

**APPLICATION FOR SUBSTITUTE CONSENT
UNDER SECTION(S) 177E OF THE PLANNING &
DEVELOPMENT ACT 2000 (as amended)**

Client – Mr. John Roche

Subject Property – Clonmines, Wellingtonbridge, Co. Wexford

1. Overview:

O’ Leary Consulting Engineers & Chartered Town Planners have been retained to prepare an application for substitute consent for a camping / camp site enterprise which was located in the townland of Clonmines, Wellingtonbridge, Co. Wexford (hereinafter referred to as the “subject property”). This report has been commissioned on the instruction of Mr. John Roche (hereinafter referred to as “the client”). This report has been commissioned on foot of planning enforcement proceedings being taken against the client by Wexford County Council.

2. Report Author:

This report has been compiled by Terry O’ Leary on behalf of O’ Leary Consulting Engineers & Chartered Town Planners. The author of the report is a Chartered Consulting Engineer and holds an M. Eng. (Structural & Geotechnical), MA (Town Planning), M.Sc., B.Sc. Hons., C. Eng, PhD & C. Env. O’ Leary Consulting Engineers are corporate members of the Irish Planning Institute hold professional indemnity insurance in the sum of €1,000,000.00 and a copy of the policy document is set out in Appendix 1 of this report.

3. Preamble:

Mr. John Roche the registered owner of the subject property has been served with planning enforcement proceedings by Wexford County Council on foot of unauthorised works completed at the subject property. The following note summarises the legal proceedings referenced hereto;

