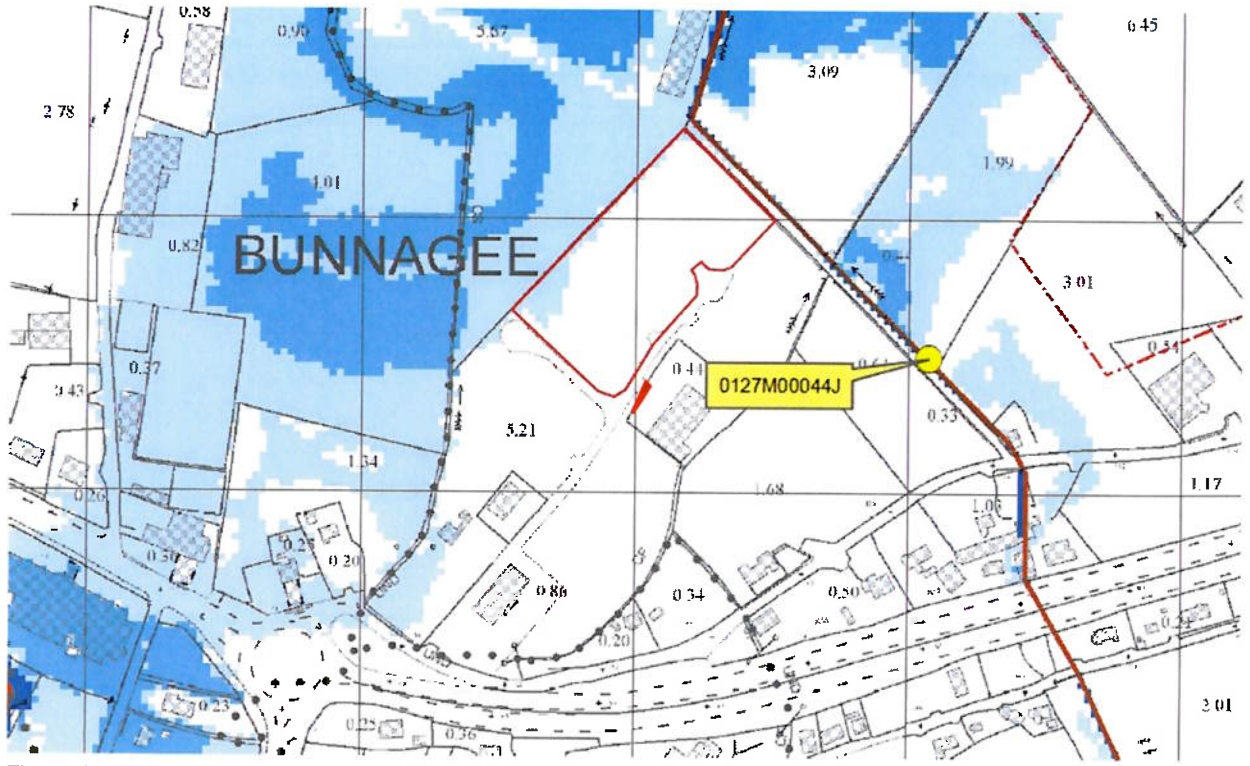

Figure 10 Fluvial flood map and subject lands

2.11.5 Section 8.4 of the Donegal CDP 2024-2030 is applicable and sets out a number of policies and objectives for projects affected by Flood Risk which include:

Objectives

F-O-1	To ensure that development does not give rise to unacceptable new flood risks or does not exacerbate existing flood risk.

Policies

F-P-1 CC	To only permit development where flood or surface water management issues can be successfully addressed and/or where there is no unacceptable residual flood risk for the development, its occupants and/or private property or public infrastructure elsewhere within the catchment. A precautionary approach shall be applied to the consideration of flood risk issues and shall include the application of the 'Avoid', 'Substitute', 'Justify' principles set out in the EU Floods Directive (2007/60/EC) and 'The Planning System and Flood Risk Management - Guidelines for Planning Authorities', November 2009, DoEHLG. Where appropriate, applicants/developers shall be required to submit: a. an independent 'Flood Risk Assessment' in accordance with the aforementioned Guidelines or any subsequent related publication and/or 'Surface Water Drainage Calculations', from suitably qualified persons; and b. evidence of compliance with the Justification test set out in Section 5.15 of the aforementioned Guidelines or any subsequent related publication.
F-P-2 CC	a. To require the use of Sustainable Urban Drainage Systems (SUDs) including flood attenuation areas, wetlands, the controlled release of surface waters and use of open spaces and semi-permeable hard surfaces for urban development proposals. b. Support the removal of existing stormwater discharging to combined (foul and storm) sewers using nature-based solutions. c. Not to support the discharge of additional surface water to combined sewers.
F-P-3 CC	To support the development of long and short-term flood remediation works, including embankments, sea defenses, drainage channels, and attenuation ponds and wetlands, subject to environmental considerations including potential impact on designated shellfish water and fresh water pearl mussel catchment areas, compliance with Article 6 of the Habitats Directive, best practice in Coastal Zone Management and the Marine Resource and Coastal Management policies of this Plan.
F-P-4	Not to permit developments which would hinder the maintenance of river or drainage channels.

2.11.6 **In this context the policy context of the CDP aligns with the Section 28 Guidelines, and development in a flood plain requires an adequate Flood Risk Assessment that fully asseses impact on affected lands.**

2.11.7 With a detailed flood risk analysis having not been carried out or available to show how the Road Scheme impacts, or does not impact, lands in the area the proposal is therefore a Material Contravention of the Donegal CDP 2024-2030.

2.11.8 We refer to Case Law on what is a Material Contravention, as also cited in Heather Hill Management Company clg & anor -v- An Bord Pleanála & anor (2019) wherein at paragraph 52 it states:

'52. The test for determining whether a contravention is material is that prescribed by the High Court (Barron J.) in Roughan v. Clare County Council, unreported, High Court, Barron J., 18 December 1996. "It has been submitted on behalf of the Applicants that what is or is not a material development has to be considered in the light of the substance of the proposed development; whether or not any change of use would be significant; the location of the proposed development; the planning history of the site or area; ***and the objectives of the development plan.*** *I accept that all these matters must be taken into account when considering whether or not any proposed contravention of the development plan is material. What is material depends upon the grounds upon which the proposed development is being, or might reasonably be expected to be, opposed by local interests. If there are no real or substantial grounds in the context of planning law for opposing the development, then it is unlikely to be a material contravention."*

53. (This test has been very recently approved of by the High Court (Baker J.) in Byrnes v. Dublin City Council [2017] IEHC 19, [23]).

54. Applying this test to the facts of the present case, a decision to grant planning permission for 197 units at Bearna self-evidently represents a material contravention of the plan.'

2.11.9 Accordingly on the grounds of both the design and flood risk matters, inter alia other grounds we have raised under our Grounds of objection, we submit the works to be carried out do not accord with the Development Plan and are clearly a Material Contravention.

2.12 Ground 5: Ecology and Derogation Licence Requirements

2.12.1 We have reviewed the Ecological Assessments incorporated into the EIAR and note the surveys that have been carried out over the preceeding years. Of note all bat species occurring in the State, and the otter (Lutra lutra), are subject to the system of strict protection required by Article 12 of Council Directive 92/43/EEC (the "Habitats Directive"), transposed into Irish law by Regulations 51 to 54 of the European Communities (Birds and Natural Habitats) Regulations 2011 ("the 2011 Regulations"). Regulation 51 prohibits, without a derogation licence granted under Regulation 54, the deliberate disturbance of these species and the damage or destruction of their breeding sites or resting places.

