

## Leahy Planning Ltd.

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**The Secretary  
An Bord Pleanála  
Marlborough Street  
Dublin 1.**

**21 June 2024**

### **Re: Application for a Substitute Consent.**

**Development:** Retention and completion of agricultural shed and storage unit at Rossadillisk, Co Galway.

**Applicant:** Mr Tom Termini

***Fee Enclosed:*** €104

Dear Sir/Mdm,

We enclose herewith application for substitute consent in the above together with cheque in your favour for the requisite fee relevant drawings and copy of remedial NIS.

It is necessary to explain how this building came to require substitute consent. In around 2020, Mr Tom Termini who is a small agricultural operator in this area wished to construct a facility for the keeping of bees. He determined that an agricultural shed was necessary for this purpose and he checked the exempted development regulations and satisfied himself that what he proposed was within the floor area for exempted agricultural sheds under Schedule 2, Part 3, Class 9 exemption under the Planning and Development regulations – provision

of a barn or shed for agricultural use under 300m<sup>2</sup> floor area and under 8m in height. He proceeded on this basis and commenced construction of the agricultural storage shed and a small equipment storage shed.

He received a letter from Galway County Council describing the development as being unauthorised and on 21st May 2021 he lodged a section 5 referral with Galway County Council. This referral was refused by Galway County Council (copy of refusal attached as **Appendix 1**) and unfortunately Mr Termini did not appeal this refusal to the Board. The reason for the refusal was that Galway County Council believed the development could have an impact on the adjacent SAC and that appropriate assessment would be required.

Some months later he contacted this office and we advised that he have an AA screening report done to determine whether in fact appropriate assessment was required.

The appropriate assessment screening report indicated that appropriate assessment was not required and on this basis this office lodged a second section 5 referral on 26th of September 2022. (Ref ED22/58). This was again refused by Galway County Council on 24th of October 2022. The reason for refusal referred to Article 9 (1) (a) (viiB), indicating that AA was necessary. We then appealed this to the Board on 15 November 2022 (ABP 315121-22), but the Board decided that as the matter had previously been determined and as the circumstances had not changed that it could not determine the matter. This dismissal of the appeal issued on 17 January 2024.

We had felt that inclusion of the screening report did represent a material change in the second application and appeal was therefore warranted. The Board did not agree.

This now leaves us with no option but to apply for substitute consent as the situation as it stands is that decisions have been made and have standing which indicate that appropriate assessment is required. We have therefore procured a remedial Natura Impact Statement which is included with this application as **Appendix 2**. This outlines remedial measures including provision for natural re-colonisation of areas of bare ground.

### **1. Description.**

The development is an agricultural shed of 91 m<sup>2</sup>. It is proposed to be used in Mr Termini's beekeeping and honey production operation. There is also a small storage shed of 6.8 m<sup>2</sup>.

The total height of the agricultural shed is 7.9m. Drawings illustrating the proposal are attached (**Appendix A**) as are photographs, given that the building has already been commenced (**Appendix 3**).

**Calculation of fees:** Total area of buildings proposed is 103.8 m<sup>2</sup>, rounded up to 104 m<sup>2</sup> for fee calculation. Schedule 9, Section 3, Class 3(1) €1 per m<sup>2</sup> = €104.

### **Exceptional Circumstances.**

Section 177 D of the Act outlines that the Board may grant Substitute Consent where it is satisfied

*“that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent”*  
( 177D(1)(b) ).

177D(2) outlines the matters to which the Board may have regard in determining if exceptional circumstances exist. These are recited as follows:

177D (2) (b)

*“whether the applicant had or could reasonably have had a belief that the development was not unauthorised;”*

Mr Termini at all times had regard to the exempted development regulations and ensured that the shed he proposed was under the exempted development limits in regard to area and height. As he was not located in a European site and as there is not discharge of any kind he did not consider that the proposal would be de-exempted. This was a reasonable position for an agricultural operator to take.

177D (2) (a)

*“whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;”*

Given that the original stage I Natura Impact Statement indicates no adverse effects it is clear that no circumvention of the Habitats Directive (or the EIA Directive) was intended.

