

TYPE OF APPLICATION: APPLICATION FOR SUBSTITUTE CONSENT PURSUANT TO SECTION 177E OF THE PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED

PLANNING AUTHORITY: LONGFORD COUNTY COUNCIL

PA REG. REF.: 22/1233

ABP REF.: ABP-314204-22 & LS14.318304 (DEEMED WITHDRAWN)

APPLICANT: GALRO ULC, MILL HOUSE, KILLASHEE STREET, LONGFORD.

DEVELOPMENT: RE-FENCING OF LANDS, WIDENING OF EXISTING ENTRANCE GATE, COMMENCEMENT OF RE-SURFACING OF EXISTING DRIVEWAY, AND REPAIRS TO HARBOUR.

DEVELOPMENT ADDRESS: CASHEL, NEWTOWNCASHEL, CO. LONGFORD, N39 VH28.

DATE OF SITE INSPECTION: 21/07/2024

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902.

22/07/2024

Re Prepared Pursuant to LS14.318304 having been withdrawn on 15/01/2024

Dear Sir/Madam,

Emma Pillion Planning (EPP) has been retained by Galro ULC, Mill House, Killashee Street, Longford to prepare a report to accompany an application for substitute consent on their behalf in respect of maintenance, repair and improvement works at their premises in Cashel, Newtowncashel, Co. Longford, N39 VH28, which is within European Sites the Lough Ree Special Area of Conservation (Site Code: 004064) and the Lough Ree Special Protection Area (Site Code: 004064).

This application for Substitute Consent, in accordance with Section 177E(2)(b) and (c) of the Planning and Development Act 2000, as amended, is accompanied by a remedial natura impact statement (rNIS) and the relevant fee.

1.0 Introduction

1.1 This application for Substitute Consent is made pursuant to Section 177E of the Planning and Development Act 2000, as amended. The application is being made on behalf of Galro ULC who both the owners of the lands and the people who carried out the development in accordance with Section 177E(1B) of the Planning and Development Act 2000, as amended (hereafter referred to as 'The Act').

1.2 The application seeks Substitute Consent (hereafter referred to as 'SC') for the upgrade of facilities at existing dwellinghouse, namely the:

- re-fencing of lands,
- widening of existing entrance gate,
- commencement of re-surfacing of existing driveway, and
- repairs to harbour.

1.3 Pursuant to Section 177E(1C)(a) of The Act a preliminary examination into the requirement for EIA screening for the subject works and the proposed extension was carried out by An Bord Pleanála during the consideration of ABP-314204-22 which concluded that a screening determination was not required (Attachments 2 and 11).

1.4 Pursuant to Section 177E(1C)(b) of The Act during the course of ABP-314204-22 An Bord Pleanála concluded that in the absence of a Natura Impact Statement, the Board could not be satisfied that the proposed development would not give rise to disturbance or barrier risk to qualifying interest species and therefore were precluded from granting planning permission.

1.5 This application for SC is made pursuant to an application for leave to apply for substitute consent (LS14.318304) having been deemed withdrawn by An Bord Pleanála on the 15/01/2024 (Attachment 1) on foot of changes to the planning legislation in December 2023.

1.6 Subsection 41(11) of the 2022 Act provides that where an application for leave to apply for substitute consent under section 177C was made to the Board and was not decided upon under section 177D before section 177C was repealed, the application must be deemed to be withdrawn and the fee returned to the applicant.

2.0 Site Location and Description

2.1 The site is located just off the northern portion of Lough Ree, on the eastern shoreline of the lake, in the midlands. The area known as Cashel, Newtowncashel, is located 10km south of Lanesborough, 15km west of Ballymahon and 18km north of Athlone, as the crow flies. The site is accessed off a cul-de-sac local road, which serves Cashel Graveyard and a number of houses/farms, along with the commonage at the end of the cul-de-sac upon wherein the (former) public access point to Lough Ree is located.

