

Karen

312969

Karen Hickey

From: Bord
Sent: Monday 11 April 2022 12:31
To: Appeals2
Subject: FW: SU03.312969
Attachments: Submission on Substitute Consent App Ref SU03.312969 for Mr. Pat Quinn.pdf

From: Mandy Coleman <mandy@pjcoleman.com>
Sent: Monday 11 April 2022 12:10
To: Appeals2 <appeals@pleanala.ie>; Bord <bord@pleanala.ie>
Subject: SU03.312969

Dear Sir or Madam,

Please find attached submission on behalf of our Client, Mr. Pat Quinn, in relation to the above Substitute Consent Application.

We would appreciate if you could kindly acknowledge receipt of this submission at your earliest convenience.

Kind regards
Mandy Coleman.

Regards

Mandy Coleman | Planner

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Sent via email to appeals@pleanala.ie and bord@pleanala.ie.

OUR REFERENCE
MC/6113

YOUR REFERENCE
SU03.312969

DATE
11th. April, 2022

RE: ABP REF: SU03.312969
APPLICATION BY VALLEY HEALTHCARE FUND – INFRASTRUCTURE INVESTMENT
FUND ICAV FOR SUBSTITUTE FOR INFILLING OF LAND AT TULLA ROAD,
KNOCKANOURA, ENNIS, CO. CLARE.

Dear Sir or Madam,

We act on behalf of Mr. Pat Quinn in relation to the preparation of a submission/observation in relation to the above application for Substitute Consent in accordance with s.177H of the Planning & Development Act, 2000 (as amended) (the Act). Details required as part of this submission are outlined below:-

Person making submission: Mr. Pat Quinn, 5 Knockanoura, Tulla Road, Ennis

Address for Correspondence: Mr. Pat Quinn c/o P. Coleman & Associates, 5, Bank Place, Ennis.

Subject Matter of Submission: Substitute Consent Application by Valley Healthcare Fund - Infrastructure Investment Fund ICAV for Infilling of Land at Tulla Road, Knockanoura, Ennis, Co. Clare.

An Bord Pleanála Ref: SU03.312969

The application was lodged on 9th. March, 2022 with a 5 week submission period up to and including 12th. April, 2022. As per the public notice there is no fee payable for third party submissions.

1.0 INTRODUCTION

Our Client wishes to make a submission on an application for substitute consent which has been made under Section 177E of the Act. It follows a decision by An Bord Pleanála (the Board) (Ref: LS03.307172), dated 22nd. September, 2021, to grant the Applicant leave to apply for Substitute Consent. The Board's decision under ABP Ref: LS03.307172, directed as follows:-

- (a) The application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- (b) the application for substitute consent be accompanied by a remedial Natural Impact Statement (rNIS).

Our Client's site adjoins the eastern boundary of the subject site. Our Client has been significantly affected by unauthorised works and is seeking to have permission refused for this application.

This submission will demonstrate that in our Client's opinion "*Exceptional Circumstances*" do not exist in this case and that the Board are therefore precluded from granting permission.

Our Client has a number of concerns in relation to the negative impact which the works have had on his residential amenities and the adjoining area which are outlined in this submission.

This submission includes an additional submission prepared by our Client which outlines in detail the relevant factual background regarding the subject site and our Client's submission regarding the Applicant's claim of "*Exceptional Circumstances*".

In summary, the submission will demonstrate that granting permission for the unauthorised infilling works is not in accordance with the proper planning and sustainable development of the area and therefore should not be permitted.

2.0 THE SUBJECT SITE

The subject site is located approximately 1.5km from the centre of Ennis, on the southern side of the R352 Ennis to Tulla Road. The subject site has a stated area of 0.32 hectares. The subject site is undeveloped and filled with hardcore material. The northern boundary fronts onto the Tulla Road.

There is an existing entrance/exit to the subject site from the R352 on the eastern side of the northern boundary.

There is an existing single storey petrol filling station and shop to the west of the subject site with a number of single storey commercial/retail units to the west of the petrol filling station. Further to the west of these units is the River Fergus which forms part of the Lower Shannon Special Area of Conservation (SAC). Beyond the river to the west and set well back from the road is a single storey abattoir facility. Our Client's dwelling immediately adjoins the subject site to the east. The southern boundary of the site is not defined by any boundary. The subject site forms part of a larger undeveloped plot that extends further south and to the rear of the petrol station.

The principal character of the area is, apart from the units immediately to the west of the subject site, is entirely residential.