177D (2) (c)

*“whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;”*

Again, given that the initial Stage I Natura Impact Statement indicated no adverse effects, and given the very limited nature of the works involved, it is very difficult to see how ability to carry out Appropriate Assessment could have been impaired. The board will of course be aware that public participation will be fully provided for with this application for substitute consent.

177D (2) (d)

*“the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;”*

The initial Stage I Natura Impact Statement indicated no adverse effects. In carrying out the remedial NIS as required for this application, our consultant has identified some possible effects and indicated remediation thereon.

177D (2) (e)

*“the extent to which significant effects on the environment or adverse effects on the integrity of a European Site can be remediated.*

While some effects have been identified and will be remediated as indicated in the remedial NIS , it is doubtful if these could be described as significant.

177D (2) (f).

*“whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;”*

The applicant has an exemplary record in terms of compliance with planning permissions and other than the instant case there are no enforcement proceedings pending against him.

177D (2) (g).

*“such other matters as the Board considers relevant.”*

We point out that the development in question is a small-scale development of a type very common in rural areas. The quality of build proposed is attractive and generally superior to that often found in agricultural sheds.

**Matters of proper planning and sustainable development.**

The proposal is an agricultural shed in an agricultural area. The Galway County Council development plan clearly states its support for agriculture. The proposal is located in Cleggan, and under Section 7(a) of the plan the area of Cleggan is listed. Section 7(a) affirms as follows ;

*“The open countryside provides for rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise.”*

It is clear therefore that the provision of shed for agricultural purposes (beekeeping) is entirely consonant with the development plan.

Given that the buildings were designed to be within the limits expressed under the general height and area restrictions provided for under the exempted development regulations is difficult to see how it could be regarded as one which would interfere with the character of the landscape or any view or prospect of special amenity value as may be suggested by the referral to 9 (1) (a) (vi) in the reason for refusal of the referral. Indeed, no such prospect of special amenity value is indicated in the development plan. Given that the height

and scale of the facility is perfectly consonant with the conduct of agriculture it is difficult to see any justification refusal of this agricultural operation.

We would also point out that there many examples within the local area, and within the indicated landscape, of sheds of a similar size and nature to that proposed which have been constructed, generally for agricultural or for storage purposes.

We attach as **Appendix 4** a variety of photographs of such sheds which have been taken by Mr Termini on 12th of November 2022. All of these were taken within 2.2 km of the location of the proposed development.

It is difficult to see therefore how it could be argued that the shed proposed by Mr Termini is a material breach of the development plan or that it can "interfere with the character of the landscape..... the preservation of which is an objective of the development plan".

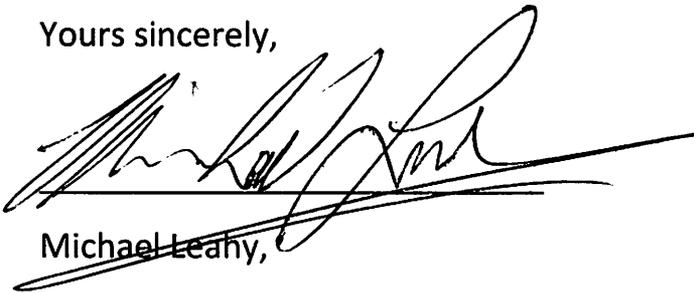
All of the arguments put forward by the planning authority to date have revolved around the issue of whether or not the shed was exempted development. The Planning Authority has not been able to accept an application because of its position that the development requires an Appropriate Assessment. I therefore have no idea whether it will oppose the granting of substitute consent and if it does so, on what basis it would suggest doing so. I trust, in the interests of natural justice that any such arguments made by the planning authority will be forwarded to us for our comments.

**Conclusion.**

This is an application for a small agricultural development in an area where such developments are permitted and indeed encouraged under the development plan. The proposal has no discharges of any kind, a high quality of build is proposed, the building would be an attractive feature and will contribute to diversification of agriculture in the local rural economy.

We therefore strongly urge the board to grant substitute consent as applied for,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Leahy', with a long horizontal flourish extending to the right.

Michael Leahy,

for Leahy Planning Ltd.

On behalf of Mr Tom Termini

Enclosed:

Appendix A

Appendixes 1-4

Cheque in your favour in the amount of €104