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The Secretary

An Coimisiún Pleanála

64 Marlborough Street

Dublin 1

DO1 V902

Date: 11th August 2026

Re: Application for Substitute Consent for the following;

The retention of upgrading works to the existing footpath extending from Clonfadda House to the shoreline, the retention of a new steel storage shed, the retention of a footpath providing access thereto, permission for drainage works associated with the footpath, and all ancillary site and landscaping works. at Clonfadda House, Clonfadda, Killaloe, Co. Clare V94 W2YY

This application has been prepared by Andrew Hersey Planning of 3 Atlantic View, West End, Kilkee, Co. Clare on behalf of Tommy Geary of Clonfadda House, Clonfadda, Killaloe, Co. Clare V94 W2YY

1.0 Introduction

- 1.1 I, Andrew Hersey Planning Consultant, am acting on behalf of Tommy Geary of Clonfadda House, Clonfadda, Killaloe, Co. Clare V94 W2YY
- 1.2 My client wishes to submit an application for substitute consent to An Coimisiún Pleanála for the works described above



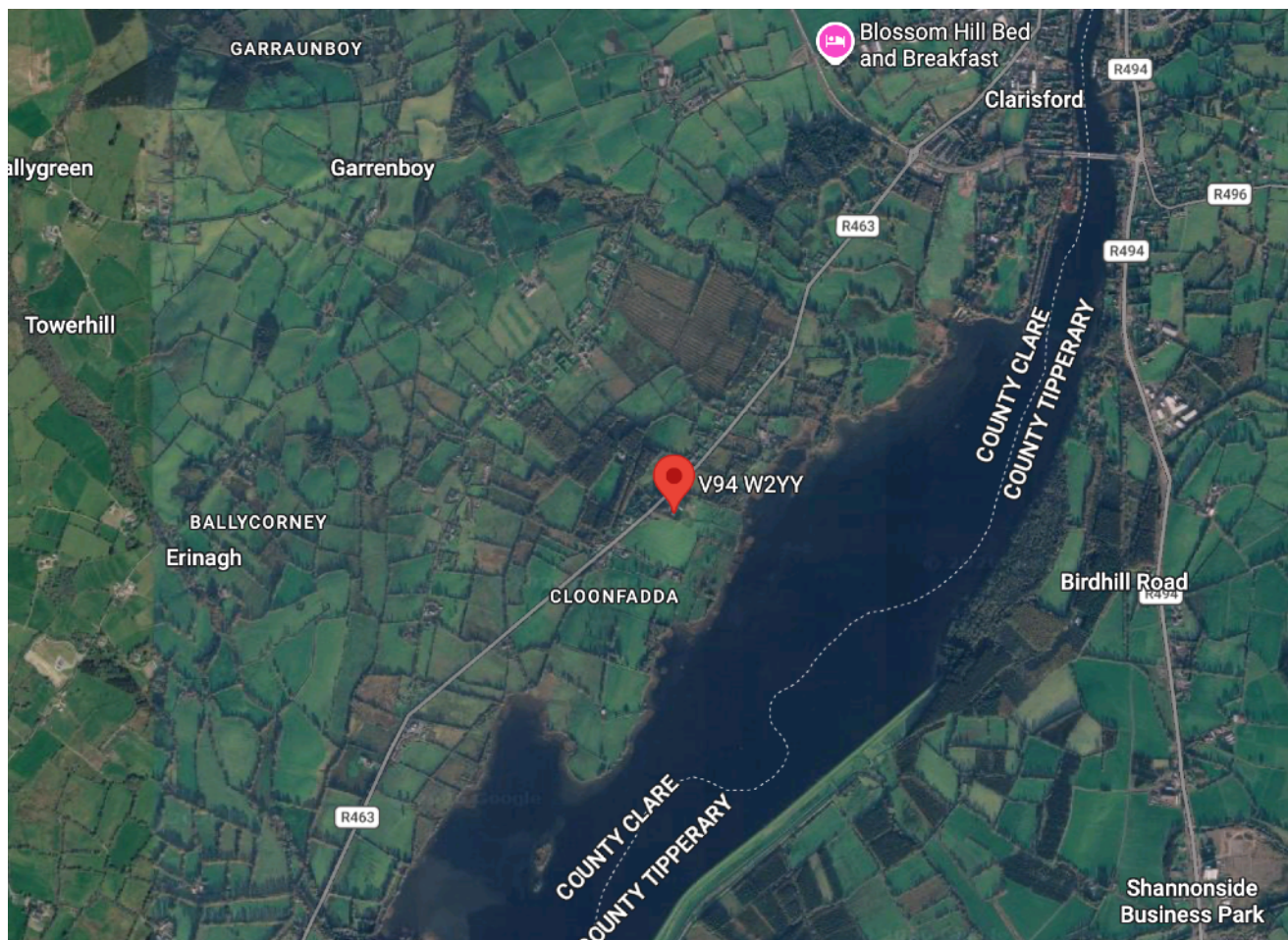


Figure 1 - Site Location Map

- 1.3 This application for Substitute Consent has been lodged following a Warning Letter issued by Clare County Council on 10 January 2025 under Enforcement Reference UD24-094. The Warning Letter identified unauthorised development comprising the construction of a gravel/hardcore pathway and kerbing within a Special Area of Conservation.
- 1.4 Following the submission of further information, including an Appropriate Assessment Screening Report, Clare County Council subsequently confirmed by correspondence dated 9 October 2025 that, in its opinion, Appropriate Assessment would have been required had an application for permission been made prior to the commencement of the development. The correspondence is included at Appendix 2.



- 1.5 The present application for Substitute Consent has therefore been prepared having regard to the enforcement history and the requirement for retrospective Appropriate Assessment. The application is accompanied by a Remedial Natura Impact Statement prepared by OMC Consulting, together with the planning, ecological and other supporting documentation necessary to enable An Coimisiún Pleanála to assess the development

2.0 Site Context & Background

2.1 Site Context

- 2.1.1 The application site is located in the townland of Clonfadda, approximately 3.5 km south of Killaloe, to the east of the R463. (Please refer to the accompanying Site Location Map and Site Layout Plan.) The site comprises Clonfadda House, a detached period dwelling which has recently undergone renovation works. The dwelling is set within extensive landscaped grounds that slope eastwards towards the shoreline of Lough Derg.
- 2.1.2 The application site comprises lands in the ownership of the applicant, Tommy Geary, together with lands adjoining the shoreline of Lough Derg which are in the ownership of the Electricity Supply Board (ESB). The extent of the respective ownerships is identified on the accompanying Site Layout Plan. Accordingly, the development the subject of this application extends across lands in both the applicant's ownership and ESB ownership.
- 2.1.3 The applicant has obtained the written consent of the Electricity Supply Board to the making of this application and to the proposed development insofar as it relates to lands in ESB ownership. A copy of the ESB letter of consent is included with the application documentation (see Appendix 1)
- 2.1.4 The shoreline of Lough Derg and the lands immediately adjoining it, including part of the application site, are designated as part of the Lower River Shannon Special Area of Conservation (SAC) (Site Code: 002165). As such, the lower section of the footpath, which forms part of the development the subject of this application, is located within the SAC.. The extent of the designation is identified on the accompanying Site Layout Plan.



- 2.1.5 The footpath that is the subject of this application extends from the lawn to the front of Clonfadda House eastwards to the shoreline of Lough Derg. The path also branches northwards, terminating at the existing steel shed, which is also the subject of this retention application.
- 2.1.6 The application site is located adjacent to the Lower River Shannon Special Area of Conservation (SAC) (Site Code: 002165). The existing dwellinghouse is located outside the designated European Site. The existing footpath extends from the dwellinghouse to the shoreline, with the lower section of the footpath located within the SAC. The domestic storage shed is located outside the designated SAC.
- 2.1.7 Accordingly, the development comprises works both outside and within the designated European Site. The principal works within the SAC relate to the upgrading of the existing footpath. The proposed drainage and associated landscaping works are remedial measures identified in the accompanying Remedial Natura Impact Statement to address the potential environmental pathways associated with surface-water runoff from the existing path.
- 2.1.8 Prior to the works being undertaken, a path existed along the route of the development, including within the section of the route located within the Lower River Shannon SAC. The historical photographic and aerial evidence submitted with this application demonstrates the existence of this pre-existing route, including evidence of its use prior to the works being undertaken (see photos in Appendix 1
- 2.1.9 The works therefore comprised the upgrading and improvement of an existing route rather than the creation of a new pedestrian route through previously undeveloped land. The works included the installation of kerbing, surfacing of the existing route and associated localised groundworks and alterations to the path margins. The upgraded route broadly followed the alignment of the pre-existing path
- 2.1.10 The accompanying rNIS records that the works were undertaken intermittently between 16 March and 18 September 2024 and during daylight hours. The construction involved manual labour and light plant, including a mini excavator, mini dumper, power barrow, compactor and hand tools. The nature and scale of the works are further described and assessed in the accompanying rNIS.