2.12.2 As per the European Judgement C-166/22 the Law requires a Derogation Licence before development consent is given. Specifically paragraph 36 states:

> 36 **It follows from that case-law that, in the specific case where, first, the execution of a project that is subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed in the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, second, a Member State confers power to grant such a derogation on an authority other than the one on which it confers power to give development consent for the project, that potential derogation must necessarily be adopted before development consent is given. If it were otherwise, that development consent would be given on an incomplete basis and would not, therefore, meet the applicable requirements (see, to that effect, judgment of 24 February 2022, *Namur-Est Environnement*, C-463/20, EU:C:2022:121, paragraphs 52 and 59 and the case-law cited).**

2.12.3 Having reviewed the Ecology assessments we note impacts and disturbance on Protected Species will arise. We highlight the Biodiversity (Terrestrial Ecology) Baseline Report confirms multiple bat roosts in structures and trees within, or immediately adjacent to, the CPO boundary. All are Annex IV European Protected Species. The confirmed roosts identified in the Baseline Report are set out below:

Structure/Feature Ref.	Type	Confirmed Bat Roost Status
S1-B13a	House	Confirmed: likely one bat (Pipistrelle sp.)
S1-B14a	House	Confirmed: likely two bats (Pipistrelle sp. and one unconfirmed)
S1-B14b	Shed	Confirmed: three bats (likely two Myotis sp. and one other)
S1-B17	House	Confirmed: likely four bats (Leisler's bat and others)
S1-B21a	House	Confirmed: three bats of unconfirmed species
S1-B22b	Shed	Confirmed: one bat of unconfirmed species

Structure/Feature Ref.	Type	Confirmed Bat Roost Status
S1-TA5-BT17	Tree	Confirmed roost (PRF-M); roosting bats also recorded 2022

2.12.4 The EIAR separately records evidence of otter (Lutra lutra) activity along the route corridor, including holts assessed as active or potentially active in proximity to the CPO boundary (e.g. holt references within Sections 1 and 2 of the scheme), identified through detailed mammal surveys carried out between 2019 and 2025.

2.12.5 The EIAR expressly acknowledges, in its own terms, that bats are protected under the Wildlife Acts 1976 to 2022 and "all bat species are listed in Annex IV of the Habitats Directive as species protected across their entire natural range," and records otter as a qualifying interest of the Lough Swilly SAC and River Finn SAC through which the scheme passes.

2.12.6 Notwithstanding these confirmed findings, we highlight no derogation licence under Regulation 54 of the 2011 Regulations — nor any application for one — is referenced anywhere in the Baseline Report or, so far as the Objector can establish, elsewhere in the EIAR. The only licences referred to are Schedule II licences obtained from NPWS for survey purposes (i.e. to permit the ecological surveys themselves), which are not derogation licences and do not authorise disturbance, damage or destruction associated with construction of the scheme.

2.12.7 In this context the CPO cannot be granted as to do so would be contrary to the Habitats Directive [1] and the precautionary principle applies.

[1] NPWS Guidelines Applications for Regulation 54 Derogations for Annex IV Species

3 SUMMARY & CONCLUSIONS

3.1 This practice was engaged by the objector, Charles Doherty as owner and Director of One Stop Motor Shop Ltd, to examine and assess the proposed CPO insofar as it affects his lands and to prepare this statement to An Coimisiún on his behalf.

3.2 It is in this context that we submit this statement of case to the Coimisiún to demonstrate that the proposed acquisition of the objectors' lands is not justified and that the established criteria for confirmation of a compulsory purchase order are not met.

3.3 In preparing this submission, Genesis Planning has undertaken an analysis of the objectors' lands in the context of the CPO documentation and the relevant statutory and policy framework. The analysis identifies:

- The criteria for justifying a CPO are not met in this instance;
- The following grounds of objection are also highlighted:
- **Ground 1:** Business Disruption and Loss of Land for Business Expansion
- **Ground 2:** Access and Severance
- **Ground 3:** Reliance on Outdated Option Selection Evidence Base
- **Ground 4:** Flood Risk
- **Ground 5:** Ecology and Derogation Licence Requirements

3.4 An Coimisiún cannot confirm the Order in respect of the objectors' lands while this objection, made by persons upon whom notice of the making of the Order was required to be served, is not withdrawn. Pursuant to Section 218 of the Planning and Development Act 2000 (as amended), An Coimisiún has discretion to hold an oral hearing, and our clients respectfully request that such a hearing be held and that they be afforded the opportunity to be heard.

3.5 On our review of the Scheme and the CPO insofar as it affects the objectors' lands, we submit that the acquisition of the objectors' interest is not demonstrated to be justified by the common good, consistent with the principles established in Clinton v An Bord Pleanála that compulsory acquisition must be shown to be necessary and proportionate to the public benefit sought to be achieved.

3.6 For these reasons, we respectfully request that An Coimisiún decline to confirm the Order insofar as it affects the lands as detailed on Map References 2064 I.101 and 2069 C.101.

Ronan Woods
Director

GENESIS
PLANNING
CONSULTANTS

Appendices

1 **NPWS Guidelines Applications for Regulation 54 Derogations for Annex IV Species**

2 **Case Law on Derogation Licence Requirements European Judgement C-166/22**

NPWS
An tSeirbhís Páirceanna Náisiúnta agus Fiadhúlra
National Parks and Wildlife Service

Applications for Regulation 54 Derogations for Annex IV species

Guidance for Applicants

Version 2.0 June 2026

Prepared by the Department of Housing, Local Government and Heritage
gov.ie

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Note

The information given in this document is intended as general guidance relating to strictly protected species and is not meant to be a legal interpretation.

1. Introduction

The purpose of this guidance is to provide a reference document for applicants who may be involved in preparing applications for derogations issued under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011-2021 ("the 2011 Regulations"). This Supplementary Guidance constitutes official Guidelines of the Minister for the purposes of regulation 71(2) of the Regulations: "(2) The Minister may issue such guidelines and codes of practice as he or she considers appropriate for the guidance of the public in relation to these Regulations".

Applicants are advised to refer to the following publications before submitting any derogation to the National Parks & Wildlife Service (NPWS) for assessment. They provide background information and technical interpretation of terms used in this guidance.

- Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland (2021, National Parks and Wildlife Service)
    - This document provides an overview of the system of strict protection as it applies in Ireland. It specifically outlines a decision-making process for public authorities when dealing with proposed works that could affect species under strict protection.
- Mullen, E., Marnell, F. & Nelson, B. (2021) Strict Protection of Animal Species. *National Parks and Wildlife Service Guidance*, No. 1. National Parks and Wildlife Service, Department of Housing, Local Government and Heritage
    - This document describes the decision-making process for public authorities when dealing with proposed works that could affect species under strict protection. It also provides species accounts for some of the species under strict protection and two case studies to facilitate interpretation of the guidance.
- European Commission (2021) Commission notice: Guidance document on the strict protection of animal species of Community interest under the Habitats Directive. C(2021) 7301 Final.
    - This document sets out the Commission's advice in the context of the implementation of Articles 12 and 16 of the EC Habitats Directive and is an important source of guidance for applicants and decision-makers. It describes fundamental principles of the system of strict protection and the interpretation of European case law in the context of issuing derogations. Due to its overarching relevance to the tranposition of the parts of the Directive across Europe, it is frequently quoted throughout this Supplementary Guidance.
- Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters (2014, Department of Arts, Heritage and the Gaeltacht)
    - This guidance sets out to address several key potential sources of anthropogenic sound that may impact detrimentally upon marine mammals in Irish waters. It incorporates a re-examination of the Code of Practice for acoustic surveys and potential mitigation measures in this respect. An updated version of this document will be published in 2025.
- Marnell, F., Kelleher, C. & Mullen, E. (2022) Bat mitigation guidelines for Ireland v2. Irish Wildlife Manuals, No. 134. National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, IrelandGuidelines for Ireland V2
    - These guidelines update and replace the Bat Mitigation Guidelines for Ireland published in 2006 (Kelleher & Marnell, 2006). They have been developed to assist those involved with land-use planning and development operations (in the widest sense) where bats are known or suspected to occur.

2. Background

I. Species subject to Strict Protection

The species referenced in Table 1 below are protected by way of a system of "strict protection" pursuant to the requirements of Articles 12, 13 and 16 of the Habitats Directive (92/43/EEC) ("Habitats Directive") and are listed in Annex IV of that Directive.

Species/species groups listed on Annex IV which occur in Ireland and are subject to that system of strict protection are set out below:

Table 1: Species/species groups listed on Annex IV that occur in Ireland

Fauna	Flora
All bat species	Killarney Fern
Otter	Marsh Saxifrage
Natterjack Toad	Slender Naiad
Kerry Slug	
All dolphin, whales and porpoise species	
All marine turtle species	

II. System of Strict Protection

The EU Habitats Directive is transposed in Ireland by the European Communities Birds and Natural Habitats Regulations 2011, as amended. The system of strict protection for animals and plants as set out in Table 1 is provided for in regulation 51 and 52 of these Regulations. Applicants should also take note of protections under the Wildlife Acts when preparing their applications.

Regulation 51 makes it a criminal offence, subject to criminal prosecution, to carry out any of the following activities unless a derogation has been granted in accordance with regulation 54 of the Regulations:

(a) Deliberately capture or kill any specimen of the relevant species in the wild
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration
(c) Deliberately take or destroy eggs of the relevant species in the wild
(d) Damage or destroy a breeding or resting place of such an animal, or
(e) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of the relevant species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.