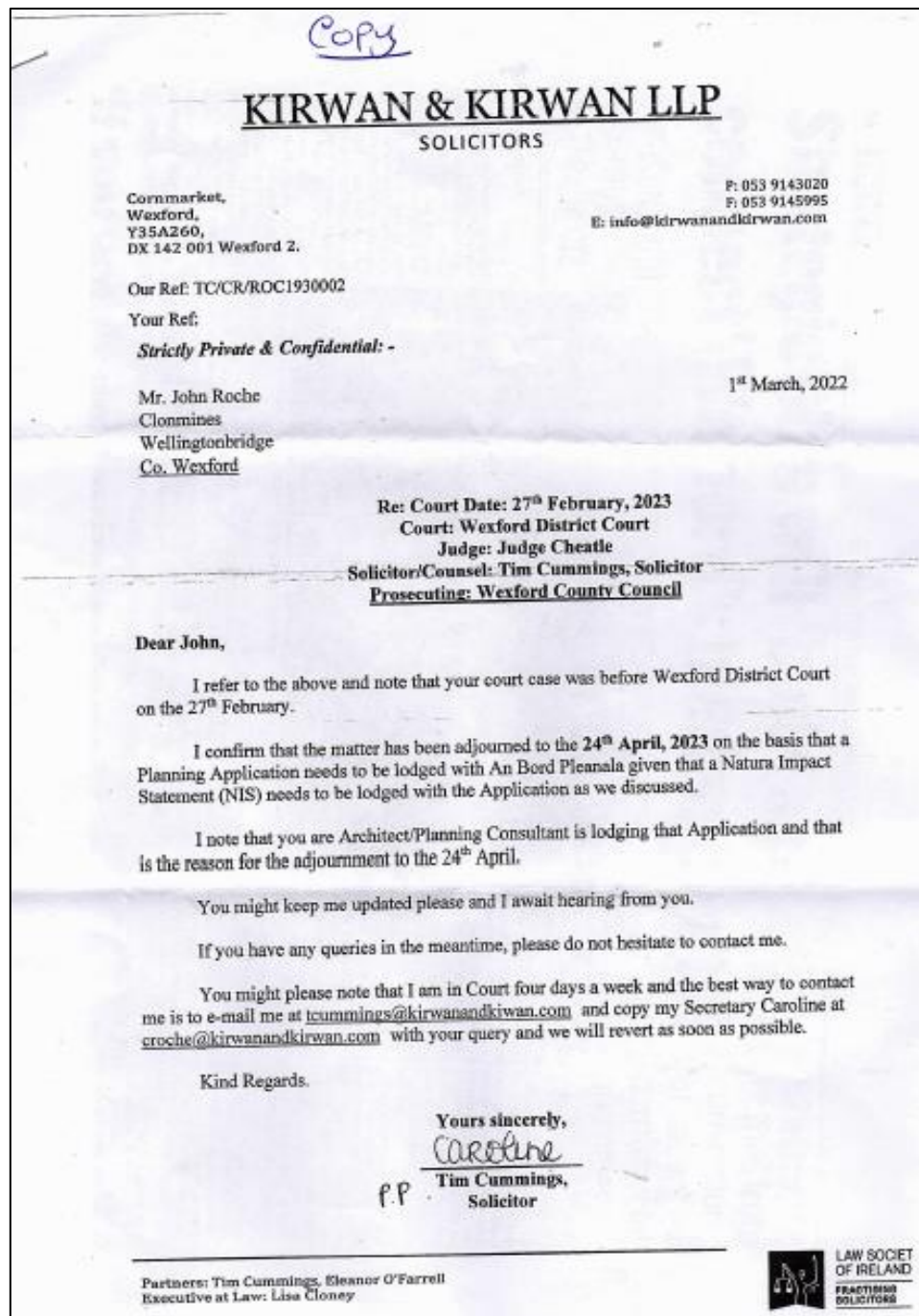


Figure 1 – Confirmation of Legal Proceedings Underway

4. Substitute Consent Process:

An Bord Pleanála was given additional functions and responsibilities under various provisions contained in the Planning and Development (Amendment) Act 2010. Some of the relevant provisions of the Act were subsequently amended by the Environmental (Miscellaneous Provisions) Act 2011, the European Union (EIA and Habitats) Regulations 2011, the European Union (EIA and Habitats) (No. 2) Regulations 2011, the European Union (Substitute Consent) Regulations 2011, the European Union (Environmental Impact Assessment and Habitats) Regulations 2015 (numbers 1 and 2).

Section 57 of the Planning and Development (Amendment) Act 2010 inserted 2 additional parts into the Planning and Development Act 2000 (as amended) i.e. Parts XA and XAB. The Board's functions were expanded in both parts. Section 75 of the Planning and Development (Amendment) Act 2011 inserted a new section 261A into the Planning and Development Act 2000 (as amended). This section deals with the control of quarries and it contains additional functions for An Bord Pleanála.

Part XA (inserted by section 57 of the Planning and Development (Amendment) Act 2010) deals with the issue of substitute consent. The concept of substitute consent derives from a European Court of Justice finding to the effect that permission for the retention of development affected by the EU Directive on Environmental Impact Assessment may be granted only in exceptional circumstances.

This application for substitute consent is made under the above criteria and on foot of a direction from Wexford County Council that the application must be made to An Bord Pleanála as outlined in the following planning determination for the subject property;

5. Planning Application 20221465 to Wexford County Council:

A planning application was submitted to Wexford County Council under planning permission reference no. 20221465 on the 3rd November 2022 as follows;

Application No.: 20221465	
Application Type: Full Permission	
Application Date:	Thursday 3rd of November 2022
Date Registered:	
Applicant Name:	John Roche
Development: Clonmines, Tintern	
Proposal:	Permission for the proposed development of lands to be used for a camper, caravan & campsite and for the change of use of 2 no. agricultural buildings; shed A to be changed to a communal use building which includes toilet facilities and shed B to be changed to a covered area for seating and refreshments and a new treatment plant & percolation area, also included is a Natura Impact Statement
Area:	New Ross M.D.
Decision: Invalidated	
Decision Stage:	Invalid Application
Decision Date:	Thursday 24th of November 2022