2.2 Planning History

- 2.2.1 *Planning Reg. Ref. 16474* - Permission granted for development comprising of the following works: a) Alterations/Extensions to the existing dormer style dwelling house consisting of; b) Demolition of existing single storey conservatory, and carport to sides of existing dwelling; c) New 1.5 storey extension to side of existing dwelling, including alterations to roof existing to accommodation same; d) Proposed new treatment system, percolation area to replace existing; e) Alterations/Extension to existing single storey shed/outbuilding; f) Adjustments to existing water feature/pond; g) And all associated site works and service connections.
- 2.2.2 *Planning Reg. Ref. 17-639* - Permission granted for development comprising of the following; a) Removal of existing water feature / pond and replacement with new single storey pool structure to rear of existing dwelling. b) All associated site works and services
- 2.2.3 Neither of the above planning permissions relates to the development the subject of this application for Substitute Consent.

2.3 Enforcement History

- 2.3.1 The applicant received a Warning Letter from Clare County Council under Enforcement Reference UD24-094, dated 10 January 2025. The Warning Letter related to the unauthorised development comprising the construction of a gravel/hardcore pathway and kerbing within or adjoining the Lower River Shannon Special Area of Conservation (SAC). A copy of the Warning Letter is included at Appendix 2.
- 2.3.2 Following the Warning Letter, information was submitted to Clare County Council in connection with the potential regularisation of the development, including an Appropriate Assessment Screening Report. By correspondence dated 9 October 2025, Clare County Council confirmed that it had reviewed the additional information submitted and set out the opinion of the Planning Authority and Environmental Officer in relation to the requirement for Appropriate Assessment. A copy of this correspondence is included at Appendix 2.
- 2.3.3 In that correspondence, Clare County Council identified the proximity of the Lower River Shannon SAC, including the fact that the development was partially within and contiguous with



the European site, together with the potential for direct and indirect effects. The Council also identified the potential for impacts on surface-water quality arising from the construction works and the associated hydrological connectivity with the European site.

2.3.4 Having regard to those matters, Clare County Council concluded that, had an application for planning permission been made prior to the commencement of the development, the requirement for Appropriate Assessment could not have been screened out. The Planning Authority therefore concluded that Appropriate Assessment, together with the preparation of a Natura Impact Statement, would have been required.

2.3.5 The Council further advised that, having regard to Section 34(12) of the Planning and Development Act 2000, as amended, an application for retention permission would be required to be refused where Appropriate Assessment would have been required had permission been sought prior to commencement of the development. The applicant was accordingly advised to consider the appropriate means of regularising the development.

2.3.6 The present application for Substitute Consent has therefore been prepared in response to the enforcement history and the subsequent position adopted by Clare County Council. The application is accompanied by a Remedial Natura Impact Statement which provides the ecological assessment necessary to consider retrospectively the effects of the development and the remedial measures proposed.

2.4 Policy Context

2.4.1 Clare County Development Plan 2023-2029

2.4.1.1 It is noted that the proposed development site is located on lands designated as a “Heritage Landscape’ in the Plan



3.0 The Application

3.1 Legislative Basis for the Application

3.1.1 This section demonstrates that the application has been prepared in accordance with the requirements of Section 177E of the Planning and Development Act 2000 (as amended) and Article 227 of the Planning and Development Regulations 2001 (as amended). The following sections identify the relevant statutory provisions and demonstrate how the application satisfies each of the prescribed legislative and procedural requirements

3.2 Application Contents

3.2.1 This planning application has been prepared by the following consultants on behalf of the applicants:

- Andrew Hersey Planning - MIPI - Planning Lead
- Larry Manning, Principal Ecologist, OMC Consulting – Remedial Natura Impact Statement
- Niklas Weissbrich - Architectural Technician - Drawings

3.2.2 For the avoidance of doubt, this letter, and all accompanying material forms part of our client's planning application.

No	Items	Member of Project Team	Copies
1	Application to An Coimisin Pleanála for Substitute Consent Form No. 7. Article 227 of the Planning and Development Regulations 2001 (as amended) for Substitute Consent (incl. Development Description, calculation of fees (€102- see attached fee calculation document), confirmation of property ownership, etc) completed in hard copy.	Applicants and Andrew Hersey Planning	1
2	Newspaper notice (Clare Champion) published 31/07/2026). A copy of this notice with the advertisement outlined in red accompanies this planning	Andrew Hersey Planning	1
3	Site Notice (erected). Site notice copy attached and location indicated on the attached OS Location Map @1:2500 and Site Layout Plan @ 1:500	Andrew Hersey Planning	1



No	Items	Member of Project Team	Copies
4	Substitute Consent Planning Application Statement (this report).	Andrew Hersey Planning	1
5	Planning Application Drawings including survey drawings	Niklas Weissbrich	1
6	Remedial Stage 1 Screening Report and Stage 2 Natura Impact Statement (rNIS).	OMC	1

3.2.3 The application includes, inter alia, the following documentation;

- (i) Planning Report
- (ii) Remedial NIS
- (iii) Copy of all Drawings
- (iv) Consent from Applicant for agent to apply for permission on his behalf.
- (v) Consent from ESB
- (vi) Planning Application Form
- (vii) Site Notice
- (viii) Newspaper Notice

3.3 *Statutory Provisions*

3.3.1 Section 177E of the Planning and Development Act 2000, as amended (hereafter referred to as “the Act”), provides the statutory framework for applications for Substitute Consent in respect of development which has been carried out without the necessary planning permission in circumstances where Environmental Impact Assessment and/or Appropriate Assessment was required or is required.

3.3.2 Section 177E(1) provides that an application for Substitute Consent is made to An Coimisiún Pleanála. Section 177E(1B) provides that an application may be made by a person who has carried out the development or by the owner or occupier of the land on which the development has been carried out.



- 3.3.3 Section 177E(1C) establishes the statutory assessment gateway for Substitute Consent. The Commission may consider an application where it is satisfied that an Environmental Impact Assessment and/or Appropriate Assessment was required or is required in respect of the development. In circumstances where an application is accompanied by a Remedial Natura Impact Statement and the application is not otherwise invalid or withdrawn, Section 177E(1E) provides for the Commission to be deemed satisfied that Appropriate Assessment was required and was required in respect of the development.
- 3.3.4 Section 177E(2) sets out the principal requirements for an application for Substitute Consent. In summary, the application must identify the person making the application, be accompanied by the appropriate remedial Environmental Impact Assessment Report and/or Remedial Natura Impact Statement, as applicable, include the prescribed fee, comply with the requirements prescribed under Section 177N and be accompanied by any other documents considered of assistance to the Commission in determining the application.
- 3.3.5 Where a Remedial Natura Impact Statement is submitted, Section 177E(4B) provides that the Commission may require further information where it considers that the Remedial Natura Impact Statement does not comply with the requirements of Section 177G(1). Section 177G(1) requires a Remedial Natura Impact Statement to address the significant effects, if any, which have occurred, are occurring or can reasonably be expected to occur as a consequence of the development, together with details of appropriate remedial or mitigation measures undertaken or proposed.
- 3.3.6 The statutory framework therefore requires the Commission to consider the development retrospectively, having regard to the environmental effects arising from the development and, where relevant, the remedial measures proposed, together with the other planning and environmental considerations arising under the Act and associated Regulations.
- 3.3.7 The manner in which the present application satisfies the relevant requirements of Section 177E and the Planning and Development Regulations 2001, as amended, is set out in the following sections of this report.



3.4 Basis for Application under Section 177E of the Planning Act 2000 (as amended)

3.4.1 Having regard to the statutory framework outlined in Section 3.3 above, the present application satisfies the basis upon which an application for Substitute Consent may be made under Section 177E of the Act.