Regulation 52 is similar to Regulation 51 but applies to flora, whereby it is an offence to:

a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or
b) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 13(1)(b) of the Habitats Directive.

This protection only applies to the species listed above in their "natural range" in Ireland.

III. Derogations from Strict Protection

Article 16 of the Habitats Directive provides for derogations to be given from the offences listed in Article 12 and 13. However, derogations can only be granted in very restricted circumstances, and can only be provided where it can be demonstrated that specific stringent tests are met.

Regulation 54 of the 2011 Regulations transposes Article 16 into Irish law.

An application for a derogation from the offences listed above may arise from circumstances whereby an applicant wishes to carry out a specific activity and cannot avoid committing one of the offences. It is important that any application for a derogation clearly states which prohibited activity/activities is/are the subject of the application. The prohibited activity/activities that is/are the subject of a derogation will also be stated on the derogation itself, if granted. A flow chart for issuing derogations under Article 16(1) of the Habitats Directive, is reproduced in Appendix 1 (taken from European Commission (2021)).

The cumulative tests that the NPWS will apply before a derogation may be granted are as follows:

- **Test 1**: the derogation is required for one or more of the specific reasons set down in regulation 54(2) (a)-(e), and
- **Test 2**: there must be no satisfactory alternative, and
- **Test 3**: the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

Each of these tests are applied in sequence. If an application for a derogation fails Test 1 then it does not have to be considered further and the application will be refused. Similarly, if it passes Test 1 but fails Test 2 then it is not considered further and the application will be refused. The derogation may only be issued if it passes all three tests.

IV. Principle of Proportionality

Whilst derogations may only be granted subject to meeting stringent requirements, the European Commission guidance advises that the principle of proportionality should be applied when determining if an application passes each Test. It states *"As a general rule, the severity of any of the conditions or 'tests' will increase with the severity of the potential impact of a derogation on a species or population.[1]"* This means that each application will be assessed on a case-by-case basis.

V. Precautionary Principle

As part of the environmental policy of the EU, Article 191(2) of the Treaty on the Functioning of the European Union states that the application of the policy shall be based on the precautionary principle. This principle addresses potential risks where, if it is possible that a proposal might cause harm to the environment and if there is no scientific agreement on the issue, the proposal should not be carried out. Applicants should therefore be aware of the importance of providing sufficient, detailed and up to date scientific data as part of their application.

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1 European Commission (2021) Commission notice: Guidance document on the strict protection of animal species of Community interest under the Habitats Directive. C(2021) 7301 Final. p46

3. Applying for a Derogation

I. Test 1: A reason(s) listed in Regulation 54 (a)-(e) applies to the proposed activity

Test 1 involves identifying the reason(s) behind carrying out the activity requiring derogation e.g. the reason(s) for an activity may involve the necessity to improve a national road for public health and safety, thus requiring the demolition of a derelict house, the construction of new dwellings or a greenway, requiring the felling of trees. The applicant must state in their application the reason(s) for the activity that is the subject of the derogation. NPWS officials will check that the selected reason (a to e, as below) matches the description of the activity provided by the applicant. Where the reason a to e selected by the applicant does not match the description of the reason provided, then the derogation may not be granted as Test 1 cannot be passed.

Note that applicants may choose more than one reason for the activity. The reason(s) may include:

a) In the interests of protecting wild flora and fauna and conserving natural habitats
b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property
c) In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
d) For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants, or
e) To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

In this Section, each of the possible reasons that can be considered under Test 1, are dealt with in turn and guidance is given to assist applicants in determining which reason applies to the activity described in the application, if any, and what evidence should be provided to allow Test 1 to be carried out effectively.

Reason a): In the interests of protecting wild flora and fauna and conserving natural habitats

This reason may be chosen in circumstances where the applicant wishes to carry out an action that could lead to one or more of the prohibited activities taking place, in order to protect other wild flora and fauna and/or natural habitats. The EC Guidance (2021) states that:

> *"Given the general objective of the Directive, **vulnerable, rare, endangered or endemic species and natural habitats** (for example, those listed in the annexes to the Habitats Directive) are more likely to be covered by this reason, which would effectively aim to reduce the negative impact of a given species on them. It would be unusual to prioritise the interests of a species that is common and thriving over the interests of a species that meets the criteria of Article 1(g) of the Directive." (Para 3-19).*

For this reason to be satisfied, applicants should state how the level of importance of protection and/or conservation of species/habitats outweighs the protection of the species concerned.

Examples of evidence that could be[2] provided by the applicant to support the reasoning:

- The relevant flora, fauna and habitats that will be protected should be clearly identified
- Ecological survey data relating to these flora, fauna and habitats should be collected by a suitably qualified ecologist. This data should be up to date and collected within 12-18 months of your application.
- Up-to-date data describing their distribution, condition and conservation status. See CIEEM Advice Note on the lifespan of Ecological reports & Surveys https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf
- The scale and nature of the effect of the derogation on the species concerned
- Argument as to how the interests of protection and conservation of the species/habitat concerned justify affecting another species under strict protection.

Reason b): To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

This reason may be chosen in circumstances where the applicant wishes to carry out an activity that could lead to one or more of the prohibited activities taking place, in order to prevent serious damage, in particular to crops, livestock, forests, fisheries, water, and other types of property.

Examples of evidence that could be[2] aboveprovided by the applicant to support the reasoning:

- The specific nature of the potential serious damage that may be caused, including a description of location, magnitude and nature of potential economic loss
- Maps should be provided to show the location of the potential serious damage at an appropriate scale
- Evidence that there is a high likelihood of serious damage occurring and a description of the link to the species (which is/are the subject of the proposed derogation)
- Evidence as to why the potential damage is considered "serious" and that this outweighs the conservation interests of the species concerned
- Evidence that the control of the species will prevent the serious damage occurring.

Reason c): In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment

This reason may be chosen in circumstances where the applicant wishes to carry out an action that could lead to one or more of the prohibited activities taking place, with the reason for doing so meeting those described above e.g. activities that are concerned with construction and demolition works associated with developments, or for works that are to make buildings or structures safe.

[2] Note that this is not a prescriptive list nor does it have any statutory basis.

It may be appropriate to choose Reason C for scenarios such as carrying out surveys to inform impact assessments of development proposals, where such surveys have the potential to commit one of the offences under Regulation 51 and 52 of the Regulations.

When considering if Reason c) is appropriate, if the applicant has indicated that the reason involved public health or public safety, it is not necessary to have to further consider "other imperative reasons of overriding public interest" ("IROPI").

When consideration of IROPI is required, the EC Guidance should be referred to during the preparation of applications as it provides a useful interpretation on how this reason may be relied upon:

> *"(3-31) Firstly, it is clear from the wording that **only public interests**, promoted either by public or private bodies, **can be balanced against the conservation aims of the Directive**. Thus, projects that are entirely in the interest of companies or individuals are not typically considered as being in the public interest.*
>
> *(3-32) Secondly, the 'overriding' nature of this public interest must be underlined. This implies that not every form of public interest of a social or economic nature is sufficient, in particular when set against the particular weight of the interests protected by the Directive. Careful balancing of interests is needed here. It is also reasonable to assume that **in most cases, the public interest is likely to be overriding only if it is a long-term interest**: short-term interests that only yield short-term benefits would not be sufficient to outweigh the long-term interest of species conservation."*

Further guidance published by NatureScot[3] in Scotland on the same topic also offers advice in determining what might constitute "other imperative reasons of overriding public interest

- *"the interests of national security and defence;*
- *where there is clear and demonstrable direct environmental benefit on a national or international scale;*
- *where it is shown that there is a vital contribution to strategic economic development or regeneration;*
- *where failure to proceed would have unacceptable social and/or economic consequences*
- *where the project is of national importance, or, possibly, regional importance".*

This guidance from Scotland also goes on to state that:

> *"….. in practice, when considering species licences under IROPI, we will take into account whether an activity or development is required to meet, or contribute to meeting a specific need, such as:*

- *maintaining the health, safety, education or environment (sustainable development, renewable or green energy, green transport) of Scotland's people;*
- *complying with national planning policies;*
- *supporting economic or social development (nationally important infrastructure development projects, employment, regeneration, mineral extraction, housing etc.)"*

[3] https://www.nature.scot/doc/guidance-licensing-test-1-licensable-purpose-licence-relation-european-protected-species

Examples of evidence that could be[4] provided by applicant to support the reasoning:

- Where relevant, evidence should be provided as to the nature and scale of the specific risk to health and safety posed by the proposed activity in the absence of the derogation. Reference to any statutory requirements or obligations (local, national, international) should be provided
- Evidence that the proposed activity is necessary to achieve the overall objective
- Evidence of the nature of the public interest being served, as opposed to private interest e.g. does the objective benefit the public or private sector? Does it align with local or national objectives set down in Development Plans? Does the objective deliver or contribute to social needs at a local, regional and/or national level? e.g. employment, housing primary care, hospitals, education, transport, mineral extraction, energy, etc?
- Evidence should be provided as to how the nature and level of public interest outweighs the conservation goals for the species involved.