3.0 PROPOSED DEVELOPMENT

The subject of the application involves the retention of unauthorised infilling of the subject site. The regularisation of this unauthorised infilling is required to facilitate a future planning application by the Applicant for a primary care centre. The Applicant states that there is no proposal to restore the subject site to greenfield use.

4.0 PLANNING CONTEXT

4.1 Local Planning Context

The current operative development plan for the subject site is the Clare County Development Plan 2017-2023. The subject site forms part of the town settlement of Ennis, which is included in the Ennis Municipal District Plan, Volume 3a of the Clare County Development Plan 2017-2023.

4.1.1 Current Zoning

The subject property is currently zoned as 'Commercial' where the zoning objective is stated as follows:-

'The use of land zoned for commercial purposes shall be taken to include the use of the lands for commercial and business uses including office, service industry, warehousing and the facilitation of enterprise/retail park/office type use as appropriate. Retailing is open for consideration on this zoning, provided that the sequential test is carried out and the lands are demonstrably the optimum location for the nature and quantum of retail development proposed'.

The subject site forms part of a block of land which is designated as an Opportunity Site, OP18.

The OP18 objective states as follows:-

'The site has the capacity to be redeveloped for high quality, mixed/commercial development of a limited scale, providing a landmark building on the site. As the site is partially located with an area identified as being at risk of flooding, the site is not considered appropriate for more vulnerable uses. A Traffic Management Plan will be required to accompany any future planning application and must address issues such as management of site access and egress for pedestrians, vehicles and cyclists. Adequate analysis for fuel delivery vehicles should be incorporated into the plan.

The Fergus Minor River marks the western boundary of the site and, as such, there is an opportunity to provide pedestrian access from the Tulla Road to the River Fergus to accommodate access to possible future riverside walkways. All development proposals must be progressed in full compliance with the requirements of the Habitat Directive.

Future development proposals must demonstrate, through a light spill modelling study, that there will be no negative impacts on the habitats of protected species.

A Flood Risk Assessment must also accompany any development proposals for the site, having regard to the location of the site on Flood Zones A and B. The Flood Risk assessment must be prepared having regard to the Strategic Flood Risk Assessment in Volume 10(c) of this plan. Due to the proximity of the site to the Fergus Minor River, a Construction Method Statement will be required detailing how surface water run-off will be controlled during construction, especially in relation to the release of silt to the adjoining river, which is connected to the Lower River Shannon SAC. Drainage plans must also be submitted in relation to the surface water run-off during operation, ensuring that run-off is treated via appropriate SuDS (Petrol interceptor, silt traps, etc.) prior to discharge to any surface water features.

A contaminated land/study/assessment will also be required to ensure that future development proposals will not have a negative impact on the amenities of the surrounding area.

4.1.2 Proposed Zoning

The Draft Clare County Development Plan 2023-2029 was on public display with submission/objections being accepted up and until 28th. March, 2022. There is no change to the current zoning objective for the subject site in the Draft Plan.

Our Client has made a submission in relation to the proposal to retaining the commercial zoning of the subject site. According to our Client having regard to the nature and extent of the existing unauthorised development which has taken place on the subject site and adjacent lands to-date, it is considered that to permit a zoning objective to provide for the future development of the subject site would compound the unauthorized activities on the site and therefore would not be in accordance with the orderly development of the area. Our Client is requesting that the subject site be reclassified as 'Open Space'.

4.2 Planning History

Planning History for the subject site, some of which includes the lands to the rear, is outlined as follows:-

4.2.1 Planning Applications

<i>Planning Ref:</i>	97/61 (9721061)
<i>Applicant:</i>	Noel Glynn
<i>Development Description:</i>	Construction of retail warehousing and light manufacturing units at Knockanoura, Tulla Road, Ennis.
<i>Decision:</i>	Refused by ABP on 14 th . May, 1998 following a first party appeal against refusal by Ennis Urban District Council.

Planning Ref: **98/213 (9821214)**
Applicant: Mr. Noel Glynn
Development Description: Outline permission for retail and office building at Knockanoura, Tulla Road, Ennis.
Decision: Granted by Ennis Urban District Council on 28th. January, 1999 subject to 30 No. conditions.
Status: Expired. No approval consequent to outlined applied for.