3.4.1.1 The application is being made by Tommy Geary, being the person who carried out the development the subject of this application. The applicant is also the owner of the lands comprising part of the application site. The remaining lands affected by the development are in the ownership of the Electricity Supply Board (ESB), and the applicant has obtained the written consent of ESB to the making of this application and to the proposed development insofar as it relates to those lands. A copy of the ESB consent is included with the application documentation.

3.4.1.2 The development the subject of this application includes works to an existing footpath, part of which is located within the Lower River Shannon Special Area of Conservation (SAC) (Site Code: 002165). The accompanying rNIS identifies the direct and indirect hydrological and ecological connections between the completed pathway, adjacent wetland habitats, the on-site drainage ditch and the lakeshore.

3.4.1.3 Having regard to the location of part of the development within the Lower River Shannon SAC and the identified hydrological and ecological pathways to the European site, Appropriate Assessment was required in respect of the development. This requirement was also identified by Clare County Council following its consideration of the Appropriate Assessment Screening Report submitted during the enforcement process, as set out in Section 2.3 above and the correspondence included at Appendix 2.

3.4.1.4 The rNIS has been prepared specifically in the remedial context and addresses the effects which have occurred, are occurring or could reasonably be expected to occur as a consequence of the development. It also identifies remedial measures intended to address the potential pathways for effects identified through the assessment.

3.4.1.5 The application is accordingly accompanied by a Remedial Natura Impact Statement for the purposes of enabling An Coimisiún Pleanála to undertake the Appropriate Assessment required in



respect of the development. The rNIS provides the ecological information necessary to assess the implications of the development for the relevant European sites and identifies the remedial measures proposed to address the potential effects identified.

3.4.1.6 In accordance with Section 177E(1E) of the Act, the submission of a Remedial Natura Impact Statement with this application provides the statutory basis upon which the Commission is deemed satisfied that Appropriate Assessment was required and was required in respect of the development, subject to the application otherwise being valid and not withdrawn.

3.4.1.7 No Remedial Environmental Impact Assessment Report is submitted with this application. The development has nevertheless been considered in relation to the requirements for Environmental Impact Assessment, as addressed separately in Section 5.9 of this report

3.5 *Contents of Application under Section 177E(2) of the Planning Act 2000 (as amended)*

3.5.1 Section 177E(2) of the Planning and Development Act 2000, as amended, sets out the principal requirements for an application for Substitute Consent. The present application addresses those requirements as follows.

3.5.2 In accordance with Section 177E(2)(a), the application identifies Tommy Geary as the person making the application.

3.5.3 In accordance with Section 177E(2)(b), the application is accompanied by a Remedial Natura Impact Statement (rNIS) prepared by OMC Consulting. The rNIS has been prepared in the remedial context and considers the effects which have occurred, are occurring or could reasonably be expected to occur as a consequence of the development, together with the remedial and mitigation measures proposed.

3.5.4 In accordance with Section 177E(2)(c), the prescribed fee is submitted with the application.

3.5.5 In accordance with Section 177E(2)(d), the application has been prepared having regard to the requirements prescribed under Section 177N of the Act and the Planning and Development



Regulations 2001, as amended. The application documentation includes the prescribed application form, public notices, site notice, plans, particulars and supporting documentation required for consideration of the application.

- 3.5.6 In accordance with Section 177E(2)(e), the application is accompanied by such additional documentation as is considered relevant and of assistance to the Commission in determining the application. This includes the Planning Report, the accompanying rNIS, drawings and plans, the planning history information, the Warning Letter issued by Clare County Council and the written consent of the Electricity Supply Board in respect of the lands within its ownership affected by the development.
- 3.5.7 The application is not accompanied by a Remedial Environmental Impact Assessment Report, as the development is not considered to comprise or form part of a class of development prescribed for the purposes of Environmental Impact Assessment under Schedule 5 of the Planning and Development Regulations 2001, as amended. The Environmental Impact Assessment considerations applicable to the development are addressed separately in Section 5.7 of this report.
- 3.5.8 The accompanying rNIS addresses the requirements of Section 177G(1) by identifying the potential significant effects associated with the development and setting out the remedial and mitigation measures proposed to address the identified environmental pathways. The rNIS also identifies the period within which the proposed remedial measures are to be implemented.
- 3.5.9 The applicant will provide any further information or documentation which the Commission may consider necessary to enable it to determine the application and, where required, to address any matter arising from its consideration of the accompanying rNIS

3.6 *Content of substitute consent applications – Planning Regulations 2001 (as amended)*

- 3.6.1 The requirements of Article 227 of the Planning and Development Regulations 2001, as amended, in respect of applications for Substitute Consent are addressed as follows.
- 3.6.2 Content of applications for Substitute Consent generally — Article 227



Article 227(1)

This application for Substitute Consent is made in the prescribed form, being Form No. 7 of Schedule 3 to the Planning and Development Regulations 2001, as amended. A completed copy of the prescribed application form accompanies this application.

Article 227(2)(a)

The prescribed newspaper notice of the making of the application has been published in the Clare Champion within the period prescribed prior to the making of this application. A copy of the newspaper notice, including the full page of the newspaper in which the notice was published, accompanies the application.

Article 227(2)(aa)

A site notice in the prescribed form has been erected on the site. The site notice was erected on 10 August 2026, as stated on the notice. The location of the site notice is identified on the accompanying OS Site Location Map and Existing Site Layout Plan.

Article 227(2)(b)

The application is accompanied by the prescribed number of copies of the OS Site Location Maps and Site Plans at the appropriate scales.

Article 227(2)(c)

The application is accompanied by the plans and particulars necessary to describe the development to which the application relates, including the relevant site layout plans, drawings and other particulars appropriate to the nature and extent of the development.

Article 227(2)(ca) and Article 227(2)(cb)

The development has been considered in relation to the requirements for Environmental Impact Assessment. As set out in Section 5.7 of this report, it is considered that the development does not comprise or form part of a class of development prescribed under Schedule 5 of the Planning and Development Regulations 2001, as amended, which would require the preparation of an Environmental Impact Assessment Report. Accordingly, no Remedial Environmental Impact Assessment Report is submitted with this application.



Article 227(2)(d)

The development the subject of this application does not comprise or include the provision, alteration or extension of a wastewater treatment system or percolation area. Accordingly, there is no wastewater treatment system or associated wastewater infrastructure forming part of the development for which information is required under this provision.

The drainage works proposed as part of this application relate solely to the management of surface-water runoff from the existing footpath and comprise remedial measures identified in the accompanying rNIS. They do not comprise wastewater drainage or effluent disposal infrastructure. The rNIS identifies the relevant surface-water pathway and proposes ACO drains, or equivalent linear interceptors, together with planted margins to intercept, attenuate and filter surface-water runoff.

Article 227(2)(e) and Article 227(2)(f)

The provisions relating to Part V of the Planning and Development Act 2000, as amended, and Section 97 of that Act do not apply to the development the subject of this application.

Article 227(2A)

The application is accompanied by a Remedial Natura Impact Statement (rNIS) prepared by OMC Consulting. The rNIS identifies the potential environmental effects associated with the development and sets out the remedial measures proposed to avoid, prevent or reduce potential significant adverse effects on the environment and the relevant European sites.

In particular, the remedial strategy addresses the potential effects associated with surface-water runoff from the existing footpath and its hydrological connection with the adjoining wetland, drainage ditch and shoreline. The proposed measures include the installation of ACO drains, or equivalent linear interceptors, and the management and reinforcement of planted margins to provide attenuation, filtration and infiltration of surface water.

Article 227(3)

The application is being submitted in hard copy and will not be lodged in electronic form.

Article 227(4)

Where the Commission requires additional copies of the application documentation or the accompanying rNIS, the applicant will provide such copies as may be required.

- 3.6.3 Having regard to the foregoing, it is respectfully submitted that the application has been prepared having regard to the requirements of Article 227 of the Planning and Development Regulations 2001, as amended, and is accompanied by the prescribed application form, notices, plans, particulars and supporting documentation, including the accompanying Remedial Natura Impact Statement.

3.7 *Information to support An Coimisiún Pleanála's (ACP) assessment under Section 177E of the Act (as amended)*

- 3.7.1 Clare County Council has determined that AA at Stage 2 phase - rNIS - is required. This means that my client must apply to ACP for leave to apply for Substitute Consent. ACP is required to follow the assessment process set out Section 177E.— (1) 'Decision of Board on whether to grant leave to apply for substitute consent' of the Act (as amended) states:

Section 177E (1) An application for substitute consent [in respect of development of land] shall be made to the Board.