Reason d): For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants,

This reason may be chosen in circumstances when the applicant wishes to carry out an action that could lead to one or more of the prohibited activities taking place, with the reason for doing so meeting those described above. Examples may include carrying out surveys to record the presence/absence of such species where such surveys could cause disturbance (e.g. surveys within bat roosts).

Or in the scenario whereby a surveyor may need to take and keep specimens of plants/animals for identification and/or voucher purposes. They may also wish to take from the wild for a re-introduction programme or as back-up cover against potential losses. In this example, choosing reason d) and reason e) may be appropriate.

However, applicants are advised that "research and education" should be the sole purpose of the activity and that surveys to inform commercial projects or applications for planning permission are not activities supported by this reason.

Examples of evidence that could be[5] provided by applicant to support the reasoning:

- Details of the proposed research or educational activity and justification as to why its value outweighs the risk to the named species
- Where repopulation or reintroduction is proposed, there may be some circumstances whereby the location of reintroduction requires the consideration of a protective designation (such as a Special Area of Conservation) by the NPWS. This information may assist officials in determining the level of importance of the proposed activity.

[4] Note that this is not a prescriptive list nor does it have any statutory basis.
[5] Note that this is not a prescriptive list nor does it have any statutory basis.

Reason e): To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

This reason may be chosen in circumstances when the applicant wishes to apply to carry out an activity that does not fit any of the reasons referred to above. As suggested above, this reason may be appropriate whereby a surveyor may need to take and keep specimens of plants/animals for identification and/or voucher purposes.

Examples of evidence that could be[6] provided by applicant to support the reasoning:

- The applicant should state that the objective that will be achieved by the granting of the derogation is in keeping with the overall objectives of the Directive
- Evidence should be provided as to how the activity will be limited in extent and duration and under supervised conditions.

[6] Note that this is not a prescriptive list nor does it have any statutory basis.

II. Test 2: Absence of a satisfactory alternative

Test 2 involves determining whether there is a satisfactory alternative to the derogation i.e. whether the problem the applicant faces, or the objective of the activity, can be solved or met in a way that does not involve a derogation. When granting derogations, it must have been demonstrated to the NPWS that there is no satisfactory alternative to issuing a derogation. Applicants should provide the necessary evidence to the NPWS, in terms of setting out the comparison of alternative solutions and to set out their case in their application as to why they are not satisfactory.

The applicant should present the range of alternatives solutions, in particular taking account of the best relevant scientific and technical evidence available, in the light of the circumstances of the specific situation and in compliance with the prohibited activities laid down in the Habitats Directive.

The EC Guidance states in paragraph 3-55:

> *"Only when it is sufficiently demonstrated that potential alternatives are not satisfactory, either because they are not able to solve the specific problem or are technically unfeasible, and when the other conditions are also met, can the use of the derogation be justified.*
>
> *However, **if a measure is partially satisfactory even if it does not sufficiently address the problem, but it can still reduce or mitigate the problem, it should be implemented first**."*

In keeping with the Commission's Guidance, if a derogation has been shown to be the only satisfactory alternative, the derogation must be limited to only the extent necessary to resolve the specific problem or situation, and no further.

The EC Guidance states in paragraph 3-61:

> *" In addition, the solution finally selected, even if it involves a derogation, must be objectively limited to the extent necessary to resolve the specific problem or situation. This means that derogations must be limited in time, place, numbers of specimens involved, specific specimens involved, persons authorised, etc."*

The EC Guidance refers to case law in this area and states that this test involves answering three fundamental questions:

a) What is the problem or specific situation that needs to be addressed?

b) Are there any other solutions?

c) If so, will these resolve the problem or specific situation for which the derogation is sought?

Applicants are asked to provide clear answers to these questions in their application and in their supporting documentation, where it is provided.

The justification as to why a specific alternative solution is not deemed satisfactory may not rely on arguments solely based on additional cost, cause delays or other inconvenience to the applicant.

However the EC Guidance does advise that the proportionality principle can be applied (see "Principle of Proportionality" Section 2.IV:

> *"The assessment may also take into account proportionality in terms of cost. However, economic cost cannot be the sole determining factor when analysing alternative solutions. In particular, satisfactory alternative solutions cannot be rejected from the outset on the grounds that they would cost too much[7]." (para 3-56)*

Paragraph 3-59 states:

> *"The Advocate General in Case C-342/05 clarified the proportionality principle, according to which[8] a 'measure may not be implemented if its objective can be attained by less drastic means, that is to say by means of a satisfactory alternative within the meaning of Article 16(1) of the Habitats Directive'. 'An alternative is satisfactory not only if it would attain the objectives of the derogation equally well, but also if the disadvantages caused by the derogation would be disproportionate to the aims pursued and the alternative would ensure proportionality'."*

Examples of evidence that could be[9] provided by the applicant to support the reasoning:

The applicant must show that they have considered the full range of alternative solutions; reasons why such alternative solutions are not deemed satisfactory; and that the only satisfactory solution requires a derogation for it to be undertaken legally. Evidence should include objective, verifiable factors, such as the best relevant scientific and technical considerations.

The types of alternative solutions that must be presented by the applicant must include the option of "do-nothing". The "do-nothing" option involves not carrying out the proposed activity, to not address the proposed objective or to not try to solve the problem being faced. Other alternative solutions must also be presented and compared, unless there are exceptional circumstances that limits the range of solutions that can be considered. There is no limitation as to the number or types of alternative solutions that may be considered. Each application is considered on its own merits and just because an option may be satisfactory in one case, does not mean that it is to be automatically regarded as satisfactory in a similar case.

Applicants might provide a range of different types of alternative solutions, which may include, but are not limited to the following:

a) Alternative scale e.g.:
   - reducing the number or height of lighting columns near bat roosts to avoid disturbance of roost sites or commuting routes that support such roosts
   - reducing the width of a proposed greenway in specific areas so that habitats containing protected plants can be preserved.

b) Alternative design of an activity e.g.:

7 Also See for the principle of proportionality in the context of Article 6 Commission Notice C(2018) 7621 final, Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC, p.55. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1548663172672&uri=CELEX:52019 XC0125(07)

8 See paragraphs 24 - 27of the Advocate General's Opinion in Case C-342/05.

9 Note that this is not a prescriptive list nor does it have any statutory basis.

- meeting the overall requirement for number of housing units within a site boundary using different layout/orientation of units and open space, so as to avoid removing treelines containing bat roosts habitat used by Kerry slug.
- re-orientation of access routes required for construction of a wind energy development that would otherwise have necessitated works to bridges known to host bats.
- Alternative routing for marine cables that would cause otherwise damage or disturbance to cetaceans during their breeding period.

c) Alternative location for the whole activity e.g.:
- alternative location for outdoor concert to areas that would not cause disturbance to protected plants, natterjack toads and otter holts.
- Alternative location for dumping dredged materials at sea that would not cause disturbance to cetaceans or marine turtles, particularly during period of breeding.

d) Alternative timing of the proposed activity e.g.:
- alternative times for undertaking temporary works to a dwelling house to avoid the time when bats are present and hence avoid disturbance (assuming that bats can still return to the roost unhindered after works have been completed).
- alternative timing for pile driving activities associated with pier construction to avoid disturbance to breeding porpoises/dolphins.

III. Test 3: Impact of a derogation on conservation status

This final test involves the determination as to whether granting a derogation would be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range (Regulation 54(2)). The rationale behind this test is that strictly protected species must be maintained at such a status, or restored to favourable status if this is not the case at present.

The net result on the species' conservation status from the granting of a derogation must be, at worst, neutral or, at best, positive for the species in question. If a derogation is likely to have a significant negative effect on the population concerned (or the future prospects for this population) or is likely to have a significant negative effect at the national or biogeographical level, then a derogation cannot be considered.