2.2 The site consists of a landholding of 1.25Ha on the shoreline of Lough Ree, of which approximately half is located within a domestic garden for the existing dwelling house and the remainder is fallow and unused pasture lands, with a mix of native and non-native trees located around the dwelling house (untended).

2.3 The existing bungalow on site and domestic shed to the north of the site are approximately 103sq.m. in size, neither of which are the subject of the current SC application. The bungalow is a simple rectangular shape, with its gable end facing the road and the long axis running parallel to the shoreline and the shed located to the north of the site i.e., away from the shoreline.

Site Location Map



2.4 The house, using an image from Google Maps in 2009, was served by a simple block entrance wall with small pillars and manual gate and the garden bounded by a white post and rail fence (image from Google Maps 2009 shown hereunder). This was the permitted entrance under the parent permission PL5505 in 1977 (Attachment 6).

Google Maps Image Showing Dwelling and Entrance in 2009



3.0 The Application for Substitute Consent

3.1 The application has been prepared by EPP, Will Design Associates, and Veon Ltd. in conjunction with the applicant, Galro ULC.

3.2 The application includes the following documentation;

1. Notification of withdrawal of Leave to Apply for Substitute Consent application by An Bord Pleanála dated 15th January 2024.
2. Decision of An Bord Pleanála dated 24th November 2022.
3. Decision of the Planning Authority dated 18th July 2022.
4. Reasons for refusal by Planning Authority.

5. rNIS dated 11th April 2023 prepared to accompany the application for LSC.
6. Decision of the Planning Authority dated 11th August 1977.
7. Letter from the applicant setting out the circumstances surrounding the case.
8. Letter from the contractor setting out his role in the works.
9. Timeline of events from purchase of subject site to Leave to Apply for Substitute Consent stage.
10. Photographs of the original photos of the subject site and current photos of subject site.
11. An Bord Pleanála's Inspectors Report dated 16th September 2022.
12. Planners Report dated 8th July 2022 (signed by Senior Planner 12th July 2022).
13. Veon rEIA report dated 16th October 2023.
14. Legal Opinion on whether LSC was required.
15. Veon rNIA dated 11th October 2023.
16. Photos of old fencing outside of the newly installed fencing.
17. Site location map (17a), Site layout plan (17b) for LSC.
18. Drawings showing the development now seeking SC.
19. Location of mains water pipe (raised in planning application as not serving the area, incorrectly, by the Planning Authority).
20. Planning history for Galro ULC.
21. Legal correspondence re adverse possession claims by adjacent landowner & third party (who are one and the same).
22. Veon rNIS dated 10th July 2014.
23. Veon rEIS Screening Report dated 10th July 2014.
24. Photos taken on site 21st July 2024.

3.3 The SC application seeks authorisation for the upgrade of existing facilities at existing dwellinghouse, namely the:

- re-fencing of lands inside the line of the original fence that existed on site, which had become eroded in places at some stage prior to Galro purchasing the subject lands and associated dwelling house. The original fence line is still visible outside the line of the old fence (in sections as it was missing in sections prior to purchase) and photographs documenting this are shown at Attachment 16. The reason for the installation of a new weldmesh fence, instead of the replacement with barbed wire fencing, was to exclude the risks associated with a service user of the dwelling house getting injured on a barbed wire fence, absconding from the area or putting their hands through the fence with risk of injury from farm animals at the obverse. This is common practice for Galro, as health and safety is a fundamental consideration for their respite homes and service users,
- widening of existing entrance gate than that permitted under the parent permission. The gate which existed was very narrow and the works to re-fence the site and re-gravel the driveway required machinery access, which could not fit through the gate,
- commencement of the re-surfacing of existing driveway with fresh gravel because the existing gravel driveway had become overgrown, with gravel surfacing having worn down to soil in places, and
- repairs to harbour wherein rocks were protruding on top of the harbour and Joe Sheahan had asked the contractor to track out on the harbour to level them. A misunderstanding between parties meant that the contractor had commenced moving some stones from the waterside of the harbour, placing them on the shoreline when the misunderstanding came to light.