Planning Ref: **P19/409**
Applicant: Valley Healthcare Fund
Development Description: for Permission to for a four-storey care health facility with photovoltaic arrays on the roof comprising a maximum gross floor area of 2623m²; (i) on site car and bicycle parking provision, (ii) associated building signage, (iii) landscaping and all ancillary signage; and (iv) all associated site development works Tulla Road, Knockanoura, Ennis, Co. Clare.
Status: Incomplete Application

4.2.2 Section 5 Referrals

ABP Ref: **RL03.RL3611**
Referrer: Clare County Council
Question: Whether groundworks, including the importation and disposition of fill material, creation of a hardstanding area and raising of the land area is or is not development or is or is not exempted development at Tulla Road, Ennis.
Decision: Is development and is exempted development.
Decision Quashed on 11th. February, 2020 - High Court Record Number 2019 JR 144

ABP Ref: **RL03.307625**
Referrer: Clare County Council
Question: Whether the groundworks undertaken, including importation and deposition of fill material to create a hardstanding area and the raising of ground levels from 2013 onwards is or is not development and/or is or is not exempted development.
Decision: Is development and is not exempted development.

4.2.3 Substitute Consent

Application for Leave to Apply

Application Ref: LS03.307172
Applicant: Valley Healthcare Fund Infrastructure Investment Fund ICAV
Development Description: Infilling of land at Tulla Road, Knockanoura, Ennis, Co. Clare.
Decision: Granted 22nd. September, 2021.

Extension of Time

Application Ref: SH03.311859
Applicant: Valley Healthcare Fund Infrastructure Investment Fund ICAV
Development Description: Infilling of land at Tulla Road, Knockanoura, Ennis, Co. Clare.
Decision: Granted 8th. December, 2021.

Application Ref: SH03.312939
Applicant: Valley Healthcare Fund Infrastructure Investment Fund ICAV
Development Description: Infilling of land at Tulla Road, Knockanoura, Ennis, Co. Clare.
Decision: Decision due 5th. July, 2022.

Application

Application Ref: SU03.312969
Applicant: Valley Healthcare Fund Infrastructure Investment Fund ICAV
Development Description: Infilling of land at Tulla Road, Knockanoura, Ennis, Co. Clare.
Decision: Currently being Assessed by An Bord Pleanala

4.2.4 Enforcement

The following Enforcement history relates to the subject site and adjacent lands:-

- Warning Notice Ref: W.N. 23/99 issued on 27th. August, 1999 to Mr. Noel Glynn regarding 'Unauthorised filling of site' at Knockanoura, Tulla Road, Ennis.
- UD15-30 Enforcement File regarding to the works the subject of the Section 5 Referral (RL03.RL3611)
- UD17-025 Warning Letter issued to Crossfield Management Company on 01/08/2017.

5.0 SUBMISSION

5.1 EXCEPTIONAL CIRCUMSTANCES

The new provisions to the Substitute Consent procedure which were inserted into Section 177 of the Act in December, 2020 through the Planning & Development, and Residential Tenancies, Act 2020) allow for the following:-

- “*Exceptional circumstances*” must be considered by the Board in the substantive or second stage application for substitute consent, and
- Public participation is facilitated with respect to the consideration of “*exceptional circumstances*”, as well as on the wider application of substitute consent

In assessing an application for Leave to Apply for Substitute Consent and a subsequent Substitute Consent application, the Board must be satisfied that “*Exceptional Circumstances*” exist.

Section 177(2) provides that the Board shall have regard to the following matters in considering whether exceptional circumstances exist:

- a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- 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;*
- 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;*
- e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remedied;*
- f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- g) Such other matters as the Board considers relevant*

5.1.1 Leave to Apply for Substitute Consent Application – Ref: LS03.307172

The Leave stage of the Substitute Consent process precludes public participation and the application assessment of LS03.307172 was based on the information solely submitted by the Applicant.

By Order dated 22nd. September, 2021, The Board decided to grant leave to apply for Substitute Consent under section 177D of the Planning and development Act 2000, as amended.

The Board order stated the following:

“In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to section 177D of the Planning and Development Act, 2000, as inserted by Section 57 of the Planning and Development (Amendment) Act, 2010, the Board is satisfied that:-

(a) The development is one where an Environmental Impact Assessment or a determination as to whether an Environmental Impact Assessment is not required and an Appropriate Assessment is required, and

(b) Exceptional circumstances exist by reference, in particular, to the following:-

- The fact that the regularization of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment of Habitats Directive*
- That the ability to carry out an Environmental Impact Assessment and Appropriate Assessment and provide for public participation has not been substantially impaired,*
- The applicant’s reasonable expectation that the development was capable of being regularized under the provisions of the Planning & Development Act, 2000 (as amended), and*
- The limited nature of the actual/likely significant effects on a European site resulting from the development.*

Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for the regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application”.