Response: This application is made directly to ACP.

177E (1A) The Board [Commission] may, at its own discretion and at the request of a person who intends to make an application for substitute consent, enter into consultations in respect of the application with that person before he or she makes the application.

Response: An application under Section 117E (1A) was not submitted by my clients

Subject to Section 177(2A) Subject to subsection (2A), an application for Substitute Consent may be made by— a person who has carried out the development referred to in subsection (1), or the owner or occupier of the land on which the development has been carried out.



Response: This application is made on behalf of my client, Tommy Geary, who carried out the development and who is the owner of the lands comprising part of the application site. The remaining lands affected by the development are in the ownership of the Electricity Supply Board (ESB), for which the applicant has obtained the written consent of ESB to the making of this application and the proposed development. A copy of the ESB consent is submitted with the application.

Section 177 (1C) The Board [Commission in all instances] shall only consider an application for substitute consent in respect of development of land where— subject to subsection (1D), the Board is satisfied under section 172 that an environmental impact assessment was required or is required for the development, subject to subsection (1E), the Board is satisfied under section 177U that an appropriate assessment was required or is required for the development, or 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.

Response: Appropriate Assessment was deemed required by Clare County Council. This substitute consent application pertains to the retention of development for which remedial Natura Impact Statement is now required as Appropriate Assessment was required at the time of its construction.

Section 177(1D) Where the Board receives an application which is accompanied by a remedial environmental impact assessment report under subsection (2)(b) and the application is not, under this Act or any regulations made under it, invalid or withdrawn, the Board shall be deemed to be satisfied that an environmental impact assessment is required and was required and the Board shall consider the application.

Response: Appropriate Assessment was deemed to be required by Clare County Council. This substitute consent application pertains, inter alia, to the retention of development. Appropriate assessment was required at the time of its construction. An Environmental Impact Assessment Report is not required. An rNIS is attached.

3.8 Conclusion

- 3.8.1 Having regard to the foregoing, it is respectfully submitted that this application has been prepared in accordance with the requirements of Section 177E of the Planning and Development Act 2000 (as amended) and Article 227 of the Planning and Development Regulations 2001 (as amended). The application is accompanied by the prescribed notices, plans, particulars and technical documentation, including a Remedial Natura Impact Statement, and therefore constitutes a valid application for Substitute Consent.

4.0 -Matters to be considered by ACP under substitute consent planning applications

4.1. Introduction

- 4.1.1 This part of the report sets out the assessment of the application for Substitute Consent, including the retention of the completed development and permission for the proposed remedial drainage and landscaping measures.
- 4.1.2 The Planning and Development, Maritime and Valuation (Amendment) Act, 2022 (Commencement of Certain Provisions)(No. 2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections (10) to (21), sections (23) to (40) and subsections (8) to (12) of section (41) of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Consequently, as now required, the assessment of this application for substitute consent includes consideration of ‘exceptional circumstances’.
- 4.1.3 The tests / matters to have regard to in considering exceptional circumstances in an application for substitute consent are set out in Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act, 2022. Section 30 amends Section 177K of the 2000 Act. In considering whether exceptional circumstances exist, the Commission is required to have regard to the matters set out under the criteria as set out within this part of the Act as follows:

177K(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

The application is accompanied by a Remedial Natura Impact Statement prepared specifically to enable the competent authority to assess the effects which have occurred, are occurring or could reasonably be expected to occur as a consequence of the development, together with the remedial measures required to address the identified environmental pathways.

The rNIS adopts a precautionary approach and assesses the development in relation to the Lower River Shannon SAC and Lough Derg SPA, including direct spatial overlap, hydrological connectivity, runoff, wetland and shoreline habitat, otter and potential disturbance to SPA-associated birds.

Accordingly, the application provides the ecological information necessary to enable Appropriate Assessment to be undertaken as part of the Substitute Consent process

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised.

My client carried out the works in the genuine belief that planning permission was not required. Following the purchase of the property in 2023, a planning review was undertaken on my client's behalf by Pat Kelly, Chartered Building Surveyor, in connection with the purchase. His letter dated 1 September 2023 confirms that he attended Clare County Council's Planning Offices and reviewed planning files relating to the property and neighbouring properties. His review identified that the site was within a Heritage Landscape and advised that any proposed development should seek to minimise visual impact. The review did not identify the presence of the Lower River Shannon Special Area of Conservation (SAC) or the specific planning implications arising from its designation. (See letter Appendix 1)

Consequently, my client was unaware that part of the lands was located within a European Site and did not appreciate that the location of the works within the SAC could affect the application of the exempted development provisions or give rise to a requirement for Appropriate Assessment.

Importantly, the works to the footpath did not involve the creation of a new pedestrian route through previously undeveloped lands. A pre-existing path was already in place along the route through the SAC prior to the works being undertaken. The photographic evidence submitted with

this application demonstrates the existence of this pre-existing route, including evidence of vehicular use of the path prior to the works. The upgraded path followed the line of the existing route and was constructed directly over the pre-existing path.

The applicant also sought to minimise the visual impact of the works. The storage shed was positioned behind existing trees and away from the shoreline and was finished in a brown colour. These measures were consistent with the advice contained in the planning review concerning the need to minimise visual impact within the Heritage Landscape.

It was only following receipt of subsequent correspondence from the Enforcement Section of Clare County Council raising the issue of the SAC that my client became aware of the significance of the designation in relation to the works. Following receipt of that correspondence, my client ensured that no further works were undertaken.

Since becoming aware of the issue, my client has taken significant steps to regularise the position and address the environmental implications of the development. This has included commissioning two ecological assessments, changing professional advisers and now making this application for Substitute Consent to An Coimisiún Pleanála.

The works comprising the upgrading of the existing footpath and the construction of the ancillary storage shed are of a type which, in different circumstances, may constitute exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). However, having regard to the location of part of the development within the Special Area of Conservation and the requirement for Appropriate Assessment, the exempted development provisions did not apply in this instance.

The circumstances set out above demonstrate that the development was not undertaken in a deliberate attempt to circumvent the planning system. Rather, the works were undertaken in the context of an existing path, following a planning review which did not identify the SAC designation, and in the genuine belief that planning permission was not required. Once the SAC issue was brought to the applicant's attention, steps were taken to cease further works and to regularise the position

(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.

The retrospective nature of the assessment has not substantially impaired the ability to undertake an Appropriate Assessment. OMC has undertaken a detailed site survey, reviewed the development, assessed the relevant source–pathway–receptor relationships and identified the potential effects and remedial measures required. The rNIS expressly adopts a precautionary approach to the limitations inherent in retrospective assessment

(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.

Please refer to rNIS prepared by OMC which concludes that ‘*Having regard to the scale and nature of the development, the local ecological conditions, and the mitigation measures set out in this report, it is concluded that the pathway, as remediated, will not adversely affect the integrity of the Lower River Shannon SAC, either alone or in combination with other plans or projects. No adverse effect is predicted on the ecological function of the adjacent shoreline habitat in relation to Lough Derg SPA. Residual effects are therefore considered to be localised, controlled and not significant in Appropriate Assessment terms. The rNIS identifies the potential pathways for effect and assesses both the construction and operational phases in the remedial context.*

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

The rNIS identifies specific remedial measures capable of addressing the potential pathways for effect identified in the assessment. These include interception and attenuation of surface-water runoff through ACO drains or equivalent linear interceptors and management/reinforcement of planted margins. The rNIS also recognises that wholesale removal of the existing path would itself require excavation and ground disturbance and could result in sediment mobilisation towards the

adjoining ditch and shoreline. Accordingly, the rNIS identifies retention of the existing path with targeted remedial measures as the preferred approach.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

The applicant has complied with the previous planning permissions relating to the refurbishment and extension of Clonfadda House. There is no record of previous unauthorised development associated with the site identified in the planning history reviewed for the purposes of this application

(g) Such other matters as the Board considers relevant.

My client will submit any further information the Board considers relevant to its assessment. They ask ACP to note how the development proposed for retention is all ancillary to the use of the house and that the pathway existed. It is the applicant's intention that all proposed remediation measures be implemented in full. The applicant would therefore have no objection to An Coimisiún Pleanála attaching such conditions as it considers appropriate to ensure the implementation and long-term maintenance of these measures.