Drawings are shown in Attachment 17-19.

4.0 Planning History

4.1 PL/5505 Permission sought on the 27th June 1977 for the erection of a house. The parent permission was granted permission subject to 4no. conditions on the 11th August 1977. It is noted that condition no. 1 refers *"That the new front boundary wall be located on the landward side of the*

existing fence.” It is important to note that fencing of this land pre-existed the parent permission and the designation of the subject lands as a Natura 2000 site.

4.2 Pre-planning consultation dated 30th November 2021.

4.3 22123 Permission sought for a material change of use of existing dwelling to residence where care is provided for persons with intellectual or physical disability. The proposed works will also include upgrade of the existing entrance and boundary treatments, removal of non-native invasive evergreen trees, proposed single storey extension (C.92M.SQ) to the NE & SE elevations and ancillary site works all which is within SAC and pNHA. Refused by Longford County Council and subsequently An Bord Pleanála.

4.4 ABP-318304-23 Application for leave to apply for substitute consent lodged 19/10/2023 and deemed withdrawn on 15/01/2024 due to legislative changes.

5.0 Applicant Compliance History

5.1 The applicant has never had an Enforcement Notice or legal action taken against them or their directors. The only Warning Letter ever issued to the company or any of its directors is in relation to the subject site, for which no enforcement action was taken as the company immediately engaged with the Planning Authority in respect of the alleged unauthorised works. A summary of all applications sought by Galro ULC is included at Attachment 19, but a synopsis is included overleaf.

Application Ref No.	Description	Location	Date
19326	Longford CoCo: proposed renovation to existing dwelling	9 Harbour Row, Townsparks, Longford	23.10.2023

21108	Longford CoCo: changes to PL20117	Killashee Street & Bog Lane, Townsparks, Longford	22.10.2021
1794	Longford CoCo: construction of extension to office	Millhouse, Killashee, Longford	08.05.2017
9613604	Longford CoCo: construction of 2no. housing sites	Ferefad, Longford	11.10.1996
9713730	Longford CoCo: construction of 5no. stables and farm waste pit	Ferefad, Longford	23.01.1997
166251	Westmeath CoCo: proposed renovation and extension to dwelling house	Gaddrystown, Moygoish, Sonna, Mullingar	Refused
176119	Westmeath CoCo: construction of replacement 2no. story dwelling	Gaddrystown, Moygoish, Sonna, Mullingar	17.07.2017
21134	Westmeath CoCo: construction of extension to rear and side of dwelling	Rathowen, Mullingar	17.08.2021
2360013	Westmeath CoCo: construction of agri storage shed	Gaddrystown, Moygoish, Sonna, Mullingar	06.06.2023
2360014	Westmeath CoCo: demolition of front boundary wall for surface parking	8 Great Oaks, Mullingar	Refused
2360134	Westmeath CoCo: demolition of storage sheds and construction of new shed and extensions to dwelling	Old Dublin Road, Mullingar	Refused

2360285	Westmeath CoCo: retention for change of use of domestic garage to habitable accommodation ancillary to use of main residence	Garden Lodge, Rathcolman, Mullingar	Refused
2460129	Westmeath CoCo: retention for change of use of domestic garage to habitable accommodation ancillary to use of main residence	Garden Lodge, Rathcolman, Mullingar	New application – at Further Information stage

6.0 Natural Heritage Designations

6.1 The subject site is located within the Lough Ree SPA (Site Code 004064), the Lough Ree SAC (Site Code 000440) and the Lough Ree pNHA (Site Code 00440).

7.0 Legislative Context

7.1 The Planning and Development Act 2000, as amended

7.1.1 The Act sets out that a retention application cannot be accepted by the Planning Authority for a development which would have required a remedial environmental impact assessment (rEIA), a remedial natura impact assessment (rNIS) or both. In this instance, where the requirements of Part XA of the Act can be satisfied, an application should be made to An Bord Pleanála for Substitute Consent pursuant to Section 177E(1) of The Act.