The EC Guidance, in paragraph 3-71, notes that given the potential need for best scientific data available to be used to support the applicant's case that the precautionary principle should apply particularly to this test:

> *"When data are not sufficiently robust and reliable to prove that the conservation status is favourable and/or to ensure the derogation does not adversely affect the conservation status, the precautionary principle (requiring that the conservation objectives should prevail where there is uncertainty) should be applied and no derogations should be granted. As stated by the CJEU in Case C-674/17, 'it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation'".*

Examples of evidence that could be[10] provided by applicant to support the reasoning:

Applicants must include detailed, up-to-date information[11] on the local population of the species in question, the proposal and its impacts taking into account all the mitigation and/or compensation measures that are to be undertaken. All survey data should be collected within 12-18 months of your application.

- Evidence should include an objective description of the population of the species at the local, national or biogeographical scale [12] and the extent of the impact on this population:
    - For example, is a portion of a breeding population being removed from a site, or the whole population?
    - Data on populations in the "local" area (e.g. townland, County).
    - Data on populations at the national scale.

[10] Note that this is not a prescriptive list nor does it have any statutory basis.
[11] See CIEEM Advice Note on the lifespan of Ecological reports & Surveys https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf
[12] Or beyond Ireland to other Member States territories, where the species natural range extends to these areas. For example where impacts on marine mammals or marine turtles may be predicted to occur.

- Description of impact of the proposed activity on the conservation status at the relevant scale – before and after any mitigation is applied.
- Mitigation measures including sufficient detail to demonstrate to the NPWS that the measures will be undertaken according to best practice standards and, wherever possible, have been undertaken in similar circumstances with positive results. Reference to evidence for success such as the Conservation Evidence database may help to provide such evidence.
- The effect of mitigation on the impact of the activity on the conservation status of the species. Note that if the conservation status of the concerned species is not favourable[13], this Test can only be met if it is justified as being under exceptional circumstances and only if the conservation status will not deteriorate and its restoration at a favourable status is not prevented by undertaking the activity.
- Clear explanation as to how the proposed mitigation will lead to neutral or net positive effects on the populations of the species concerned.
- Compensation for impacts that are predicted to occur are a legitimate means to ensure that the favourable conservation status will not be affected. For example, compensating for loss of an otter holt by provision of one or more artificial holt sites. However, this should not be confused with reference to "compensation" in the context of Article 6(4) of the Habitats Directive, which relates to conditions under which plans and projects may be permitted.

[13] The 2019 report published under Article 17 of the Habitats Directive states that all species except Slender Naiad, natterjack toads and lesser horseshoe bat are in favourable conservation status.

4. Monitoring of effects of the Derogation

Article 16(3)(e) of the Habitats Directive and Regulation 54(7) of the Regulations require the Minister to report to the European Commission on the measures applied to ensure the strict protection of these species and on the results of applying these measures.

Derogations require the submission of a report to the NPWS on the activity carried out and details of numbers and species affected. In addition, a derogation may include conditions that require post-completion monitoring of the species concerned and for a report to be provided including the results of such surveys. In all cases, an EU Returns Form and a derogation report must be completed by the applicant and returned to Wildlife Licencing Unit of the NPWS at wildlifelicence@npws.gov.ie.

EU Returns Form and Derogation Report

An EU Returns Form is included in all issued derogations with the unique derogation number. This form provides crucial data to be submitted to the European Commission under Article 16 of the Habitats Directive. This form must be submitted in a timely manner.

A separate narrative report, which must detail the activities undertaken, must also be submitted. In the case of derogations for cetaceans a Marine Mammal Observer (MMO) report must be submitted.

Applicants are advised to include the following information in their post-completion monitoring report:

- Clearly specify the mitigation measures that have been applied, using plans and photographs where appropriate
- Show results of surveys of the target species, using methods comparable to those undertaken when establishing the baseline population e.g. camera monitoring of otter activity pre- and post-completion of mitigation measures should be undertaken at similar locations and for similar duration.
- Identify any corrective measures that have been undertaken to address unforeseen failure to maintain the species populations at the relevant (e.g. local, national) scale.

5. Timing of Application for Derogation

In July 2023, the Court of Justice of the European Union High Court issued a judgment[14] relating to the relationship between the systems of development consent and the provision of derogations regarding the strict protection of species under the EU Habitats Directive. On the basis of this judgment, it is the Department's opinion that where a proposed activity requires consent from another statutory authority, and it appears that such an activity, if permitted, by that appropriate public authority, will also require a derogation from the Minister, then it is necessary that the derogation should be granted before the approval of the consent to the proposed activity.

The benefit to this sequencing is that if a derogation cannot be given, then this gives the applicant an opportunity to change the design, type or location of the proposal prior to making an application for consent and/or receiving the consent from the other public authority.

Under regulation 27 of the 2011 Regulations, all public authorities are obliged to exercise their statutory functions in compliance with and, as appropriate, so as to secure compliance with, the requirements of the Habitats Directive. It is the Department's opinion that the Court's views on the sequencing of derogations and development consents are considered to also apply to activities that are not required to undergo Environmental Impact Assessment (EIA) as well as activities that do not necessarily require development consent but may require permission from another public authority (e.g. industrial emissions licensing).

Public authorities are advised that, when considering applications for development consent, they should ensure that such applications include copies of the derogation(s) that the applicant has considered it is necessary to acquire. The responsibility of avoiding disturbance or damage to Annex IV species, or of obtaining an appropriate derogation, rests with the applicant.

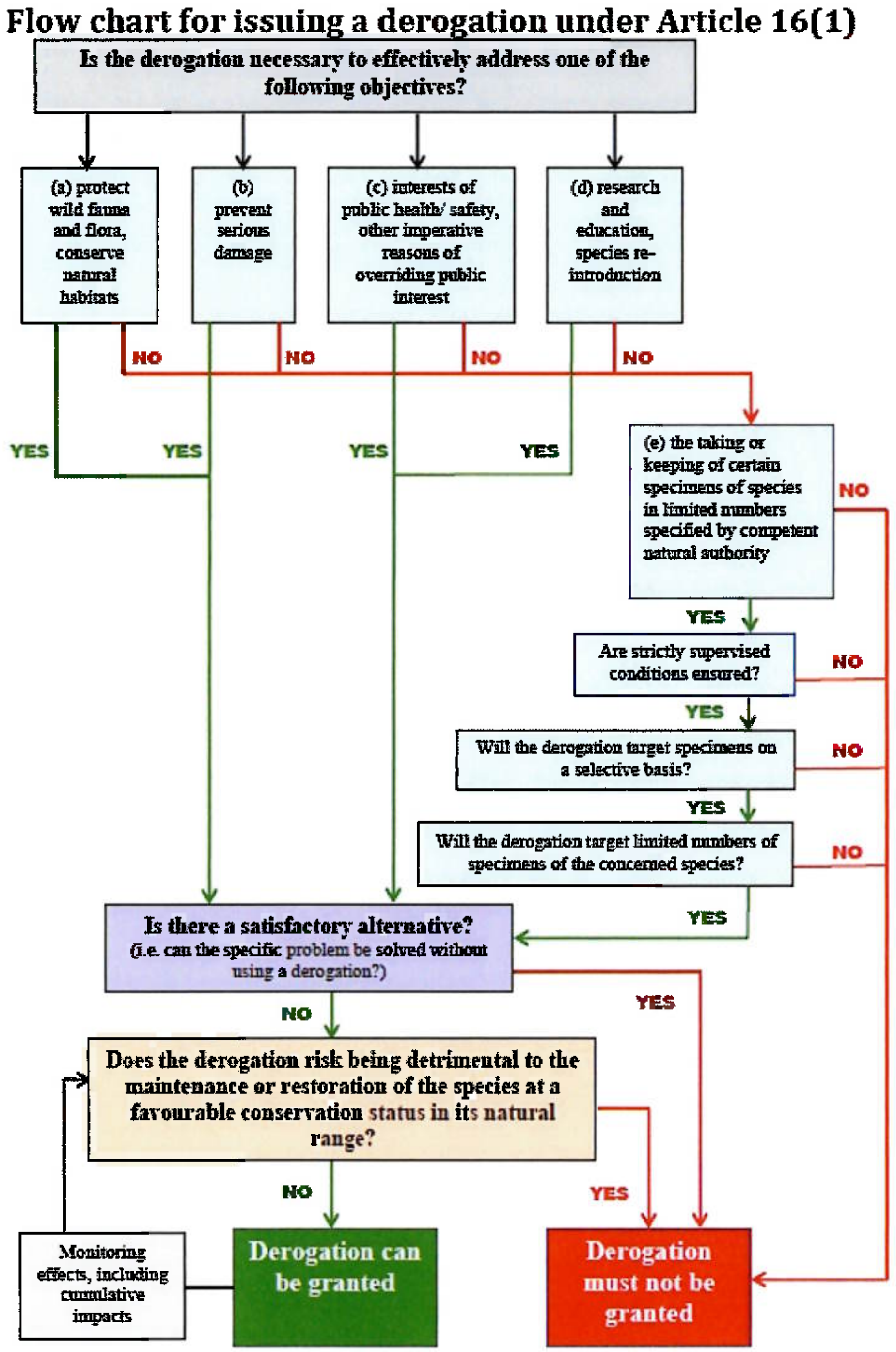
This advice also applies to local authority's own functions, whereby any approval that is made to undertake such development or carry out other relevant functions, has ensured that a derogation has been issued, where appropriate.