Other matters are considered in full, are considered within the following section of this report..

- 4.1.4 Having regard to the matters considered above, it is respectfully submitted that exceptional circumstances arise in this case for the purposes of Section 177K of the Planning and Development Act 2000 (as amended).

The circumstances in which the development was undertaken are relevant to this consideration. Following the purchase of the property in 2023, the applicant commissioned a planning review in connection with the property. That review identified the Heritage Landscape designation but did not identify the Lower River Shannon SAC or the implications arising from the location of part of the development within a European Site. The applicant therefore proceeded in the genuine belief that the works did not require planning permission or Appropriate Assessment.



The nature and circumstances of the development are also relevant. The principal works within the SAC comprised the upgrading of a pre-existing footpath rather than the creation of a new pedestrian route through previously undeveloped land. The historical photographic and aerial evidence submitted with the application demonstrates the existence of the pre-existing route, and the upgraded route broadly follows its established alignment.

The development was undertaken in association with the established residential use of Clonfadda House and the footpath and storage shed are ancillary to that use. The works are therefore limited in scale and do not represent the introduction of a new residential, commercial or other intensive land use at the site.

Following notification by Clare County Council of the issue concerning the SAC, the applicant ceased further works and took steps to regularise the position and address the environmental implications of the development. These steps included commissioning ecological assessment, preparing the accompanying Remedial Natura Impact Statement, appointing professional advisers and pursuing this application for Substitute Consent.

Of particular relevance to the circumstances of this case is the conclusion of the accompanying Remedial Natura Impact Statement that wholesale removal of the existing pathway would not be environmentally neutral. Removal would itself require excavation and disturbance of the existing path and adjoining ground and could create a risk of sediment mobilisation towards the adjoining ditch, shoreline and connected water environment. The rNIS therefore identifies retention of the existing pathway together with targeted remedial mitigation as the preferred approach.

The proposed remedial measures are specifically directed towards the principal potential environmental pathway identified in the rNIS, namely surface-water runoff from the existing path towards adjacent wet grassland, the drainage ditch and shoreline. The measures include the installation of ACO drains, or equivalent linear interceptors, together with the management and reinforcement of planted margins to provide attenuation, filtration and infiltration of runoff.

The applicant is willing to accept appropriate conditions requiring the implementation, maintenance and, where necessary, replacement of the proposed drainage and landscaping

measures, thereby ensuring that the remedial measures identified through the ecological assessment are implemented and maintained.

Having regard to the circumstances in which the development arose, the existence and established use of the pre-existing route, the applicant's genuine belief that planning permission was not required, the steps taken following notification of the SAC issue, the detailed ecological assessment now undertaken and the proposed remedial measures, it is respectfully submitted that the circumstances of this particular case are exceptional for the purposes of Section 177K of the Planning and Development Act 2000 (as amended)

5.0 Substitute Consent - Planning Assessment

5.1 The substantive issues relevant to the planning assessment of this case are as follows:

- Principle of Proposal
- Design & Visual Amenity
- Appropriate Assessment
- WFD Screening
- EIA Screening

5.2 The development for which Substitute Consent is sought comprises the retention of the completed footpath upgrading works, storage shed and associated access footpath, together with permission for targeted drainage and landscaping works proposed as remedial measures

5.3 Principle of Proposal

5.3.1 The proposed development comprises the retention of domestic works associated with an existing dwellinghouse, including the upgrading of an existing access footpath through the installation of



kerbing and a tarmacadam surface, together with the retention of a domestic storage shed ancillary to the residential use and enjoyment of the dwelling.

5.3.2 The Commission will note that the footpath pre-dated the works the subject of this application. The existence of the path prior to the upgrading works is evidenced by the historical photographs and aerial imagery contained in Appendix 3..

5.3.3 The footpath provides access from Clonfadda House to the lakeshore and facilitates the movement of small leisure boats and other domestic equipment associated with the residential use of the property.

5.3.4 The storage shed, for which retention permission is sought, is ancillary to the existing dwellinghouse and is used solely for domestic storage purposes.

5.3.5 The proposed development does not introduce any new residential or commercial use but instead facilitates the continued enjoyment and maintenance of an existing dwellinghouse.

5.3.6 The development does not introduce a new residential, commercial or recreational land use. The works are ancillary to the established residential use of Clonfadda House. The proposed drainage and landscaping works are remedial in nature and are intended to address the environmental pathways identified in the accompanying rNIS rather than to facilitate any additional intensification of the use of the site

5.3.7 Having regard to the established residential use of the site, the ancillary nature of the proposed development, and the pre-existing access to the lakeshore, it is considered that the works the subject of this application are appropriate to the residential use of the property and are consistent with the proper planning and sustainable development of the area, subject to the environmental considerations addressed elsewhere in this application

5.4 Design & Visual Amenity Considerations

5.4.1 The application site is located within Heritage Landscape 1 – Lough Derg and the Eastern Uplands, as identified in Chapter 14 of the Clare County Development Plan 2023–2029. The



Development Plan recognises Heritage Landscapes as areas where scenic, ecological and historic considerations are afforded particular importance while acknowledging that these landscapes are living environments that must continue to evolve to accommodate the needs of established rural communities. The Plan expressly recognises that such areas can accommodate the refurbishment of dwellings and ancillary development associated with existing residential properties, provided that every effort is made to minimise visual impact.

- 5.4.2 The proposed development comprises the retention of domestic works ancillary to the continued residential use of Clonfadda House, namely the upgrading of an existing footpath extending from the dwelling to the lakeshore together with the retention of a modest domestic storage shed. Part of the footpath existed prior to the works the subject of this application, with the principal changes comprising the installation of kerbing and the laying of a tarmacadam surface. The storage shed is similarly domestic in nature and is used solely for purposes ancillary to the enjoyment of the dwellinghouse.
- 5.4.3 In assessing development proposals within Heritage Landscapes, the Development Plan requires applicants to demonstrate that every effort has been made to reduce visual impact through appropriate site selection, careful siting, the use of existing landform and vegetation, and by ensuring that the design, scale, finishes and associated site works minimise visual intrusion.
- 5.4.4 It is respectfully submitted that the proposed development complies with these objectives. The upgraded footpath follows the alignment of the pre-existing access route and therefore does not introduce a new linear feature into the landscape. Equally, the storage shed is modest in scale, is located adjacent to the existing dwellinghouse and does not occupy a visually prominent position within the wider landscape. The development is read in the context of the established residential property and does not alter the overall character of the surrounding Heritage Landscape.
- 5.4.5 The remedial drainage and landscaping works will also provide additional vegetation management and surface-water control along the pathway and will be implemented having regard to the landscape sensitivity of the site



- 5.4.6 Having regard to the established route of the path, the scale and location of the storage shed, the relationship of the development to the existing dwellinghouse and the proposed remedial landscaping, it is considered that the development does not give rise to an unacceptable impact on the scenic quality or landscape character of the Lough Derg Heritage Landscape.

5.5 Appropriate Assessment

5.5.1 Legislative Context

- 5.5.1.1 The proposed development has been considered having regard to the requirements of Article 6(3) of the Habitats Directive, the Planning and Development Act 2000 (as amended), and the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended).

- 5.5.1.2 The application is accompanied by a Remedial Natura Impact Statement (rNIS), prepared by OMC Environmental Consultants, to inform the Appropriate Assessment of the development. The rNIS assesses the implications of the unauthorised development for the conservation objectives of the relevant European Sites, namely the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) and the Lough Derg Special Protection Area (SPA) (Site Code 004058), and identifies the remedial measures required to ensure that the integrity of those European Sites is protected.

5.5.2 Assessment

- 5.5.2.1 The proposed development relates to the retention of upgrading works to an existing pedestrian path extending from Clonfadda House to the lakeshore, the retention of a small ancillary storage shed and associated site works, including drainage improvements proposed as remedial measures.
- 5.5.2.2 The accompanying rNIS acknowledges that part of the development is located within the Lower River Shannon SAC and that hydrological and ecological connections exist between the site and the adjoining lakeshore. Consequently, the project has been subject to a Stage 2 Appropriate Assessment. The assessment considers the potential for direct, indirect and in-combination effects on the qualifying interests of the Lower River Shannon SAC and on the functionally linked



habitats associated with the Lough Derg SPA. Particular consideration has been given to hydrological pathways, water quality, wetland habitats, shoreline ecology, otter and potential disturbance to waterbird species.