7.1.2 The Board, in accordance with Section 177E(1B), this application is made by Galro ULC who the landowners and the persons who carried out the development which is subject to this SC application.

7.1.3 In accordance with Section 177E(1C) of The Act and having regard to the decision of the Board in ABP-314204-22, it was determined that an EIA was not required, but that an AA was required with respect to the subject development.

7.1.4 In accordance with Section 177E(1E), this application has considered the requirements of The Act and the Planning and Development Regulations 2001, as amended (hereafter referred to as 'The Regs') is submitted to the Board for their consideration for SC.

7.1.5 Pursuant to Section 177G of The Act, Veon Ltd. have prepared a rNIS taking into account the relevant considerations and any additional information which they deemed relevant to the subject site.

7.1.6 Further to review of Section 177J of The Act, it is noted that following correspondence with the Planning Authority, all works ceased immediately upon the subject site and have not recommenced pending the decision of An Bord Pleanála.

7.2 Longford County Development Plan 2021-2027

7.2.1 The Longford County Development Plan 2021-2027 (hereafter referred to as the 'LCDP') governs the policy for Longford and identifies the site as lying within an area designated as an SAC, and SPA and a pNHA.

7.2.2 The LCDP outlines that whilst the responsibility for designating sites lies with the Department of Housing, Local Government and Heritage, it is the role of the Council to ensure their protection.

8.0 Scope of Application for Substitute Consent

8.1 An application for substitute consent can only be determined by An Bord Pleanála, subject to Part XA of The Act, and subject to Section 177K(1A)(a) of The Act, the determination will be assessed on

the basis of whether exceptional circumstances exist such that the Board considers it appropriate to permit the application for substitute consent.

9.0 Grounds for the Application for Substitute Consent

9.1 Consideration of Need for rEIA/rAA

9.1.1 Section 177E(1C) of The Act specifies *“The Board shall only consider an application for substitute consent in respect of development of land where –*

(a) subject to subsection (1D), the Board is satisfied under section 172 that an environmental impact assessment was required or is required for the development,

(b) subject to subsection (1E), the Board is satisfied under section 177U that an appropriate assessment was required or is required for the development, or

(c) subject to subsections (1D) and (1E), the Board is satisfied under sections 172 and 177U, that both of the assessments referred to at paragraphs (a) and (b) were required or are required for the development.”

9.1.2 Pursuant to the requirement for EIA screening, An Bord Pleanála carried out a preliminary assessment for the subject works during the consideration of ABP-314204-22 which concluded that a screening determination was not required (Attachments 2 and 11).

9.1.3 With regard to the requirement for appropriate assessment, An Bord Pleanála’s Inspectors Report dated 16th September 2022 in respect of ABP Ref. ABP-314204-22 (Attachment 11) refers, which states;

“7.2.13 The scale of the construction is small, nevertheless there is potential for effects from runoff during construction.

7.2.14 During the operational phase of the development, there is potential for effects from runoff. Other operational phase effects include disturbance. The house, which has been in place for many years appears to have had little use. The observer’s claim of squatter’s rights, through 20 years of use of the land, points to such limited use or disuse. The proposed use will involve more human activity. The development may involve barrier effects. Although not detailed as part of this

application / appeal, it is possible that barriers such as fences may be erected or may have been erected, with potential impact on the qualifying interest features and conservation objectives of the protected sites.”

9.1.4 An Bord Pleanála concluded that in the absence of a Natura Impact Statement, the Board could not be satisfied that the proposed development would not give rise to disturbance or barrier risk to qualifying interest species and therefore were precluded from granting planning permission.

