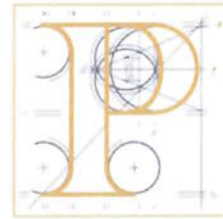


Our Case Number: ACP-324342-26

Your Reference: Glenmore Estate Farms Limited



An
Coimisiún
Pleanála

De Búrca Greene Solicitors LLP
1st Floor, Classic House
11/12 Washington Street
Cork
Co. Cork
T12 NHP1

Date: 05 August 2026

Re: Proposed Burnfoot Flood Relief Scheme
in the townlands of Ballyederowen, Carnashannagh, Monreagh (aka Barr of Kilmacilvenny), and
Inch Level at Burnfoot, County Donegal

Dear Sir / Madam,

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

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

If you have any queries in relation to the matter please do not hesitate to 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 
Eimear Reilly
Executive Officer
Direct Line: 01-8737184

JA03

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AN COIMISIÚN PLEANÁLA	
LDG-	_____
ACP-	_____
24 JUL 2026	
Fee: €	_____ Type: _____
Time: 9:15	By: Post

Our Ref
Your Ref
Date:

KM:AH:GLE/3505/26
JAO5E.324342
22/07/2026

Our Client: Glenmore Estate Farms Limited
Matter: An Coimisiún Pleanála Ref No. JAO5E.324342

Dear Sirs,

We confirm that we act for Glenmore Estate Farms Limited and enclose herewith written legal submissions prepared by Counsel.

Kindly note our clients wish to have an oral hearing convened in order that we can expand on a number of matters in Ms. Fahy's report submitted to you which give rise to legal considerations.

We look forward to hearing from you.

Yours faithfully,

De Búrca Greene Solicitors LLP

AN COMISIUN PLENANALA REFERENCES: JA05E.324342

**RE: APPLICATION BY DONEGAL COUNTY COUNCIL FOR PERMISSION
UNDER S175 AND 176 PDA, AND APPLICATION FOR COMPULSORY
PURCHASE OF LANDS BELONGING TO GLENMORE ESTATE FARMS
LIMITED**

**WRITTEN LEGAL SUBMISSIONS RELATING TO CONSENT AND
DRAWINGS ON BEHALF OF GLENMORE ESTATE FARMS LIMITED**

Introduction

1. These written legal submissions are prepared on behalf of Glenmore Estate Farms Limited (“**Glenmore**”). They concern the question whether Donegal County Council have submitted a valid application for approval pursuant to section 175 of the Planning and Development Act 2000 (as amended) (the “**PDA**”).
2. For the reasons set out herein, it is submitted that Donegal County Council have *not* submitted a valid application under section 175 and An Coimisiún Pleanála must refuse to grant approval.
3. These legal submissions are not intended to address all legal issues pertaining to the proposed development and Glenmore requests an oral hearing in relation to both the application for approval under section 175 PDA and the associated applications to CPO lands owned by Glenmore.
4. The planning merits of the proposals are addressed in the report of Ger Fahy.

Proposed development

5. Donegal County Council have applied to An Coimisiún Pleanála for approval under section 175 PDA to carry out development in connection with the Burnfoot Flood Relief Scheme.
6. The proposed development is set out at para 3.2 of the Planning Statement (dated May 2026) submitted to An Coimisiún Pleanála. Included in the proposed development is a proposal to lower defences at specified points to “*reconnect [with] the existing floodplain.*”
7. This is also evident from the advertisements in national newspapers.
8. Moreover, the proposed development was deemed to comprise a project requiring mandatory EIA on the basis that it is an **above-threshold** project comprising “*canalisation and flood relief works.*” It is above threshold as it involves flooding lands greater than 100 ha.
9. Put simply, the proposed development involves *inter alia* the intentional flooding, as an attenuation measure, of a large tract of land owned by Glenmore.
10. The candidate flood plains comprise an area estimated to be 126 ha. and in the ownership of Glenmore.
11. The application to An Coimisiún Pleanála is invalid as those lands are neither subject to a CPO, nor has Donegal County Council obtained consent from Glenmore to apply to An Coimisiún Pleanála with respect to development on Glenmore’s lands.