5.5.2.3 The rNIS identifies the principal ecological pathways associated with the development as:

- the direct location of part of the footpath within the Lower River Shannon SAC;
- surface water runoff from the path to adjacent wet grassland, the drainage ditch and shoreline;
- potential disturbance to otter commuting and foraging habitat associated with the lower corridor;
- potential disturbance to functionally linked shoreline habitat utilised by SPA bird species.

The ecological survey recorded one otter spraint and mammal tracks leading towards the water's edge, although no otter holt, couch or regularly used resting place was identified. No bat roost features were identified. The assessment also considered the potential use of the adjoining shoreline and wetland habitats by SPA-associated birds

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5.5.2.4 The report further concludes that, subject to the implementation of the proposed remedial drainage works, runoff attenuation measures, habitat protection measures and the mitigation strategy outlined therein, the development will not adversely affect the integrity of the Lower River Shannon SAC or the Lough Derg SPA, either alone or in combination with other plans or projects.

5.5.3 *Planning Assessment*

5.5.3.1 Having considered the findings and recommendations of the accompanying Remedial Natura Impact Statement, it is accepted that the development has been comprehensively assessed in accordance with the requirements of Article 6(3) of the Habitats Directive.

5.5.3.2 The proposed remedial measures have been specifically designed to address the potential source-pathway-receptor linkages identified during the ecological assessment and include drainage improvements, management of surface water runoff and measures to protect the adjoining wetland



and shoreline habitats. These works will improve the existing situation and reduce the potential for indirect effects on the adjacent European Sites when compared to the current unauthorised development.

- 5.5.3.3 Accordingly, it is considered that the proposed substitute consent development, when considered together with the mitigation and remedial measures set out in the accompanying rNIS, will not adversely affect the integrity of any European Site in view of its conservation objectives.

5.6 Water Framework Directive

5.6.1 Legislative Context

- 5.6.1.1 The Water Framework Directive (Directive 2000/60/EC) establishes a framework for the protection and enhancement of the aquatic environment with the principal objective of preventing deterioration in the status of surface water and groundwater bodies and achieving at least "Good Ecological Status" for all waters.

- 5.6.1.2 The subject site is located adjacent to Lough Derg and forms part of the Lower Shannon Catchment. Consequently, consideration has been given to the potential effects of the proposed development on the receiving aquatic environment and to the objectives of the Water Framework Directive in the preparation of this application.

5.6.2 Assessment

- 5.6.2.1 The accompanying Remedial Natura Impact Statement identifies that the principal potential pathway for effect arises from surface water runoff from the upgraded footpath to adjacent wet grassland, the drainage ditch and ultimately the lakeshore. The report recognises that the construction of a compacted path has the potential to alter local drainage characteristics by increasing runoff and reducing infiltration, thereby creating a potential pathway for the transport of sediment or contaminants to the receiving waters.

- 5.6.2.2 The rNIS further concludes that the proposed remediation measures, including the installation of drainage infrastructure, attenuation of surface water runoff and associated landscaping works,



have been specifically designed to intercept and manage runoff before it reaches the adjoining shoreline and associated wetland habitats. These measures will improve the existing situation by reducing the potential for sediment transport and uncontrolled surface water discharge to the adjacent waterbody.

5.6.3 *Planning Assessment*

5.6.3.1 Having regard to the findings of the accompanying Remedial Natura Impact Statement, it is considered that the proposed development, together with the implementation of the proposed remediation measures, will not give rise to any significant adverse effects on the ecological or chemical status of the receiving waterbody.

5.6.3.2 The proposed drainage measures represent an environmental improvement over the existing unauthorised situation and are intended to reduce the potential for uncontrolled surface water runoff to enter the adjoining drainage ditch, wetland habitats and the shoreline of Lough Derg. In this regard, the development is considered consistent with the objectives of the Water Framework Directive, as it will not result in the deterioration of the status of any surface water body or prejudice the achievement of the environmental objectives established under the Directive.

5.6.3.3 The drainage, surface-water management and associated landscaping measures proposed as part of this application are specifically directed towards reducing potential pollutant and sediment pathways, managing surface-water runoff and protecting the receiving aquatic environment. Having regard to the findings of the accompanying rNIS, it is considered that the proposed remedial measures will reduce the potential for uncontrolled runoff from the existing path to reach the adjoining ditch, shoreline and receiving waters and are consistent with the objectives of protecting the quality of the receiving aquatic environment.

5.7 **Environmental Impact Assessment**

5.7.1 The proposed development comprises the retention of the upgrading of an existing footpath extending from Clonfadda House to the lakeshore, the retention of a domestic storage shed



ancillary to the existing dwellinghouse, permission for associated drainage works and all ancillary site development works.

5.7.2 Section 177E of the Planning and Development Act 2000 (as amended) requires an application for Substitute Consent to be accompanied by a Remedial Environmental Impact Assessment Report (rEIAR) only where the unauthorised development comprises, or forms part of, a class of development prescribed for the purposes of Environmental Impact Assessment under the Planning and Development Regulations 2001 (as amended).

5.7.3 Having regard to the nature, scale and characteristics of the proposed development, it is considered that the development does not comprise a class of development prescribed in Schedule 5 of the Planning and Development Regulations 2001 (as amended). The proposed works relate solely to small-scale domestic development ancillary to an existing dwellinghouse, comprising the upgrading of an existing access footpath, the retention of a modest domestic storage shed, associated drainage works and ancillary landscaping. Such development is not included within either Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended).

5.7.4 Accordingly, it is considered that the development does not constitute EIA development for the purposes of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), and that a Remedial Environmental Impact Assessment Report is not required in support of this application.

5.8 *Planning Conclusions*

5.8.1 In determining this application, the Commission is required to consider the planning merits of the proposed development together with the environmental implications arising from the unauthorised works. While part of the development is located within the Lower River Shannon Special Area of Conservation, the accompanying Remedial Natura Impact Statement demonstrates that, subject to the implementation of the proposed remediation measures, the development will not adversely affect the integrity of any European Site in view of its conservation objectives.



- 5.8.2 The proposed drainage and associated landscaping works provide targeted remedial measures intended to improve the management of surface-water runoff and reduce the potential for environmental effects identified in the accompanying rNIS.
- 5.8.3 Furthermore, the proposed development comprises small-scale works ancillary to an established dwellinghouse. The upgraded footpath follows the alignment of an existing access route, while the storage shed is modest in scale and remains ancillary to the residential use of the property. Consequently, the development does not materially detract from the visual amenity, landscape character or environmental quality of the area.
- 5.8.4 Having regard to the domestic and ancillary nature of the development, its limited scale, its relationship to the established dwellinghouse and pre-existing access route, the findings of the accompanying Remedial Natura Impact Statement and the targeted remedial measures proposed, it is respectfully submitted that the development is acceptable in planning terms and that the grant of Substitute Consent, subject to appropriate conditions, would be consistent with the proper planning and sustainable development of the area.

6.0 Conclusion

- 6.1 This Planning Report has been prepared in support of an application for Substitute Consent pursuant to Section 177E of the Planning and Development Act 2000 (as amended) in respect of the retention of the upgrading works to the existing footpath extending from Clonfadda House to the shoreline, the retention of a domestic storage shed and associated access footpath, together with permission for targeted drainage and landscaping works and all ancillary site development works.
- 6.2 As demonstrated throughout this report, the development comprises small-scale works ancillary to the established residential use of Clonfadda House. The upgraded footpath broadly follows the alignment of a pre-existing access route extending towards the lakeshore, while the storage shed is domestic in scale and remains ancillary to the residential use of the property. Having regard to the nature, scale and purpose of the development, its relationship with the existing dwellinghouse and the established route of the footpath, it is considered that the development is acceptable in



principle and does not give rise to an unacceptable impact on the character, visual amenity or landscape quality of the area.