9.1.5 In addition, Veon Ecology have prepared a rEIA screening document which concludes:

“The scale of the subject project, when viewed individually and cumulatively, is very small in the context of both the EIA (EIS) threshold criteria, and types of projects listed in the regulations which require EIA (EIS). It is considered that the works completed at a site on lands in Newtowncashel, Co. Longford, likely did not have significant negative effects on the environment and therefore does not need to be subject to a remedial Environmental Impact Assessment (EIA) and no remedial Environmental Impact Assessment Report (EIAR) is required for it.”

9.1.6 It is concluded therefore that a rEIA is not required in this instance, however a rNIA is required and the associated rNIS is included with this application for SC.

9.2 Additional Information of Assistance to the Board

9.2.1 Longford County Council’s Planners Report (Attachment 12) dated 12th July 2022 states; *“It is noted that works have already commenced with the applicant constructing a fence along the boundary of the land right into the lake, the widening of the gateway and a deposit of large volumes of stone and the movement of stones along the shoreline. It is noted that the applicant has not proposed to retain any of these works.*

9.2.2 The applicant, along with their agent, met with the Area Planner and Senior Executive Planner in January 2023, with a view to regularising the site and reapplying for planning permission. From minutes taken by the applicant’s agent at that meeting the following was set out:

“We discussed the reasons for refusal from the Council and An Bord Pleanála and we agreed that the reasons for refusal could be attempted to be dealt with in a new application, however the Planners questioned the upgraded fence and if retention of same was needed.”

Later in the meeting the Planners outlined that the *“Planning Authorities opinion is that the above works, while minor, required retention permission via the Bord”*

9.2.3 Veon Forestry, Ecology & Environment have prepared their consideration of whether an environmental impact assessment, a determination as to whether an environmental impact assessment is required (Attachment 23). Having regard to the scale and nature of the development that has taken place, there is no requirement for either a determination in relation to EIA or for EIA and the likelihood of significant effects on the environment can be excluded for the purposes of EIA.

9.2.4 There are no specific circumstances which would warrant a determination for a sub-threshold EIS in light of the potential adverse impacts on the environment. The development was also assessed in the context of whether or not the development would be likely to have significant effects on the environment based on the criteria set out in Schedule 5 of Regs and significant effects, both direct, indirect and cumulative were ruled out.

9.2.5 Given the discussions at the pre-planning meeting, the applicant and agent began exploring the need for the regularisation of the improvements/maintenance tasks outlined by the Planners, despite being of the previous opinion that the improvements/maintenance tasks did not need planning permission as they were minor and necessary for the improvement/maintenance of the property, which they routinely carry out at properties owned by the company all over the country. Having consulted with their solicitor, an opinion on the improvements/maintenance tasks was sought and provided by Mary Moran-Long PhD BL (Attachment 14) which concluded that the improvement/maintenance tasks carried out on site must be regularised through an application for LSC, which has since been amended by the changes to the Act.

9.2.6 The rNIS prepared for the purposes of the SC application outlined that the site borders Lough Ree, a freshwater lake protected under the Lough Ree SAC and SPA. No other hydrological features exist on or near the site. The rNIS sets out that *“The Lough Ree Special Area of Conservation (SAC) (000440) overlaps the project site, and the Lough Ree Special Protection Area SPA (004064) borders the site.”*

9.2.7 In addition the rNIS states that *“This rNIS has identified that given the nature of the works completed and the implementation of mitigation measures, the completed works did not give rise to adverse effects on the integrity of any of the identified European sites.”*