Figure 2 – Confirmation of Planning Application Submission

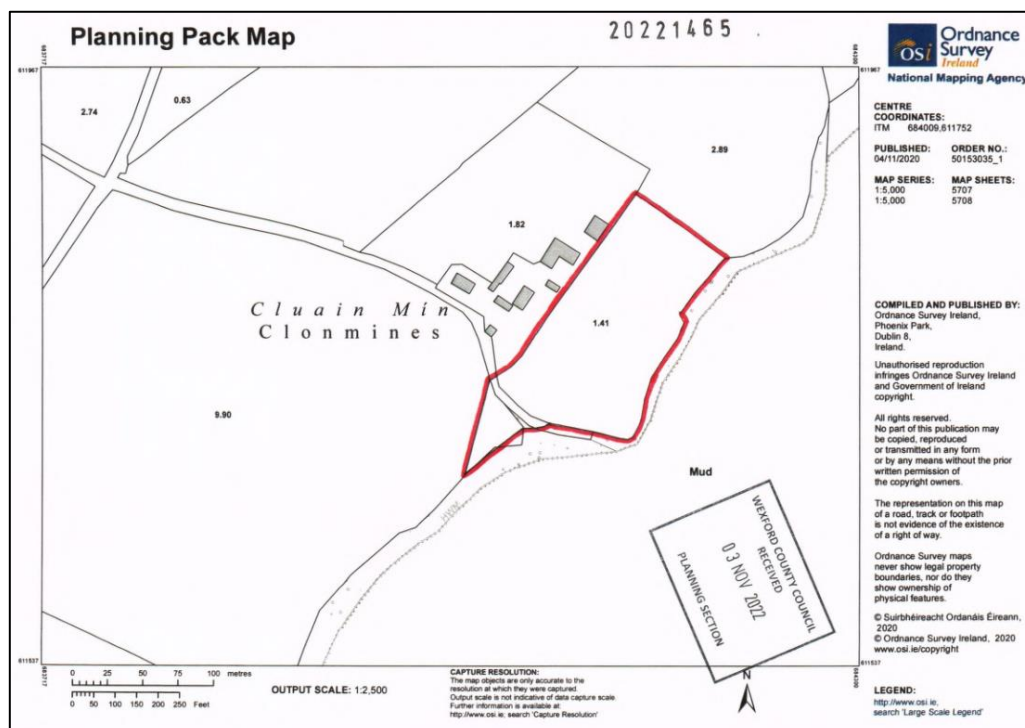


Figure 3 – 1:2500 Ordnance Survey Ireland Planning Permission Site Location Map

(Source: Wexford County Council Planning File 20221465)

Planning permission application 20221465 was deemed invalid by Wexford County Council on the 24th November 2022 with the following extracted from the planning report. A full copy of the planning report is set out in Appendix 2 hereunder;

Having regard to the nature of the development which will be required to seek retention being located within the catchment of a designated Shellfish Protected Waters and construction of campervan parking area within the Bannow Bay SPA and Bannow Bay SAC, such works require the submission of a remedial Natura Impact Statement (NIS) and the planning authority in such instances is An Bord Pleanála.

In accordance with Section 34(12) of the Planning and Development Act 2000 (as amended) if an application is submitted for retention for these works and change of use accompanied by a NIS, the planning Authority will have no option but to return the application as a 'Refuse to Consider' in accordance with Section 34(12) of the Planning Act 2000 (as amended).

Section 34 (12) A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out (a) an environmental impact assessment, (b) a determination as to whether an environmental impact assessment is required, or (c) an appropriate assessment.

Attached please find all documentation submitted with the application. I am arranging for a refund of the fee paid.

Please ensure that the notice erected on site is removed from same with immediate effect.

Yours sincerely


Staff Officer
Planning and Development

Figure 4 – Extract from Planning Invalidation Report from Planning Application 20221465

(Source: Wexford County Council Planning File 20221465)

A site inspection was carried out by Wexford County Council at the subject property on the 24th November 2022 and the planning inspector concluded that the proposed works had already been completed and that the planning application was inaccurately described. The planning inspector stated as follows as extracted from the planning invalidation report in Appendix 2;

Comhairle Contae Loch Garman



28 November 2022

John Roche
C/O John Roche
St Leonards
Ballycullane
New Ross
Co Wexford
Y34 V294

PLANNING AND DEVELOPMENT ACT 2000 (as amended)
PLANNING AND DEVELOPMENT REGULATIONS 2001 (as amended)

Register No: 20221465

Applicant: John Roche

Proposal: Permission for the proposed development of lands to be used for a camper, caravan & campsite and for the change of use of 2 no. agricultural buildings; shed A to be changed to a communal use building which includes toilet facilities and shed B to be changed to a covered area for seating and refreshments and a new treatment plant & percolation area, also included is a Natura Impact Statement

Location: Clonmines, Tintern

Dear Sir/Madam

The attached application received on 3 November 2022 does not comply with the following requirements of the Planning and Development Regulations 2001 (as amended). This application has been deemed an invalid application for the following reasons:

Article 26(4) states that where, on inspection of the land to which the application relates, the planning authority considers that the requirements of Articles 17(1)(b), 19 or 20 have not been met, or the information submitted in the planning application is substantially incorrect or substantial information has been omitted, the planning application shall be invalid.

A site inspection was carried out on 24 November 2022 which has indicated that the development is already carried out and the application has been advertised as seeking