5.1.1.1 Inadequate Assessment of Leave Application

In relation to the Board's assessment of the Leave Application Ref: LS03.307172, we note that the Inspectors Report which is dated 9th. September, 2020 was prepared prior to a decision having been made on the Section 5 Referral Ref: RL03.307625. This report noted that the Section 5 Referral Ref: RL03.307625 was pending. The RL03.307625 Order was signed on 20th. April, 2021 the Order on the Leave Application Ref: LS03.307172 was not signed until 22nd. September, 2021. No addendum or additional Inspectors Report in the Leave Application Assessment was prepared following the RL03.307624 decision. It is our Client's opinion that the Leave Application Ref: LS03.307172 failed to consider all the relevant facts of the case in its assessment and is therefore flawed.

5.1.2 "Exceptional Circumstances" - Belief that Development was not Unauthorised

S.177(D)(2)(b) of the Act states as follows:-

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

It is our Client's opinion that the Applicant's claim that the subject site was purchased on the stated basis that the filling of lands was exempted development and that the land and associated works were in full accordance with the relevant statutory provisions is not sufficient to satisfy the requirements of Section 177(2)(b) of the Act as outlined above. The information submitted by the Applicant in support of the claim of "Exceptional Circumstances" was limited and unsupported.

Our Client is of the opinion that "Exceptional Circumstances" do not exist in relation to this case and that the application for Substitute Consent should not be permitted. S.177H of the Act provides that the Board is not bound by, and may not have regard to, any earlier decision under the "Exceptional Circumstances" gateway.

Our Client has prepared a detailed submission, which forms part of this submission, outlining why in his opinion "Exceptional Circumstances" do not exist and why the Applicant can not avail of s.177(D)(2) of the Act. Our Client is of the opinion that it is totally unreasonable for the Applicant to base their application for leave on the fact that the subject site was purchased on the stated basis that the filling of lands was exempted development and that the land and associated works were in full accordance with the relevant statutory provisions as per the decision of the Board in RL 03RL.3611.

A comprehensive due diligence investigation on the publicly available files regarding the works on the subject site by members of the Applicants planning and legal advisers would have provided evidence that the infilling of the lands were not part of the River Fergus Lower (Ennis) Certified Drainage Scheme (Phase 2) as approved and therefore could not have been exempted development. The Department of Public Expenditure and Reform have details of the full extent of the scheme, as confirmed, and have details of the EIA and AA which were carried out at the time.



Our Client's submission provides detailed evidence that the Applicant's Planning Consultants, HRA Planning, were aware of the unauthorised works taking place on the site in September, 2014 and were aware of the significant impact it was having on our Client's property. We refer to email from Mr. Gary Rowan of HRA to our Client on 19th. September, 2014, referred to in our Client's submission (Page 17 and 18 of Submission of Pat Quinn), which clearly shows that HRA were aware that the works the subject of this application came after the main drainage works were underway, as accommodation works for Mr. Glynn and that the relevant planning consent for these works would not have been secured as part of the main drainage works approval.

In addition, it is unreasonable to expect that the Applicant's planning and legal advisers would not have advised that no contract be signed until the 8-week limitation period for Judicial Review proceedings had expired particularly given the planning history of the site and the historical knowledge of the works which the Applicant's Planning advisers had.

5.1.3 "Exceptional Circumstances" - Regard to Substitute Consent Area

The subject application applies to an area outlined in red on the submitted site layout drawing. This area only relates to a portion of the land the subject of the Section 5 referral (ABP Ref: RL RL03.307625) which was identified as where unauthorised infilling works had taken place (Area A & Area B – see Figure 1 below).



Figure 1 – Subdivision of Subject lands by Clare County Council into Area A and Area B.

In relation to the Section 5 Referral application by Clare County Council to An Bord Pleanála Ref: 03.RL3611, Clare County Council subdivided the overall land of that referral application into two parts Area A and Area B (See Figure 1). Note that these areas are not physically subdivided on ground but Clare County Council subdivided them for the purpose of differentiating between the sections of lands which they considered to be within the works area for the Drainage Scheme (Area B) and the land which they considered to be outside of the works area (Area A).

In relation Area A, Clare County Council state in their Section 5 application to An Bord Pleanála (Ref: 03.RL3611):-

'Area A was located outside of the flood relief works area; however, the Planning Authority understands that an access route to the river embankment "works area" through this section of lands was agreed between the landowner and the OPW, and the resulting access route led to accommodation works being carried out on the site. At the time of the works, the site was overgrown and there were numerous mounds of material deposited throughout the site. It is understood that the area was cleared and mounds of material within the site were levelled and additional hard-core material was imported and deposited within the site.'