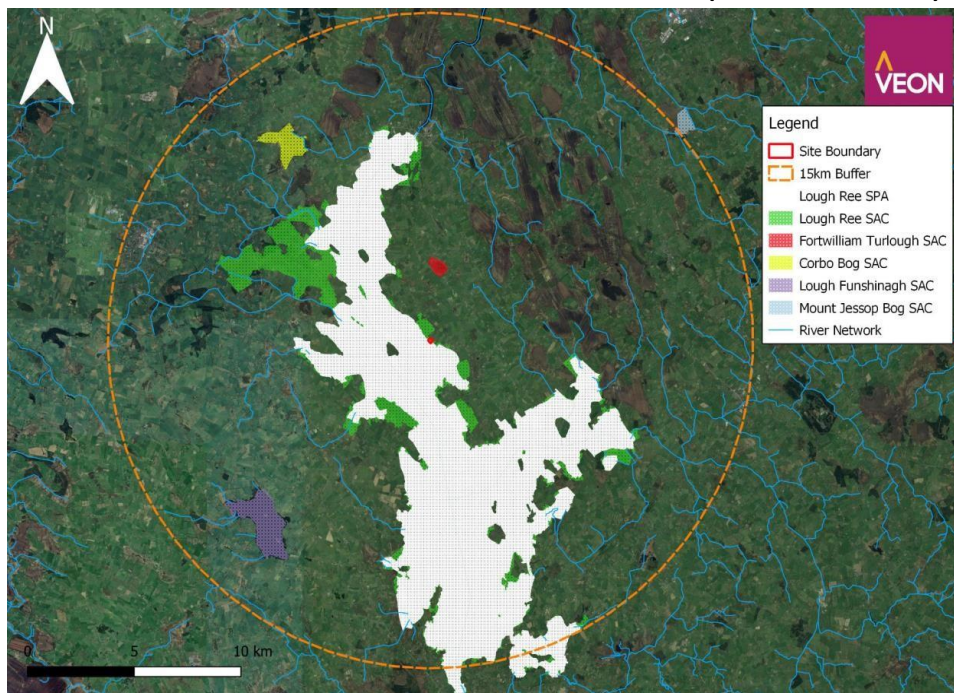
9.2.8 Following the withdrawal of the LSC application by An Bord Pleanála and during the preparation of the subject SC application, the rNIS identify the areas which may have been potentially impacted by works carried out as being the actual site itself and the aquatic habitats downstream of the works. The aquatic zone consists of Lough Ree (covering an area of 100.2km²) and a portion of the River Shannon where it exits the lake.

9.2.9 The rNIS sets out that the shoreline of Lough Ree is the only hydrological feature which is within the development site. The rNIS also outlines that the water quality status assessed under the EU Water Framework Directive (2000/60/EC) 2nd cycle 2016-2021 of Lough Ree is ‘good’ and that many of the qualifying interests of the Lough Ree SAC are directly influenced by the water quality of the lake.

9.2.10 The site consists of an improved grassland area which formed part of the garden around the dwelling house, a semi-natural woodland and boundary hedgerow which forms part of the outer site to the north and east, and a wet semi-natural grassland area between the house and the shoreline on the southern portion of the site. Prior to the applicant purchasing the site, the lands were grazed and whilst they are regenerating, they are now considered agricultural lands (GA1 improved agricultural grassland) and are of low biodiversity value.

9.2.11 An assessment of the birds utilising the site was carried out as part of the rNIS and while a wide range of birds are thought to use the site for nesting/foraging, the shoreline does not offer any nesting opportunities for aquatic birds. The site inspection observed no record of the otter, but what is thought to be badger routes were discovered on site, along with red squirrels and a possible sighting of a red squirrel drey.

Natura 2000 Sites within the 15km Zone of Influence (Source: rNIS Veon)



9.2.12 In conclusion, having regard to the Veon rNIS report accompanying this application, the physical and hydrological potential pathways between the works and the designated sites via ground, surface and or environmental impact of both, it is considered that an appropriate assessment was required for the subject works and is now required retrospectively for the works seeking SC. Based on the Conservation Objectives of the Natura 2000 sites and the fact that the Planning Authority are satisfied that they cannot rule out effects that the development may have had on the SAC and SPA, the

development therefore qualifies for consideration for substitute consent in respect of a development for which rAA is required.

9.3 Section 177K of the Act

9.3.1 Section 177K(1A)(a) of the Act specifies that the Board shall also be *“satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board”*.