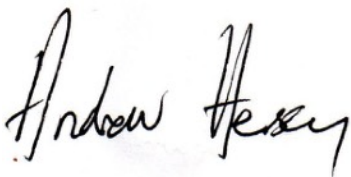
- 6.3 The environmental implications of the development have been assessed in detail in the accompanying Remedial Natura Impact Statement. The rNIS identifies the Lower River Shannon Special Area of Conservation as the principal European site of relevance and also considers the potential relationship between the development and functionally linked shoreline habitat associated with the Lough Derg Special Protection Area. The proposed drainage and associated landscaping works form an integral part of the remedial measures identified in the rNIS and are specifically intended to address the potential environmental pathways associated with surface-water runoff from the existing footpath. Subject to the implementation of the identified remedial measures, the rNIS concludes that no adverse effect is predicted on the integrity of the relevant European sites, either alone or in combination with other plans or projects.
- 6.4 The proposed remedial measures will also improve the management of surface-water runoff from the existing footpath and reduce the potential for uncontrolled runoff and sediment transport towards the adjoining ditch, shoreline and receiving aquatic environment. Having regard to the nature, scale and characteristics of the development, it is considered that the development does not comprise a class of development prescribed under Schedule 5 of the Planning and Development Regulations 2001 (as amended) which would require the submission of an Environmental Impact Assessment Report and, accordingly, an rEIAR is not required in support of this application.
- 6.5 The circumstances in which the development was undertaken are also relevant to the consideration of exceptional circumstances under Section 177K of the Planning and Development Act 2000 (as amended). The applicant did not knowingly undertake development within a European Site in circumstances where he was aware that planning permission and Appropriate Assessment were required. A planning review undertaken in connection with the purchase of the property in 2023 identified the Heritage Landscape designation but did not identify the Lower River Shannon SAC or the implications arising from the location of part of the development within a European Site. The applicant therefore proceeded in the genuine belief that the works did not require planning permission or Appropriate Assessment.

- 6.6 The principal works within the SAC comprised the upgrading of a pre-existing access route rather than the creation of a new pedestrian route through previously undeveloped land. Following notification by Clare County Council of the issue concerning the SAC, the applicant ceased further works and took positive steps to regularise the position and address the environmental implications of the development, including commissioning ecological assessment, preparing the accompanying rNIS, appointing professional advisers and pursuing this application for Substitute Consent.
- 6.7 Of particular relevance to the circumstances of this case, the accompanying rNIS identifies retention of the existing pathway together with targeted remedial measures as the preferred approach. The rNIS recognises that wholesale removal of the existing pathway would itself require excavation and disturbance of the existing path and adjoining ground and could result in sediment mobilisation towards the adjoining ditch, shoreline and connected water environment. The proposed drainage and landscaping measures therefore provide a defined remedial response to the environmental pathways identified in the rNIS, including the management and attenuation of surface-water runoff from the existing path.
- 6.8 Having regard to the circumstances in which the development arose, the existence and established use of the pre-existing access route, the applicant's genuine belief that planning permission was not required, the steps taken following notification of the SAC issue, the detailed ecological assessment now undertaken and the specific remedial measures proposed, it is respectfully submitted that the circumstances of this particular case are exceptional for the purposes of Section 177K of the Planning and Development Act 2000 (as amended).
- 6.9 Having regard to all of the foregoing, it is respectfully submitted that the grant of Substitute Consent, subject to appropriate conditions securing the implementation and ongoing maintenance of the proposed remedial measures, would be justified in the particular circumstances of this case and would be consistent with the proper planning and sustainable development of the area.

If you have any further queries please get in touch with the undersigned.

Please find attached the requisite fee of €102

Kind Regards



Andrew Hersey BAggr.Sc. Dip. EIA Mgmt. MRUP MIPI Planning Consultant

3 Atlantic View

West End, Kilkee,

Co. Clare

V15 PH32

hersey.andrew@gmail.com. www.andrewherseyplanning.com Phone: 087 6870917



Appendix 1 Letter of Consent from ESB





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esb.ie

Giniúint agus Trádála
27 Sráid Mhic Liam Íochtarach
Baile Átha Cliath, D02 KT92, Éire
Fón +353 1 676 5831

Generation and Trading
27 Lower Fitzwilliam Street
Dublin, D02 KT92, Ireland
Phone +353 1 676 5831

Private & Confidential

An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

20th July 2026

**Re: Planning Application for Substitute Consent,
Cloonfadda House, Cloonfadda, Killaloe, Co. Clare, V94 W2YY.**

To whom it may concern,

We wish to advise An Coimisiún Pleanála, that ESB consents to the lodgement by Tommy Geary of an application for substitute consent in respect of lands adjoining Cloonfadda House, Cloonfadda, Killaloe, Co. Clare, insofar as the application includes lands in ESB ownership, identified on the attached site location map, Drawing No. P1.1.

ESB confirms that it is the registered owner of lands registered in Folio CE51516F, Entry No's. 1 & 3 in the Townland of Cloonfadda, in the Barony of Tulla Lower, in the Electoral Division of Killaloe, County Clare, insofar as those lands are affected by the application. This consent is provided solely for the purpose of allowing the application for Substitute Consent to be made and does not convey to the applicant any estate, right, title or interest in ESB lands.

This consent letter is not intended to be a reflection on the merits or otherwise of the application, and ESB reserves the right to make separate submissions or observations to An Coimisiún Pleanála or any relevant Planning Authority under the Planning and Development Acts 2000, as amended.

For the avoidance of doubt, this consent does not authorise entry onto ESB lands or the carrying out of any works on ESB lands. Any such access, works, wayleave, licence or other land agreement would require a separate written agreement with ESB.

Yours Faithfully,

For and on behalf of ESB.

Paul Whitty

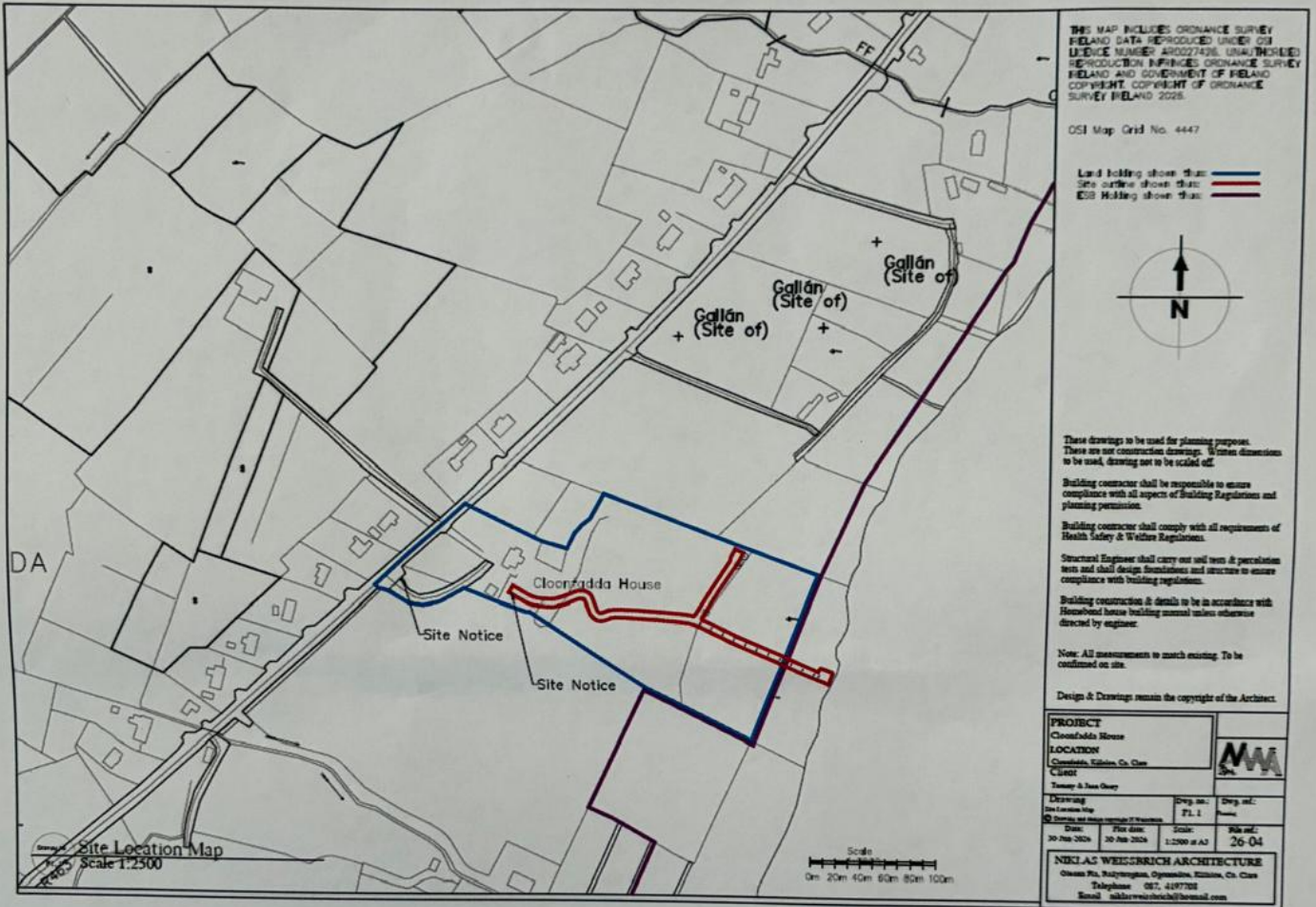
Estate Management, Group Property & Security