Drawings, lands and CPO

12. Ms Fahy notes that the application for permission is accompanied by maps and drawings which are largely confined to the areas where works are proposed. By

contrast, Ms Fahy notes that the drawings do not identify – whether in red line or blue line – the candidate flood plains.

13. Ms Fahy notes that the proposed flood plains comprise an area of approx. 126 ha of lands owned by Glenmore.
14. The first issue is that those lands are not included within the red or blue drawings submission to An Coimisiún Pleanála.
15. The red line does not include lands which are proposed to be flooded as part of the proposed development. The red line comprises only the area in which works are proposed. However, it is clear that the development is for the purpose of providing flood attenuation by way of flooding Glenmore's land (manifestly resulting in a material change in use). Ms Fahy notes the position starkly in her report in the following terms "*[t]his land will become an attenuation basin or a pond and will become unusable, yet it is not the subject of the CPO.*"
16. With respect to routine planning applications, Articles 22 and 23 of the Planning and Development Regulations 2001 (as amended) (the "**PDR**") require drawings to comply with the following:

“(2)

(b) 6 copies of a location map of sufficient size and containing details of features in the vicinity such as to permit the identification of the site to which the application relates, to a scale (which shall be identified thereon) of not less than 1:1000 in built up areas and 1:2500 in all other areas, or such other scale as may be agreed with the planning authority prior to the submission of the application, in any particular case and marked so as to identify clearly:

(i) the land or structure to which the application relates and the boundaries thereof in red,

(ii) any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land which is the subject of the application in blue.

(iii) any wayleaves in yellow...”

17. Article 23 provides:

“Plans, drawings and maps accompanying a planning application in accordance with article 22 shall all be in metric scale and comply with the following requirements:

(a) site or layout plans shall be drawn to a scale (which shall be indicated thereon) of not less than 1:500 or such other scale as may be agreed with the planning authority prior to the submission of the application, the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown... ”

18. Article 24 provides:

“Notwithstanding article 22(2)(d), an outline application shall, in addition to the requirements of article 22(2), be accompanied only by such plans and particulars as are necessary to enable the planning authority to make a decision in relation to the siting, layout or other proposals for development in respect of which a decision is sought.”

19. It is noted that these provisions are not replicated identically in the case of local authority development applications under s175.

20. Nevertheless, Article 118, which applies to applications under section 175 provides:

“When making an application for approval under section 175(3) of the Act, a local authority shall, subject to article 119, send to the Board—

(a) 3 copies of the plans and particulars of the proposed development...”

21. It is submitted that ‘plans and particulars’ ought to be interpreted as including maps which comply with the requirements of Articles 22, 23 and 24 PDR. The latter provision appears to include, within the ambit of ‘plans and particulars’, those drawings required by Article 22(2).
22. It is further difficult to see how An Coimisiún Pleanála could be satisfied as to the completeness of any assessment of the environmental effects of the proposed development if it is not shown clearly by the applicant the precise tracts of lands to be flooded. Naturally, the flooding of lands has the potential for many environmental effects thereon, including effects on biodiversity, the regenerative propensity of the land and indeed safety.
23. While it is possible that those drawings could perhaps now be sought by An Coimisiún Pleanála (although Glenmore maintains that the application is invalid), the one matter which cannot under any circumstances be resolved is the absence of consent of the landowner, Glenmore, to apply for approval for development to its lands.

The law

24. Section 175 PDA provides:

“(1) Where development belonging to a class of development, identified for the purposes of section 176, is proposed to be carried out—

(a) by a local authority that is a planning authority, whether in its capacity as a planning authority or in any other capacity, or

(b) by some other person on behalf of, or jointly or in partnership with, such a local authority, pursuant to a contract entered into by that local authority whether in its capacity as a planning authority or in any other capacity, within the functional area of the local authority concerned (hereafter in this section referred to as "proposed development"), the local authority shall prepare, or cause to be prepared, an environmental impact assessment report in respect thereof.

(2) Proposed development in respect of which an environmental impact assessment report has been prepared in accordance with subsection (1) shall not be carried out unless the Board has approved it with or without modifications.

(3) Subject to subsection (3A), where an environmental impact assessment report has been prepared in accordance with subsection (1), the local authority shall apply to the Board for approval of the proposed development to which the report relates.