It is acknowledged that there may be certain scenarios whereby there is a delay between receiving a derogation and commencement of the relevant activity and a derogation may require revision. In some cases, there may be a likelihood of changes in species presence or distribution e.g. usage of trees by bats or otters moving into an area. It may be appropriate to ensure, by means of a condition to a consent, that the applicant acquires a revised derogation prior to the commencement of the relevant works, if such time has elapsed.

Derogation applications received will be processed in a timely manner by the NPWS. To assist the prompt processing of applications, applicants are requested to submit a fully completed application form and include all relevant information in their supporting documentation as requested. Incomplete applications will be returned to the applicant.

[14] Case 166/22 Hellfire Massy Residents Association.

6. Appendix I – Flowchart for Issuing a Derogation (Taken from EC Guidance, 2011, p49)



7. Appendix II – Example 1: Repairs to Unsafe Bridge Structure

Test 1: Derogation Reason: Regulation 54(2)(c) - In the Interest of Public Health and Safety

A bridge that links a commuter town to a major city was in urgent need of repair works. Structural inspections confirmed that the existing bridge exhibited progressive deterioration resulting in loss of structural integrity. The application for the derogation was accompanied by a structural engineer's report that verified the poor state of the bridge and justified the need for repairs. Failure to undertake remedial works would result in either closure of the route or continued exposure of the public to an unacceptable safety hazard. The objective of the proposed activity was therefore to eliminate a clear and immediate public safety risk by repairing the bridge.

Baseline ecological surveys confirmed the presence of a day roost used by bats (no. 2 Myotis spp). The roost is located in a crevice under the bridge and the proposed works would result in temporary disturbance and the loss of this single roost feature.

The proposed activity was deemed to be necessary in accordance with Regulation 54(1)(c) of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, corresponding to Article 16(1)(c) of the Habitats Directive, on the grounds of public health and public safety. On this basis the application passed Test 1.

Test 2: no satisfactory alternative exists

In accordance with the requirements of Article 16, alternative solutions were fully considered. The following options were presented in the application:

- A "do-nothing" option (continued use of the bridge whilst it continued to deteriorate) was examined and rejected as it would result in increased risk to the public and also ultimately lead to loss of the roost if the structure collapsed. This option would not resolve the situation as ultimately the roost would be lost due to the eventual collapse of the bridge.
- Relocation of the crossing or construction of an alternative route was also considered; however, these options would require substantially greater land-take, cause increased habitat loss/disturbance, and disproportionate cost, while failing to remove the safety risk in a timely manner. This option would not resolve the situation as ultimately the roost would be lost due to the eventual collapse of the bridge.

It was considered that the applicant had considered all available satisfactory alternatives and that at the time no other alternative solutions were apparent. It was therefore concluded that no satisfactory alternative existed that would achieve the objective of the works without disturbing the bats. Having weighed the possible solutions to solve the applicant's problem against the effects of a derogation on the species concerned, it was concluded that the application passed Test 2.

Test 3: Impact on Conservation Status

The bat population concerned formed part of a wider, well-connected local population as indicated by other records of roosts for this species nearby. The species was assessed as having favourable conservation status at both regional and national levels. The application included proposals for appropriate mitigation measures, including pre-works surveys, exclusion of bats from the roost prior to works beginning, a temporary roost structure to be provided while works are ongoing and a replacement roost for use by bats when the works had been completed as well as ecological supervision, and post-works monitoring. This will result in a temporary loss of a roost and no bats will be injured or killed. On this basis the application passed Test 3 and a derogation with associated conditions was issued.

8. Appendix III – Example 2: Construction of Housing Development

Test 1: Derogation Reason: Regulation 54(2)(c) - Imperative Reasons of Overriding Public Interest

A residential development of 420 residential units, including a substantial proportion of social and affordable housing, was proposed for lands zoned for residential development under the relevant County Development Plan. The proposed development formed part of an adopted local and regional housing strategy that was aimed at addressing a housing shortfall that was causing significant social and economic consequences. The scale, location, and nature of the development was necessary to meet these objectives and contribute to the effective functioning of the housing system. Baseline ecological surveys confirmed the presence of a bat roost of soprano pipistrelle bats (no.6 Pipistrellus pygmaeus) within the development footprint. This roost was discovered in an old shed, which is to be demolished for works to take place. The proposed activity was deemed to be justified under Regulation 54(2)(c) of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, corresponding to Article 16(1)(c) of the Habitats Directive, on the grounds of imperative reasons of overriding public interest, specifically the provision of housing to meet identified and urgent societal needs. On this basis the application passed Test 1.

Test 2: no satisfactory alternative exists

In accordance with the requirements of Article 16, alternative solutions were fully considered. The following options were presented in the application:

- A range of alternative sites were considered during the plan-making and site-selection process, including smaller or less-constrained parcels of land. These alternatives were discounted as they were either unavailable, insufficient in scale to meet housing delivery targets, or constrained by infrastructure capacity, flood risk, or other environmental considerations. These options would not resolve the situation.
- Re-design of the proposed development to entirely avoid impacts on bats was also considered. However, further reduction in footprint would render the scheme unviable and would not deliver the housing outputs required to address the housing shortfall. Also the position of the old shed did not lend itself to remaining within a design suitable for housing as it would be a long term health & safety issue itself. This option would not resolve the situation.

It was considered that the applicant had considered all available satisfactory alternatives and that at the time no other alternative solutions were apparent. It was therefore concluded that no satisfactory alternative exists that would achieve the objective of the proposed works while avoiding impacts on the species. Having weighed the possible solutions to solve the applicant's problem against the effects of a derogation on the species concerned, it was concluded that the application passed Test 2.

Test 3: Impact on Conservation Status

The impacts on bats arising from the development were deemed to be limited in extent and localised in nature. The bat species concerned was widely distributed in the surrounding landscape and was assessed as being at favourable conservation status at a national level. The application outlined comprehensive mitigation and compensation proposals including the retention and enhancement of key habitat features, creation of permanent alternative breeding and resting sites in advance of construction and phased works under ecological supervision. A long-term monitoring programme was proposed to assess the effectiveness of the mitigation proposals. On this basis the application passed Test 3 and a derogation with associated conditions was issued.

Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

6 July 2023*

(Reference for a preliminary ruling – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 12 – System of strict protection for certain animal species – Article 16 – Derogation – Procedure for granting such a derogation – Right of public participation)

In Case C-166/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 14 January 2022, received at the Court on 25 February 2022, in the proceedings

Hellfire Massy Residents Association

v

An Bord Pleanála,

Minister for Housing, Local Government and Heritage,

Ireland,

Attorney General,

Other parties:

South Dublin County Council,

An Taisce – The National Trust for Ireland,

Save Our Bride Otters,

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen and J. Passer (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

* Language of the case: English.

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Hellfire Massy Residents Association, by B. Harrington, Solicitor, J. Devlin, Senior Counsel, and J. Kenny, Barrister-at-Law,
- An Bord Pleanála, by R. Minch, Senior Counsel, L. Mullett, Solicitor, B. Foley, Senior Counsel, and S. Hughes, Barrister-at-Law,
- the Minister for Housing, Local Government and Heritage, Ireland, and the Attorney General, by M. Browne, J. Brennan and A. Joyce, acting as Agents, and by E. Barrington and T. Flynn, Senior Counsels,
- Save Our Bride Otters and An Taisce – The National Trust for Ireland, by F. Logue, Solicitor,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by G. Gattinara and C. Hermes, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as well as Article 6(1) to (9) and Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

2 The request has been made in proceedings between Hellfire Massy Residents Association, on the one hand, and An Bord Pleanála (The Planning Board, Ireland; 'the Board'), the Minister for Housing, Local Government and Heritage (Ireland), Ireland, and the Attorney General (Ireland) (together, 'the Irish authorities'), on the other, concerning the validity, first, of a building permit issued by the Board and, second, of the provisions intended to transpose Articles 12 and 16 of Directive 92/43 into Irish law.