The applicant was in the latter stages of the conveyancing process for the subject site, when they became aware of a claim for adverse possession of the subject lands by Joseph Casserly in September 2021. The sale of subject site to the applicant closed on the 5th October 2021 and on the 11th October 2021 Brendan Quaine inspected the subject site, measured the location of the boundary and commence the process of mapping the purchase of the premises. In the following weeks the boundary was confirmed, a contractor appointed, and a fence erected where it had been damaged/was no longer in place to secure the lands from any further trespass (see correspondence at Attachment 21). The applicant had already begun to plan an extension to the subject development, for which they intended to seek planning permission for (under 22-123) but was completely unaware that fencing the lands to prevent further issues regarding adverse possession and carrying out some routine maintenance works prior to the planning application process would result in any impact on the planning process.

9.3.2 Section 177K(1J)(a) *“whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;”* It is not considered that the regularisation of the development concerned would circumvent the purpose and objectives of the EIA Directive in that the application relates to the retention of maintenance/improvement works to a permitted dwelling site and associated surrounding woodland/agricultural land and which is below the statutory threshold for EIA as set out in The Regs. As EIA was and is not required no issue arises in relation to the EIA Directive.

9.3.3 Having regard to the fact that this application for SC includes a rNIS in accordance with the Habitats Directive, the rNIS has evaluated the requisite considerations and has determined, on its

merits, that the subject development did not have significant impacts on the purpose and objectives of the Habitats Directive. In addition, given the lengthy and permitted history of use on the site that predates the Habitats Directive, the small scale of the maintenance/improvement works carried out, it is not considered that regularisation would circumvent the purposes or objectives of the Directive as a pre-established site.

9.3.4 Section 177K(1J)(b) *“Whether the applicant had or could reasonably have had a belief that the development was not unauthorised;”* The attached letter from the applicant refers (Attachment 7). Galro ULC, which owns similar houses all over the midland’s region, offer respite facilities to families of vulnerable children and adults. The company, nor its directors, have never owned a premises in/near a Natura 2000 site, waterways or other protected areas and they operate in a highly legislative industry wherein compliance is a fundamental obligation. The purchase of the dwelling house was via a local auctioneer and the documents accompanying the purchase made no such reference to the protection of any aspect of the dwelling/lands therein (ref Appendix 21).

9.3.5 Given the nature of the works, which would normally be described as routine maintenance and improvement works to an existing permitted dwelling house and associated lands within a rural area, the fact that the applicant had applied for planning permission to extend the house and change the use before finding out there was an issue with the maintenance works, it suggests that the applicant had the belief that the extension and change of use required planning permission as would be the norm, but that the maintenance works did not require planning permission.

9.3.6 The applicant, upon purchasing the subject premises and adjoining lands, had to approach the third party to remove their livestock from the lands and the applicant was advised to fence off the lands and secure access to same as part of the process of denying the adverse possession claims. There was never any question for Galro ULC that the subject works were maintenance and involved routine tasks which didn’t require planning permission. The requirement to fence the lands to keep the third party’s animals from accessing same necessitated the removal of the piers as the machine couldn’t fit in the existing gateway and the applicant believed the compaction of the harbour stone to be

maintenance works and never even considered that planning permission could be required for them. Having regard to the foregoing and to the contents of the applicant's letter attached hereto (Attachment 7) and the contractors letter attached (Attachment 8), it is considered that the applicant could reasonably have had the belief that the development was not unauthorised.

9.3.7 Section 177K(1J)(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?"* As EIA was and is not required no issues arise in relation to this matter. Having regard to the planning history on the subject site since the applicant purchased the site and the fact that there has been third party activity on site, it is not considered that the provision for public participation has been substantially impaired. It is therefore considered that there has been no impairment to carrying out rAA, including providing for public participation.