(3A) A local authority shall not be eligible to make an application under subsection (3) in relation to proposed development in the maritime area unless it—

(a) is the holder of a maritime area consent granted for the occupation of a maritime site for the purposes of the proposed development,

(b) is the owner of land on which it is proposed to carry out the development concerned, or

(c) makes the application with the consent, or on behalf, of the owner of land on which it is proposed to carry out the development concerned.

(3B) The Board shall neither consider an application under subsection (3) in relation to proposed development in the maritime area nor grant approval for

such development under subparagraph (i), (ii) or (iii) of paragraph (a) of subsection (9) unless the applicant for such approval—

(a) is the holder of a maritime area consent granted for the occupation of a maritime site for the purposes of the proposed development,

(b) is the owner of land on which it is proposed to carry out the development concerned, or

(c) makes the application with the consent, or on behalf, of the owner of land on which it is proposed to carry out the development concerned....”

25. As appears, express provision is made in section 175 PDA (particularly at subsections 3A and 3B) requiring the consent of landowners in the case of maritime area development. Those provisions are inapplicable in the present case, as this is not maritime area development.

26. That is unsurprising as, often, applications for approval under section 175 are made in tandem with applications to compulsorily purchase lands in question.

27. In the present case, there are notices seeking to compulsorily purchase lands belonging to Glenmore, **but not the lands to be flooded.**

28. In other words, the approx. 126 ha proposed to be flooded are neither the subject of CPO nor consent. That renders the application invalid in Glenmore's submission.

29. While the consent of the landowner is an express statutory requirement in the case of routine applications under section 34 PDA, the PDA is silent as to the necessity to obtain consent for lands which are to be developed but not the subject of the CPO procedure.

30. In Glenmore's submission, the applicable case is *Frescati Estates v Walker* [1975] IR 177. That case dealt with the question whether a person with no legal estate or interest in a property entitled to apply under the Local Government (Planning and

Development) Act, 1963, for permission to develop the property. The 1963 Act, long since repealed, was silent on the question of consent from landowner.

31. Henchy J for a unanimous Supreme Court stated:

“To sum up, while the intention of the Act is that persons with no legal interest (such as would-be purchasers) may apply for development permission, the operation of the Act within the scope of its objects and the limits of constitutional requirements would be exceeded if the word "applicant" in the relevant sections is not given a restricted connotation. The extent of that restriction must be determined by the need to avoid unnecessary or vexatious applications, with consequent intrusions into property rights and demands on the statutory functions of planning authorities beyond what could reasonably be said to be required, in the interests of the common good, for proper planning and development.

Applying that criterion, I consider that an application for development permission, to be valid, must be made either by or with the approval of a person who is able to assert sufficient legal estate or interest to enable him to carry out the proposed development, or so much of the proposed development as relates to the property in question.”

32. Thereafter, the PDA put on an express statutory footing the requirement to obtain consent from a landowner in case of routine applications under section 34. However, in the case of applications for approval under section 175 PDA, which concerns lands which are *not* the subject of the CPO procedure, the PDA is silent. The position therefore is similar to that facing the courts in *Frescati*: legislative silence on the topic.

33. The principles set out in *Frescati* apply mutatis mutandis to the present application.

Conclusion

34. Donegal County Council's application for development fails to identify by way of properly produced maps the candidate flood plains.
35. Donegal County Council do not own the approx. 126 ha of candidate flood plains. They have not sought to CPO same – electing to CPO only very small areas of lands, presumably related only to the necessary works. Neither has Donegal County Council obtained the consent of the landowner to apply for approval to develop same.
36. The situation is as drastic as this: Donegal County Council is seeking approval to flood lands – approx. 126 ha - which it neither owns, nor has the consent of the landowner nor has it the intention to CPO.
37. The Commission simply could not lawfully approve development of this nature, resulting in flooding of Glenmore's land, without either proceeding to CPO same or else obtaining its consent for same.
38. For the avoidance of any doubt, Glenmore does not consent to this application, nor the intended flooding of its lands.
39. The present application is completely invalid and ought to be rejected.
40. Glenmore seeks an oral hearing.

**James Kane BL,
instructed by DeBúrca Greene Solicitors LLP**

on behalf of Glenmore

18th July 2026