Legal context

International law

3 Article 6(1) of the Aarhus Convention provides:

'Each Party:

(a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

(b) shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) may decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.'

4 Article 6(2) to (9) of that convention lays down detailed rules for public participation in a decision-making procedure.

5 Article 9(2) of the Aarhus Convention provides:

'Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) having a sufficient interest or, alternatively,

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.'

European Union law

Directive 92/43

6 Under Article 6(3) of Directive 92/43:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

7 Article 12 of that directive provides:

'1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1(a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Member States shall establish a system to monitor the [incidental] capture and killing of the animal species listed in Annex IV(a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.'

8 Article 16 of Directive 92/43 provides:

'1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the [breeding] operations necessary for these purposes, including the artificial propagation of plants;

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. Member States shall forward to the Commission every two years a report in accordance with the format established by [the committee set up pursuant to Article 20] on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to [that committee].

3. The reports shall specify:

(a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;

(b) the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use;

(c) the circumstances of when and where such derogations are granted;

(d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;

(e) the supervisory measures used and the results obtained.'

Directive 2011/92/EU

9 Recital 2 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) ('Directive 2011/92'), states:

'Pursuant to Article 191 of the Treaty on the Functioning of the European Union, [European] Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.'

10 Under Article 1(2) of Directive 2011/92:

'For the purposes of this Directive, the following definitions shall apply:

(a) "project" means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

...

(c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

...'

11 Article 2(1) to (3) of that directive provides:

'1. Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for development consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from [Directive 92/43] and/or Directive 2009/147/EC of the European Parliament and the Council [of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7)], Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.

...'

12 Article 3(1) of Directive 2011/92 provides:

'The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under [Directive 92/43] and [Directive 2009/147];

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).'

13 Article 8a of that directive is worded as follows:

'1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

...

4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

...'

Irish law

14 Regulation 51 of the European Communities (Birds and Natural Habitats) Regulations 2011 ('the 2011 Regulations') provides:

'(1) The Minister [for Arts, Heritage and the Gaeltacht] shall take the requisite measures to establish a system of strict protection for the fauna consisting of the species referred to in Part 1 of the First Schedule.

(2) Notwithstanding any consent, statutory or otherwise, given to a person by a public authority or held by a person, except in accordance with a licence granted by the Minister under Regulation 54, a person who in respect of the species referred to in Part 1 of the First Schedule–

(a) deliberately captures or kills any specimen of these species in the wild,

(b) deliberately disturbs these species particularly during the period of breeding, rearing, hibernation and migration,

(c) deliberately takes or destroys eggs of those species from the wild,

(d) damages or destroys a breeding site or resting place of such an animal, or

(e) keeps, transports, sells, exchanges, offers for sale or offers for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 12(2) of [Directive 92/43],

shall be guilty of an offence.

(3) The prohibitions referred to in paragraph (2) shall apply to all stages of life of the biological cycle of fauna to which this Regulation applies.

(4) The Minister shall establish a system to monitor the incidental capture and killing of fauna consisting of the animal species referred to in Part 1 of the First Schedule and, having regard to the information gathered, he or she shall conduct further research or take such conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.'

15 Regulation 54 of the 2011 Regulations provides:

'(1) Any person may apply to the Minister, or the Minister or Ministers of Government with responsibilities for fish species referred to in Part 2 of the First Schedule, for a derogation licence from complying with the requirements of the provisions of Regulations 51, 52 and 53.

(2) Where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species to which [Directive 92/43] relates at a favourable conservation status in their natural range, the Minister, or the Minister or Ministers of Government with responsibilities for fish species referred to in the Fourth Schedule, may grant such a derogation licence to one or more persons, where it is–

(a) in the interests of protecting wild fauna and flora and conserving natural habitats,

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

(3) A derogation licence granted under paragraph (2) shall be subject to such conditions, restrictions, limitations or requirements as the Minister considers appropriate.

(4) Any conditions, restrictions, limitations or requirements to which a derogation licence under paragraph (2) is subject shall be specified therein.

(5) Without prejudice to any conditions, restrictions, limitations or requirements specified therein, a derogation licence granted under this Regulation is subject to the provisions of subsections (2) to (5) of section 14 of the Protection of Animals (Amendment) Act 1965.

(6) The Minister shall forward to the European Commission every two years a report, in accordance with a format established by the European Commission, on the derogation licences to which paragraph (2) relates.

(7) The report referred to in paragraph (6) shall specify–

(a) the species which are subject to the derogation licences and the reason for the derogation, including the nature of the risk with, if appropriate, a reference to alternatives rejected and scientific data used,

(b) the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use,

(c) the circumstances of when and where such derogation licences are granted,

(d) the authority empowered to declare and check that the required conditions apply, and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task, and

(e) the supervisory measures used and the results obtained.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 By decision of 25 June 2020, the Board granted a development consent to South Dublin County Council (Ireland) for a project consisting of two buildings comprising a visitor centre at Montpelier Hill in County Dublin, a tree canopy walk/pedestrian bridge over a regional road, conversion of conifer forest to deciduous woodland, and conservation works to existing structures.

17 That decision states that the Board had completed an appropriate assessment exercise, for the purposes of Article 6(3) of Directive 92/43, and had concluded that there was no adverse effect on European sites.

18 According to the abovementioned decision, the Board had also completed an environmental impact assessment, within the meaning of Directive 2011/92, and had concluded that, subject to compliance with the conditions set out in that decision, the effects on the environment of the proposed development would be acceptable.

19 By a judgment of 2 July 2021, the referring court dismissed the action brought by the applicant in the main proceedings against the decision of 25 June 2020, with the exception of the ground challenging, as regards the situation following the adoption of that decision, the validity of Regulations 51 and 54 of the 2011 Regulations.

20 By that ground of challenge, the applicant in the main proceedings submits, in essence, that the system of strict protection provided for in Article 12 of Directive 92/43, as implemented in Irish law, is invalid in so far as it does not integrate the derogation mechanism laid down in Article 16 of that directive into the procedure for granting development consent to projects and, moreover, does not provide for proper public participation, thereby failing to comply with the Aarhus Convention.

21 The Board and the Irish authorities dispute the merits of the abovementioned ground of challenge. In addition, they object to the reliance by the applicant in the main proceedings, first, on the Aarhus Convention since it did not expressly reference that convention in its pleadings, and, second, on possible future harm to strictly protected species.

22 In those circumstances, the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Whether the general principles of EU law arising from the supremacy of the EU legal order have the effect that a rule of domestic procedure whereby an applicant in judicial review must expressly plead the relevant legal provisions cannot preclude an applicant who challenges the compatibility of domestic law with identified EU law from also relying on a challenge based on legal doctrines or instruments that are to be read as inherently relevant to the interpretation of such EU law, such as the principle that EU environmental law should be read in conjunction with the [Aarhus Convention] as an integral part of the EU legal order.

(2) Whether [Article 12 and/or Article 16] of [Directive 92/43] and/or those provisions as read in conjunction with [Article 9(2)] of the [Aarhus Convention] and/or in conjunction with the principle that Member States must take all the requisite specific measures for the effective implementation of [that] directive have the effect that a rule of domestic procedure whereby an applicant must not raise a "hypothetical question" and "must be affected in reality or as a

matter of fact" before [he or] she can complain regarding the compatibility of the domestic law with a provision of EU law cannot be relied on to preclude a challenge made by an applicant who has invoked the public participation rights in respect of an administrative decision and who then wishes to pursue a challenge to the validity of a provision of domestic law by reference to EU law in anticipation of future damage to the environment as [a] result of an alleged shortcoming in the domestic law, where there is a reasonable possibility of such future damage, in particular because the development has been authorised in an area which is a habitat for species subject to strict protection and/or because applying the precautionary approach there is a possibility that post-consent surveys may give rise to a need to apply for a derogation under [Article 16] of [Directive 92/43].

(3) Whether [Article 12 and/or Article 16] of [Directive 92/43] and/or those provisions as read in conjunction with [Article 6(1) to (9) and/or Article 9(2)] of the [Aarhus Convention] and/or with the principle that Member States must take all the requisite specific measures for the effective implementation of [that] directive have the effect that a derogation licence system provided in domestic law to give effect to [Article 16] of [that] directive should not be parallel to and independent of the development consent system but should be part of an integrated approval process involving a decision by a competent authority (as opposed to an ad hoc judgement formed by the developer itself on the basis of a general provision of criminal law) as to whether a derogation licence should be applied for by reason of matters identified following the grant of development consent and/or involving a decision by a competent authority as to what surveys are required in the context of consideration as to whether such a licence should be applied for.