Notwithstanding the change in ownership of part of Area A the entire site the subject of the Section 5 referral (i.e., Area A and Area B) should be assessed as an integrated unit. Areas A and B both form the area where the unauthorised infilling works took place and are intrinsically linked and formed part of the overall landholding referred to by the Applicant as *"The Glynn Landholding"*. It is not a reasonable basis to only include part of this land within this application solely due to a change in ownership of part of the land. In our opinion the determination of the area of the site for the purposes of Substitute Consent application is very important.

5.1.4 "Exceptional Circumstances" - Remedial Natura Impact Statement (rNIS)

Section 177T of the Act states the following in respect to the meaning of a Natura Impact Statement (NIS)

- (1) (b) A Natura Impact Statement means a statement, for the purposes of Article 6 of the Habitats Directive, of the implications of a proposed development, on its own or in combination with other plans or projects, for one or more than one European site, in view of the conservation objectives of the site or sites.*
- (2) Without prejudice to the generality of subsection (1), a Natura Impact Report or a Natura Impact Statement, as the case may be, shall include a report of a scientific examination of evidence and data, carried out by competent persons to identify and classify any implications for one or more than one European site in view of the conservation objectives of the site or sites.*

Section 177G of the Act states the following with respect to the required content of a remedial Natura Impact Statement (rNIS):-

- (1) *A remedial Natural Impact Statement shall contain the following:-*
- (a) *a statement of the significant effects, if any, on the relevant European site which have occurred or which are occurring or which can reasonably be expected to occur because the development the subject of the application for was carried out:-*
 - (b) *details of;*
 - (i) *any appropriate remedial or mitigation measures undertaken or proposed to be undertaken by the applicant for Substitute Consent to remedy or mitigate any significant effects on the environment or on the European site;*
 - (ii) *the period of time within which any such proposed remedial or mitigation measures shall be carried out by or on behalf of the applicant;*
 - (c) *such information as may be prescribed under section 177N;*
 - (d) *and may have appended to it, where relevant, and where the applicant may wish to reply upon same;*
 - (i) *a statement of imperative reasons of overriding public interest;*
 - (ii) *any compensatory measures being proposed by the applicant.*

The rNIS submitted with this application has only based its assessment on the area of the subject site. The restriction of the area to be included in this application for Substitute Consent to the area outlined in the site layout drawing submitted with this application would substantially impair the ability to carry out an adequate rNIS to assess the environmental impacts of the full extent of the works that have been carried out on the overall landholding (i.e., Area A and Area B).

Therefore, having regard to the restricted part of the site to which this application for Substitute Consent relates and the restricted assessment in the rNIS to the subject site, it is our Client's opinion that this application for Substitute Consent has not demonstrated the extent to which significant effects on the European Site could be identified and remedied. The subject site cannot be considered in isolation from the overall landholding given the nature and extent of the unauthorised works.

The cumulative/in-combination effects of the unauthorised works within the overall landholding (i.e. Area A and Area B) and on adjacent sites have also not been considered in the rNIS.

The rNIS states itself that

"The impacts assessed must include the direct, indirect, and cumulative impacts of approving the project, together with any current or proposed activities and developments impacting the site".

No account has been taken of other unauthorised infill works which have taken place in the area which could have led to potential in-combination effects. These include unauthorised infilling of the remainder of Area A and Area B lands referred to in this submission which were originally part of the overall landholding and unauthorised infilling which was taken place to the east of the subject site within the Ennis Abattoir site.

The unauthorised infilling within the Ennis Abattoir site is the subject of a current planning application for retention, Planning Application ref: P21/1324 refers (note our Client has lodged a submission in relation to this Application outlining his concerns regarding the impact of the unauthorised infilling works on the SAC and the inadequate assessment in the Screening Report for AA of the cumulative effects of the unauthorised infilling works which have taken place in Area A and Area B referred to in this submission). The effect of these other unauthorised infilling works on the remainder of Area A and Area B and on the lands within the Ennis Abattoir site in combination with the unauthorised filling which has taken place on the subject site and their potential to affect the qualifying interest of the SAC has therefore not been assessed. The rNIS needs to include a full assessment of the cumulative impacts of all developments on site and in the vicinity of the site.

Based on the lack of evidence included in the rNIS it is our Client's opinion that it is not possible to conclude, beyond scientific doubt, that the unauthorised work would not adversely affect, or has not had an adverse effect on, the integrity of a European site.

5.1.5 "Exceptional Circumstances" – Summary

The new provisions to the Substitute Consent procedure were enacted with the express purpose of requiring the Board to refuse an application for Substitute Consent in the absence of "Exceptional Circumstances", by "enabling members of the public to make submissions and observations in relation to the question as to whether such circumstances exist".