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esb.ie

Drawing No. P1.1



Appendix 2 - Warning Letter from Clare County Council





COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

WARNING LETTER
PURSUANT TO
SECTION 152(1) OF THE PLANNING AND DEVELOPMENT ACT
2000, (AS AMENDED)

Thomas Geary,
Clonfadda House,
Killaloe,
Co. Clare
V94 W2YY

Date: 10th January 2025

Our Ref: UD24-094

RE: Lands at Clonfadda House, Killaloe, Co. Clare

A Chara,

We wish to inform you that it has come to the attention of the Planning Authority, Clare County Council, that unauthorised development may have been, is being or may be carried out, namely:

- The construction of a gravel/hardcore pathway and kerbing in a Special Area of conservation.

On lands at Clonfadda House, Killaloe, Co. Clare

Accordingly, this Warning Letter, pursuant to the provisions of Section 152(1) of the Planning and Development Act, 2000, as amended, is hereby issued to

Thomas Geary, Owner of the lands.

Any person served with this Warning Letter may make submissions or observations in writing to the Planning Authority, Clare County Council, regarding the alleged unauthorised development not later than four weeks from the date of the service of this Warning Letter.

When the Planning Authority considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice may be issued requiring its recipient to cease or not to commence unauthorised development, or to proceed with development in accordance with the related permission.

Officials of the Planning Authority may at all reasonable times enter on the land for the purposes of inspection.

Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence pursuant to Section 151 of the Planning and Development Act, 2000, as amended. I am obliged to inform you that the possible penalties involved where there is a conviction for such an offence are that a person shall be liable:

1. on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.
- or
2. on conviction on indictment to a fine not exceeding €12,697,380.78 or to imprisonment for a term not exceeding 2 years, or to both.

Where an unauthorised development involves the construction of an unauthorised structure, the minimum fine is:

- 1 on summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less:

or

- 2 on conviction on indictment, the estimated cost of the construction of the structure or €12,697.38 for each day, whichever is less,

except where the person convicted can show to the court's satisfaction that he, she, or it, does not have the necessary financial means to pay the minimum fine.

Failure to comply with an Enforcement Notice is an offence contrary to Section 154(8) of the Planning and Development Act, 2000, as amended.

The penalties upon conviction for an offence contrary to Section 154(8) are the same as for Section 151, set out above.

In addition, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person on whom an Enforcement Notice is served or where Court action is taken.

If you have any queries in relation to the above, please contact the **Planning Enforcement Section** on **(065) 6821616**.

We await any written submissions or observations you may have regarding the alleged unauthorised development, not later than four weeks from the date of the service of this Warning Letter.

Mise le meas,


Anne-Marie Greer-Casey
Staff Officer,
Enforcement Section,
Planning Department,
Economic Development Directorate.

From: enforcements <enforcements@clarecoco.ie>
Sent: Thursday 9 October 2025 12:49
To: Pat Kelly <pat@kellysurveyors.ie>
Cc: enforcements <enforcements@clarecoco.ie>
Subject: Re: UD24-094

A Chara,

Clare County Council Planning Authority write to you regarding planning enforcement file UD24-094.

We wish to acknowledge your email dated 22nd September 2025. We thank you for the additional information provided. Having reviewed the AA Screening Report, the below summarises the opinion of the Planning Authority and Environmental Officer.

The Planning and Development Act, 2000 (as amended) imposes a general obligation to obtain planning permission prior to the commencement of “development” as defined. Where development has been carried out without planning permission, it is, in principle, open to the developer to apply for planning permission ex post facto to “retain” the unauthorised development. Such a planning permission is referred to as a “retention” permission.

The circumstances in which retention planning permission may be obtained have been restricted because of amendments introduced to the Planning and Development Act, 2000 under the Planning and Development (Amendment) Act 2010. Section 34(12) of the PDA 2000 (as amended) now provides as follows.

“(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—

1. an environmental impact assessment,
2. a determination as to whether an environmental impact assessment is required, or
3. an appropriate assessment.”

In assessing this application, the Planning Authority has made regard to two key elements namely what is the “development concerned” and would it have triggered the requirement for appropriate assessment had an application for permission been made for the “development concerned” before that development commenced.

The development concerned in this case relates to the retention of works undertaken to the rear of a private dwelling which encompass significant levels of excavation, construction and site works partially within and contiguous with the Lower River Shannon SAC (Site Code: 002165). However, on review of the documentation submitted ahead of a potential application for retention permission it is clear the subject unauthorised development as constructed had the potential to impact on the Qualifying Interest Features of the SAC. Given the SAC is designated for several water dependent habitats and species such as Otter and the unauthorised works would have had the potential to release significant quantities of silt to the receiving waters there would therefore have been a requirement for mitigation measures had the application come in for planning permission prior to the works taking place. In considering the second element as to whether the “development concerned” would have triggered the requirement for appropriate assessment, had an application

for permission been made before the development commenced the Local Authority is required to undertake a notional screening exercise. The following should be considered as part of this notional screening by the Planning Officer:

1. The proximity of the nearest European sites (Lower River Shannon SAC) partially within and partially contiguous with the European Site and which there is potential for direct effects together with in-direct effects.

2. There is a potential for impacts on surface water quality arising from the construction which has already taken place and/or through the continued operation which could lead to significant effects on the Qualifying Interest Features of the associated European site.

3. Had an application for permission been made prior to the commencement of development this hydrological connectivity in such close proximity to the European site would have been sufficient to trigger the requirement for appropriate assessment given that the threshold for Screening is low by providing that a planning authority must determine that an appropriate assessment is required if it cannot be excluded, on the basis of objective information, that the project, individually or in combination with other plans or projects, will have a significant effect on a European site. Case C-258/11, Sweetman & Ors. V An Bord Pleanála & Ors., Advocate General Sharpton considered that the test is set at a lower level and that the question is simply whether the plan or project concerned is capable of having an effect.

4. No construction methodology has been submitted to indicate whether or not mitigation measures were required during the course of construction works associated with the excavations for the paths, kerbing, shed and hard stand area

together with additional hardcore areas and site boundary works.

5. Case C-323/17, *People Over Wind v Coillte* CJEU held that mitigation measures could not be taken into account at the screening stage of an appropriate assessment. Any measures intended to avoid or reduce the harmful effects of a project on site should not be taken into account at the screening stage as this would compromise the practical effect of the Habitats Directive in general. Given the potential requirement for mitigation measures had an application for permission been sought prior to the commencement of development, it is considered that the undertaking of appropriate assessment together with the preparation of a Natura Impact Statement would have been required for the works.

Based on the information received as part of the enforcement process, and our analysis as outlined above, the Planning Authority is not satisfied that Clare County Council as the competent authority can screen out the requirement for appropriate assessment in relation to any future retention application given a Finding of No Significant effects would not have been possible had the applicant applied for permission prior to the commencement of development and therefore an appropriate assessment would have been required.

Therefore, in accordance with S. 34(12) of the Planning and Development Act, 2000 (as amended), the Planning Authority would be required to refuse to consider this application to retain the unauthorised development on the basis that appropriate assessment would have been required had the applicant applied for planning permission prior to the commencement of development.

1. 4-0 Opinion of Advocate General Sharpston of 22 November 2012.

The Planning Authority advise you consider review the above with your client and revert to us within three (3) weeks from the date of this letter, outlining your intended next steps and how regularisation is to be delivered by your client.

Le Meas,

Jennifer

Regards,

Jennifer Quirke
Planning Enforcements,
Planning & Economic Development.

Clare County Council, Áras Contae an Chláir, New Road, Ennis,
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COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL



Appendix 3 - Photos before development took place



Figure 2- Aerial Photo showing pathway to the shore



Figure 3 - Jeep travelling to the shore via the existing path before work took place