9.3.8 Section 177K(1J)(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;"* Given that EIA was and is not required, no issues arise in relation to this matter. The possible adverse effects on the integrity of a European site in this case, relate to the physical and hydrological linkages between the subject site and the Lough Ree SAC, which is directly connected to the subject site and which were screened in for potential impacts which highlighted that impacts could not be eliminated and a Stage 2 assessment was required.

9.3.9 Given the nature and scale of the works carried out, the limited impacts on the environment to date were localised and short-term. Furthermore, there is no evidence from Veon's inspection of the site, to suggest that any such adverse effects have arisen and all maintenance works on site have ceased since the applicant became aware of the matter.

9.3.10 Section 177K(1J)(e) *“The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;”* As EIA was and is not require no issues arise in relation to this matter. In relation to AA there are no indicators to suggest that remediation is required, as no adverse effects have been identified on site.

9.3.11 Given that:

1. the subject site already had fencing,
2. adjoining lands have fencing,
3. lands further along the shoreline are in agricultural use and have fencing down to the shoreline,
4. there was an existing driveway to the dwelling house,
5. the dwelling house already exists, and
6. the conclusion of the rNIS carried out by Veon Ecology,

the maintenance works at the existing premises has had no *“significant effects upon the Lough Ree SAC and SPA and the QIs for which these sites have been designated”*.

9.3.12 Section 177K(1J)(f) *“Whether the applicant has complied with previous permissions granted or has previously carried out unauthorised development;”* A full list of permitted developments for the company and the company directors are set out in Section 5.0 of this report. The applicant has also no legal enforcement history in planning terms, indeed the subject site is not even the subject of enforcement proceedings, just the Warning Letter issued in relation to the subject site.

9.3.13 The company has its head office at Killashee Street, Longford and operates approximately twenty-five (25) designated residential centres for people with disabilities throughout Leinster and is *au fait* with the normal planning process. In addition, the company has a number of adult and children’s respite centres, community-based services and clinical therapeutic services. The company residential and respite centres are all registered with HIQA, the health information and quality authority and enjoy a high level of compliance in all of its activities.

9.3.14 The issues arising on the subject site regarding maintenance works are the first time Galro has encountered a Natura 2000 site and the considerations which surround them, could never have reasonably foreseen the issues regarding the maintenance works and deeply regrets the position it finds itself in.

9.3.15 Section 177K(1J)(g) *“Such other matters as the Board considers relevant.”* The applicant has made every effort to comply since becoming aware that the development was unauthorised, namely;

- Cooperated with the Planning Authority and employed a plethora of consultants to help assist with regularising the works so that a solution to the issue may be achieved,
- Engaged in a second pre-planning meeting with the Planning Authority to obtain advices in relation to the maintenance works,
- Analysed the reasons for refusal, engaged a barrister to ensure that the next steps would be the correct ones,
- Prepared further reports for the application for SC, and
- Withdrawn any further maintenance of the property until such time the matters have been fully considered and regularised.

9.3.16 It is contended that exceptional circumstances do exist in this case, as the regularisation of the development would not circumvent the purposes or objectives of the Habitats Directive; the applicant reasonably had the belief that the development did not require planning permission, the ability to carry out rAA and provide for public participation has not been substantially impaired, particularly in light of the limited nature of the works and the likely effects on a European site resulting from the development.

10.0 Conclusion

10.1 Having regard to Part XA of the Planning and Development Act 2000, as amended, it is considered that:

- a) the development is one where a remedial appropriate assessment is required, and
- b) exceptional circumstances exist by reference to the following:
 - the regularisation of the development would not circumvent the purpose or objectives of the Habitats Directive;
 - the applicant could reasonably have had a belief that the development was not unauthorised;
 - the ability to carry out rAA and provide for public participation has not been substantially impaired; and
 - the likely significant effects on a European site resulting from the development based on the minor works carried out have been assessed and eliminated.

Therefore, it is considered that substitute consent should be granted on this occasion.

Yours sincerely,

Emma Pillion MIPI