Our Client is availing of these new provisions and submits that in his opinion, the Applicant has not demonstrated, through the production of documentary evidence, that "Exceptional circumstances" exist in accordance with s.177(D)(2) of the Act and therefore the proposed development does not fall within the scope of the "Exceptional Circumstances" test for a Substitute Consent application. The Applicant failed to take the necessary precautions by not waiting for the 8 week Judicial Review period to expired prior to the signing the purchase contracts. The Applicant cannot avail of s.177(D)(2)(b) of the Act simply because of this failure on their part.

In addition to be Regularisation of development within the boundary comprised in this application would restrict the area to be assessed for likely significant impacts in a manner which circumvents the purpose and objectives of the Habitats Directive and would therefore not satisfy the criteria specified in s.177(D)(2)(a) of the Act.

Therefore, by reference to the provisions of Section 177K(1A) of the Act it is our Client's opinion that the Board is precluded from granting Substitute Consent in this case.

5.2 MITIGATION/REMEDATION

S.188G(1)(b) of the Act requires that the rNIS must include details of appropriate remedial measures “*proposed to be undertaken*” to remedy any significant effects, including the timescales for carrying those out.

The rNIS is not clear if mitigation/remediation measures are proposed and what these are as it states:-

“..mitigation measure may not be appropriate as the unauthorised infilling has already been completed’

The HRA Planning letter to the Board dated 7th. March, 2022 included with this application states that the rNIS has concluded that “*...remediation is not necessary*”. This is not clearly stated in the rNIS.

In relation to monitoring the rNIS states:-

“ It may therefore be more relevant to recommend monitoring measures to identify if previous unauthorised activities on the site will lead to future impacts which may affect the integrity of the adjacent Natura 200 sites. These monitoring measures could be used to inform if remediation or future mitigation measures are required”.

However, no monitoring measures to deal with this appear to be recommended in the rNIS.

The only monitoring recommended in the rNIS is that “*a monitoring programme for noxious weeds and invasive species be put in place to control noxious weeds and invasive species that may be dormant or suppressed by recent weed control*”. No where else in the rNIS were noxious weeds and invasive species or recent weed control referred to. It is unclear as to where this monitoring programme for noxious weeds and invasive species fits into the overall Assessment.

5.3 RESIDENTIAL AMENITY

The raising of ground levels and the creation of an extensive hardstanding area over the subject site and the full extent of Area A and Area B has resulted in our Client’s residential amenity being grossly interfered with.

The following photos (Figures 2 to 6) were taken by our Client in January, 2017 and clearly show the significant variation in site levels on the subject site in comparison to our Client’s property.