Comhairle Contae
Loch Garman
Wexford County
Council

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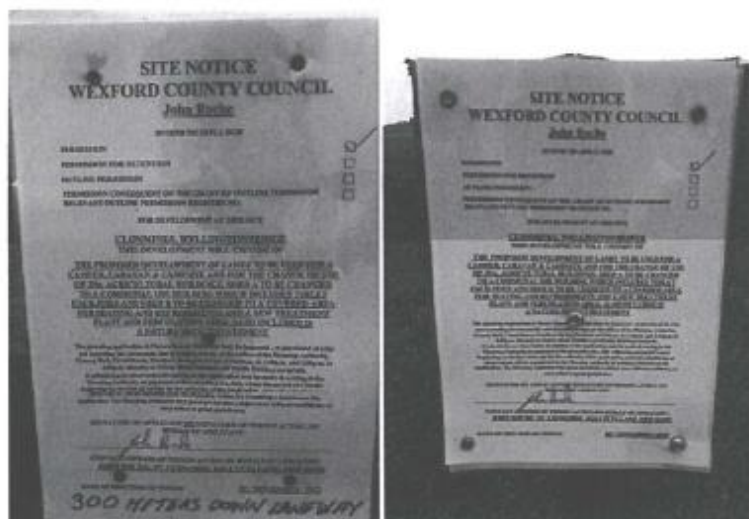
permission for the proposed development of lands to be used for a camper, caravan and campsite instead of retention.

The description of the application seeking permission is therefore not accurate and is insufficient to adequately indicate what is involved in the application. Nowhere in the advertised description does it make any indication that the development is already carried out. I note all the electrical points for the caravans etc. are in place, and the various access roads and surfaces are in place. There is a reception building and the structures seeking permission to change use are not agriculture and have signs such as wine bar etc. on them. There are various food and coffee trucks on site and picnic tables and barbeques stored on site etc.

There are two enforcement cases noted in relation to the unauthorised developments, Enf. 0158/2022 (non-compliance with PP 20211928 and Enf. 0160/2020 unauthorised development of campervan camp site.

It is considered that the application submitted is invalid as it has omitted substantial information, and it is misleading to the planning authority and the public from the description what is involved in the application.

This application is therefore deemed invalid under Article 26(4) of the Planning and Development Regulations 2001 (as amended).



Site notices at site on 24 November 2022

Figure 5 – Extract from Planning Invalidation Report from Planning Application 20221465
(Source: Wexford County Council Planning File 20221465)

Wexford County Council have determined that in accordance with Section 34(12) of the Planning & Development Act 2000 (as amended) that due to the works having already been completed and the fact that an Natura Impact Statement (NIS) is required for these works that an application for Substitute Consent will need to be made An Bord Pleanala.

6. Natura Impact Statement:

A comprehensive NIS is attached from SWC Promotions for the subject property as required for the substitute consent application process. We trust that this report will address the key issues regarding the NATURA 2000 site.

7. Summary:

We trust that the foregoing outlines for the benefit of An Bord Pleanala the circumstances that have occurred at the subject property and that the Substitute Consent procedures can be used to regularise the associated planning non-compliances under Section 177C of the Planning Development Act 2000 (as amended) as noted overleaf in correspondence from the Board.

Signed;

Terry O' Leary M. Eng. (Structural & Geotechnical) MA, M.Sc., B.Sc. Hons., C. Eng., PhD., C.Env.,

Chartered Engineer, Chartered Building Surveyor &

Chartered Town Planner MCABE, MIEI, MRICS, MSCSI, MIPI.

Registered On-Site Wastewater Assessor & IOWA Member.

Member of the International Association of Hydrogeologists (IAH).

Our Case Number: ABP-318529-23

Your Reference: John Roche



An
Bord
Pleanála

Terry O'Leary of O'Leary Consulting Engineers
"Rathview"
Rathmore
Broadway
Co. Wexford
Y35E093

Date: 04 December 2023

Re: Substitute consent for a camping / camp site enterprise
Clonmines, Wellingtonbridge, Co. Wexford.

Dear Sir,

An Bord Pleanála has received your letter in which you lodged an application for substitute consent under Section 177E of the Planning and Development Acts 2000 to 2023.

Sub-section (2) of section 177E provides that an application to the Board for substitute consent shall be made pursuant to a notice given under section 177B or 261A or a decision to grant leave to apply for substitute consent under section 177D.

Your application for substitute consent provides no evidence that it is being made as a consequence of either of the above preconditions for its validity. In the circumstances your application for substitute consent has been deemed invalid and is herewith returned and a cheque for the amount paid will issue under separate cover.

The current statutory framework for substitute consent processes enables you to lodge an application for leave to apply for substitute consent under section 177C of the Planning and Development Act 2000 as amended.

However, please note that there are new amending provisions in respect of substitute consent processes in the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Those particular provisions, which have not yet been commenced, include provisions that repeal, inter alia, sections 177B, 177C and 177D and provide for applications for substitute consent without having to go through the processes set out in those sections. This new act also provides that any leave to apply for substitute consent cases that are on hands but not decided before the commencement of the relevant section of the Act repealing the aforementioned sections shall be deemed to have been withdrawn and cannot be decided by the Board.

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