(4) Whether [Article 12 and/or Article 16] of [Directive 92/43] and/or those provisions as read in conjunction with [Article 6(1) to (9) and/or Article 9(2)] of the [Aarhus Convention] have the consequence that, in respect of a development where the grant of development consent was subjected to appropriate assessment under [Article 6(3)] of [Directive 92/43], and in a context where a post-consent derogation may be sought under [Article 16] of [Directive 92/43], there is a requirement for a public participation procedure in conformity with [Article 6] of the Aarhus Convention.'

Admissibility of the request for a preliminary ruling

23 The Irish authorities and the Polish Government contend that the present request for a preliminary ruling is inadmissible on the ground, in essence, that it relates to points of law which are based on a hypothetical scenario.

24 In that regard, it should be noted that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 52 and the case-law cited).

25 It follows that questions relating to EU law enjoy a presumption of relevance. The Court of Justice may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court of Justice does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 53 and the case-law cited).

26 In this instance, it should be noted that the present request for a preliminary ruling was submitted to the Court in the context of an action seeking, inter alia, (i) the quashing of the decision of 25 June 2020 and (ii) a declaration that Regulations 51 and 54 of the 2011 Regulations are invalid.

27 However, it is apparent from that request for a preliminary ruling, as well as from the file before the Court, and, in particular, from the referring court's judgment of 2 July 2021, that, although the referring court has already rejected the ground of challenge of the action seeking the quashing of the decision of 25 June 2020 and, in that respect, has also rejected the ground of challenge alleging the invalidity of Regulations 51 and 54 of the 2011 Regulations as regards the effect of the potential invalidity of those provisions on the legality of the procedure for adopting that decision, that court still has to rule on that ground of challenge to the extent that it concerns the situation following the adoption of the abovementioned decision.

28 In those circumstances, the request for a preliminary ruling must be regarded as admissible.

Consideration of the questions referred

The third and fourth questions

29 By its third and fourth questions, which it is appropriate to examine before the first and second questions, the referring court asks, in essence, whether Articles 12 and 16 of Directive 92/43 are to be interpreted as requiring a piece of national legislation intended to transpose those provisions of Directive 92/43 into national law to provide for (i) a development consent procedure which involves a decision by a competent authority determining whether it is necessary to apply for a derogation under Article 16 of that directive because of matters identified following the grant of development consent to a project and/or whether surveys are required to that end and (ii) public participation in that derogation procedure.

30 In that regard, it is sufficient to note that Articles 12 and 16 of Directive 92/43, which do not concern only activities carried out in the context of projects within the meaning of Article 1(2)(a) of Directive 2011/92, but which concern any human activity, do not require the derogation procedure under Article 16 of Directive 92/43 to be integrated into the procedures for granting development consent to such projects; nor do they require provision to be made for public participation in such a derogation procedure.

31 Indeed, neither Directive 92/43 nor, for that matter, Directive 2011/92, lays down any obligation to that effect.

32 It is true that Article 2(2) of Directive 2011/92 deals with the issue of integration of procedures. However, that provision merely provides for the possibility of integrating the environmental impact assessment into the existing procedures for development consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of that directive. In addition, Article 2(3) of that directive simply requires that Member States 'shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of [Directive 2011/92, Directive 92/43 and/or Directive 2009/147] are provided for' in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from Directive 2011/92 and from Directive 92/43 and/or Directive 2009/147.

33 Similarly, although Article 8a(1)(b) of Directive 2011/92 stipulates that the decision to grant development consent is to incorporate 'where appropriate, monitoring measures', such as those for which, in the case in the main proceedings, as is apparent from the file before the Court, provision appears to have been made in the decision of 25 June 2020, it does not expressly refer to the derogation procedure under Article 16 of Directive 92/43.

34 Therefore, Ireland cannot, in the dispute in the main proceedings, be accused of not having adopted a comprehensive legislative framework, since Regulations 51 and 54 of the 2011 Regulations reproduce, word for word, the main content of Articles 12 and 16 of that directive.

35 That said, Articles 12 and 16 of Directive 92/43 and, accordingly, Regulations 51 and 54 of the 2011 Regulations which transpose those provisions into national law, must be interpreted and applied in conformity with the requirements arising from other EU acts and from international conventions which are binding on the European Union, in particular, the requirements arising from Directive 2011/92 and from the Aarhus Convention, as interpreted in the case-law of the Court.

36 It follows from that case-law that, in the specific case where, first, the execution of a project that is subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed in the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, second, a Member State confers power to grant such a derogation on an authority other than the one on which it confers power to give development consent for the project, that potential derogation must necessarily be adopted before development consent is given. If it were otherwise, that development consent would be given on an incomplete basis and would not, therefore, meet the applicable requirements (see, to that effect, judgment of 24 February 2022, *Namur-Est Environnement*, C-463/20, EU:C:2022:121, paragraphs 52 and 59 and the case-law cited).

37 However, as is apparent from the file before the Court and, in particular, from the referring court's judgment of 2 July 2021, the referring court, which alone has jurisdiction to find and assess the facts of the dispute in the main proceedings, has already held that, at the time when the decision of 25 June 2020 was adopted, the need to obtain a derogation under Regulation 54 of the 2011 Regulations had not been identified. It follows that the situation referred to in the previous paragraph, namely that in which the obtaining of such a derogation is required before development consent is given, has not arisen in this instance.

38 It should be added that, under Article 3(1)(b) of Directive 2011/92, that directive – the objective of which, according to recital 2 thereof, is that effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes, in accordance with the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay – stipulates that the environmental impact assessment is to identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on biodiversity, with particular attention to species and habitats protected under Directive 92/43 and Directive 2009/147.

39 Accordingly, the outcome of an environmental impact assessment – which must be a full assessment (see, to that effect, judgment of 24 February 2022, *Namur-Est Environnement*, C-463/20, EU:C:2022:121, paragraph 58 and the case-law cited) – must make it possible to determine whether, at the time of that assessment, the project concerned was likely to have effects prohibited by Article 12 of Directive 92/43.

40 Therefore, a piece of national legislation, such as the 2011 Regulations, which criminalises the commission of the acts which Member States must prohibit in accordance with Article 12 of Directive 92/43, does not appear, in itself, both from a general point of view and in the specific context of granting development consent to a project falling within the scope of Directive 2011/92, to be liable to undermine the effectiveness of Article 12 of Directive 92/43 or to contravene the principles referred to in paragraph 38 above.

41 Lastly, it should be noted that the dispute in the main proceedings does not concern a derogation under Regulation 54 of the 2011 Regulations. Consequently, there is no need to ascertain whether, and under what conditions, members of the public concerned derive from the provisions of the Aarhus Convention a right to participate in the administrative procedure relating to such a derogation.

42 In the light of all the foregoing considerations, the answer to the third and fourth questions is that Articles 12 and 16 of Directive 92/43 must be interpreted as meaning that a piece of national legislation intended to transpose those provisions into national law cannot be regarded as contrary to that directive on the ground that that piece of national legislation does not provide for (i) a development consent procedure which involves a decision by a competent authority determining whether it is necessary to apply for a derogation under Article 16 of the abovementioned directive because of matters identified following the grant of development consent to a project and/or whether surveys are required to that end or (ii) public participation in that derogation procedure.

The first and second questions

43 By its first and second questions, the referring court asks, in essence, whether EU law is to be interpreted as precluding national procedural rules relating to judicial review of the legality of an act, under which a person applying for such review is required to refer expressly to the legal provisions whose infringement he, she or it is pleading and may not raise a 'hypothetical question' but rather 'must be affected in reality or as a matter of fact' before being entitled to challenge the compatibility of a piece of national legislation with EU law.

44 It is apparent from the file before the Court that those questions have been submitted because, in the dispute in the main proceedings, the Irish authorities relied on national procedural rules in order to contest the admissibility of the arguments put forward by the applicant in the main proceedings which gave rise to the third and fourth questions.

45 In those circumstances, having regard to the answer to the third and fourth questions, it does not appear to be necessary to answer the first and second questions.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

must be interpreted as meaning that a piece of national legislation intended to transpose those provisions into national law cannot be regarded as contrary to that directive on the ground that that piece of national legislation does not provide for (i) a development consent procedure which involves a decision by a competent authority determining whether it is necessary to apply for a derogation under Article 16 of the abovementioned directive because of matters identified following the grant of development consent to a project and/or whether surveys are required to that end or (ii) public participation in that derogation procedure.

Arastey Sahún	Biltgen	Passer

Delivered in open court in Luxembourg on 6 July 2023.

A. Calot Escobar	M.L. Arastey Sahún
Registrar	President of the Chamber