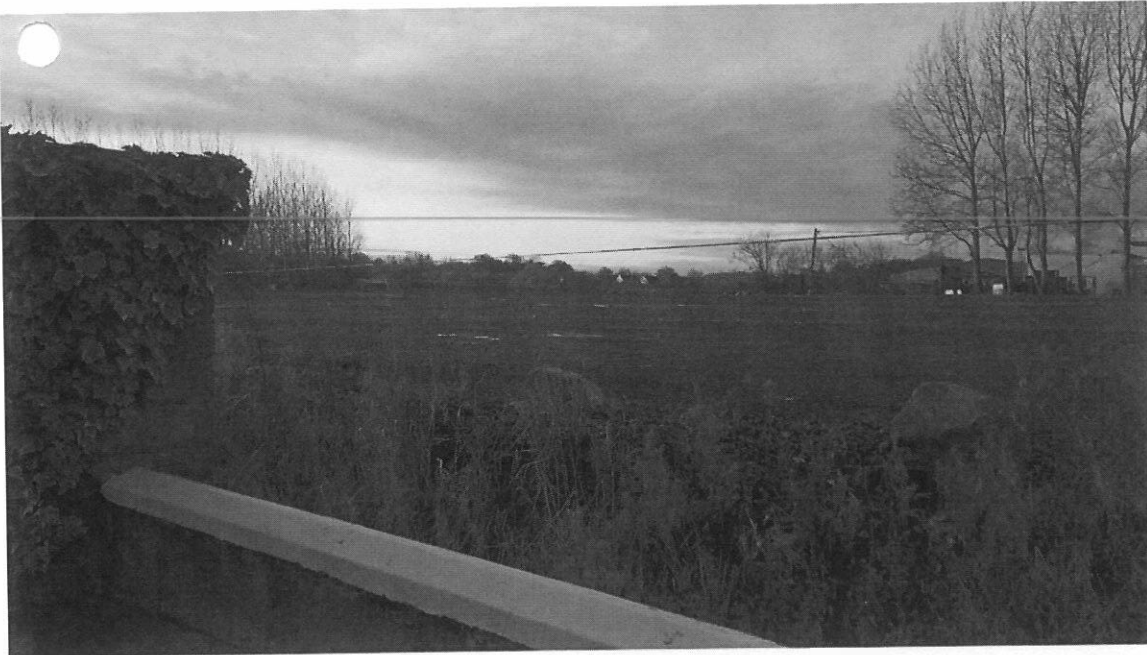


Figure 2 - View from inside our Client's western front boundary to subject land – Jan 2017



Figure 3 - View from inside our Client's western side boundary towards the subject land – Jan 2017



Figure 4 - View from inside our Client's western side boundary towards subject land – Jan 2017

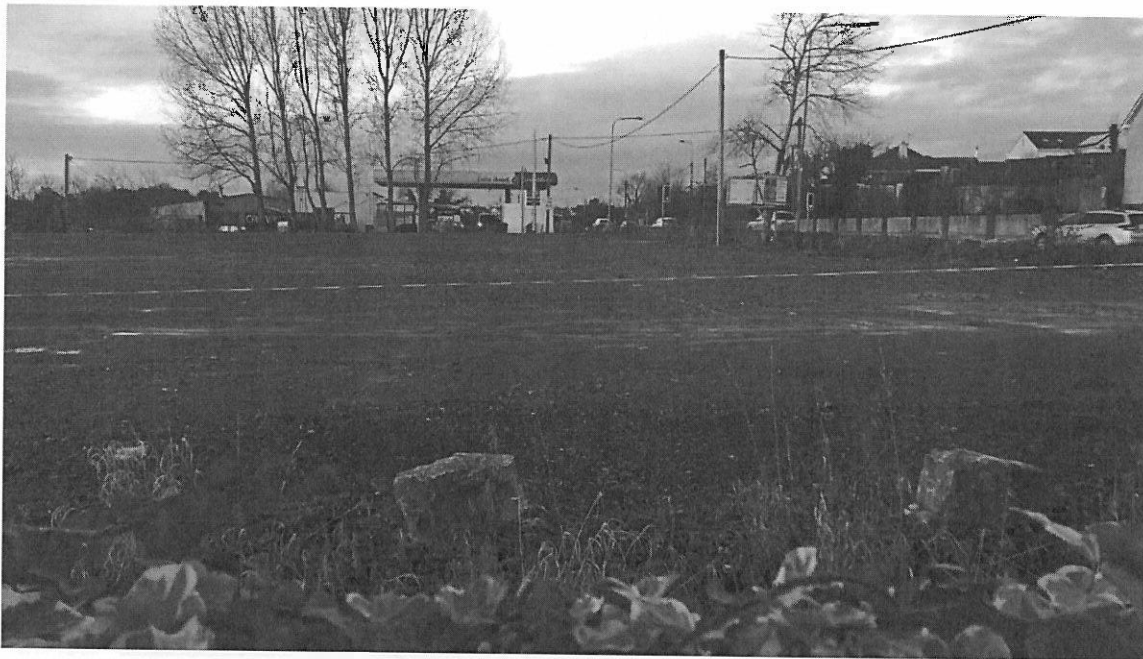


Figure 5 - View from inside our Client's western side boundary towards subject land – Jan 2017



Figure 6 - View from inside our Client's western rear boundary towards subject land – Jan 2017

In relation to the changes in ground levels over the years, we have reviewed the details in the planning files referred to in Section 4.2.2 above and also noted the levels as shown in Richard Long's drawing – 'Sketch No. 2 – Level info for Noel Glynn's site' (Figure 8 below) (email from Richard Long dated 17th. October, 2014 referred to in our Client's Submission) and we note the following in relation to the changes in levels of the subject site over the years based on this evidence:-

	Planning File 9721061 (prior to any infilling works)	Planning File 0521142 (post the original infilling works 1999-2002)	JB Barry Survey 03/09/14 (post Drainage Scheme contract)	Planning File P19-409 (post all infilling works)
Levels on Tulla Road (R352)	4.46m-4.6m.	4.44m – 4.63m	Not given	4.4m-4.6m
Stoned Section of Area A	3.02m-3.07m.	3.75m-4.5m.	4.4m-4.7m.	4.4m-4.8m.
Rear of Area A	3.12m.-3.3m.	3.0m-3.25m.	3.0m-3.1m.	3.97m-4.079m.

Figure 7 - Ground Level Comparison

SKETCH No2 - LEVEL INFO. FOR
NOEL GLENN'S SITE.

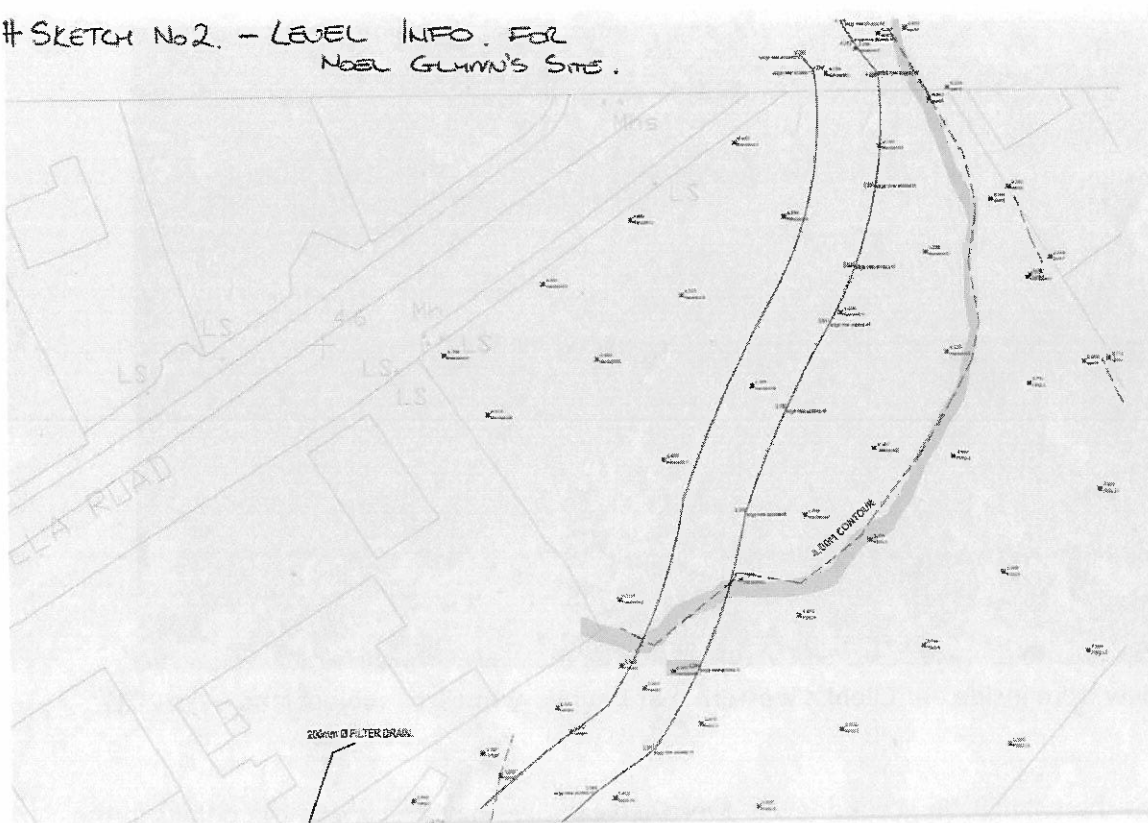


Figure 8 - Part copy of Sketch No. 2 from Richard Long email dated 17th. October, 2014. Note line of 4 m. contour

Overall, the front of the subject land, i.e., front portion of Area A fronting onto the Tulla Road, would appear to have been raised by between 1.4m. and 1.7m. approx. from the original ground levels. The rear of Area A would appear to have been raised by between 0.85m and 1m.

Most of the infilling has taken place to the front section of Area A (which forms part of the subject site), directly adjacent to our Client's property, with the levels sloping downwards towards the rear of the lands.

In relation to the change in levels on the subject site versus the levels of our Client's property, we refer to part copy of Richard Long's Sketch no. 2 (Figure 9 below) which shows the variation in levels between our Client's site and the subject site.

- 3.655 v 4.269 (+ 0.614m)
- 3.225 v 4.023 (+ 0.818m)
- 3.081 v 3.964 (+ 0.883m)
- 2.518 v 3.801 (+ 1.283m)

The above levels are based on the information which we have been able to obtain from the planning history and information from OPW in relation to the subject site.

However, we note from the Trial Hole Assessment submitted with this application that five separate trial holes representing the site, had excavations made at 1 metre levels to a depth of 6 meters. The observations at the trial holes revealed solid made-up ground down to more than 3 meters. This would suggest a greater level of infill on the subject site than we estimated as outlined above.

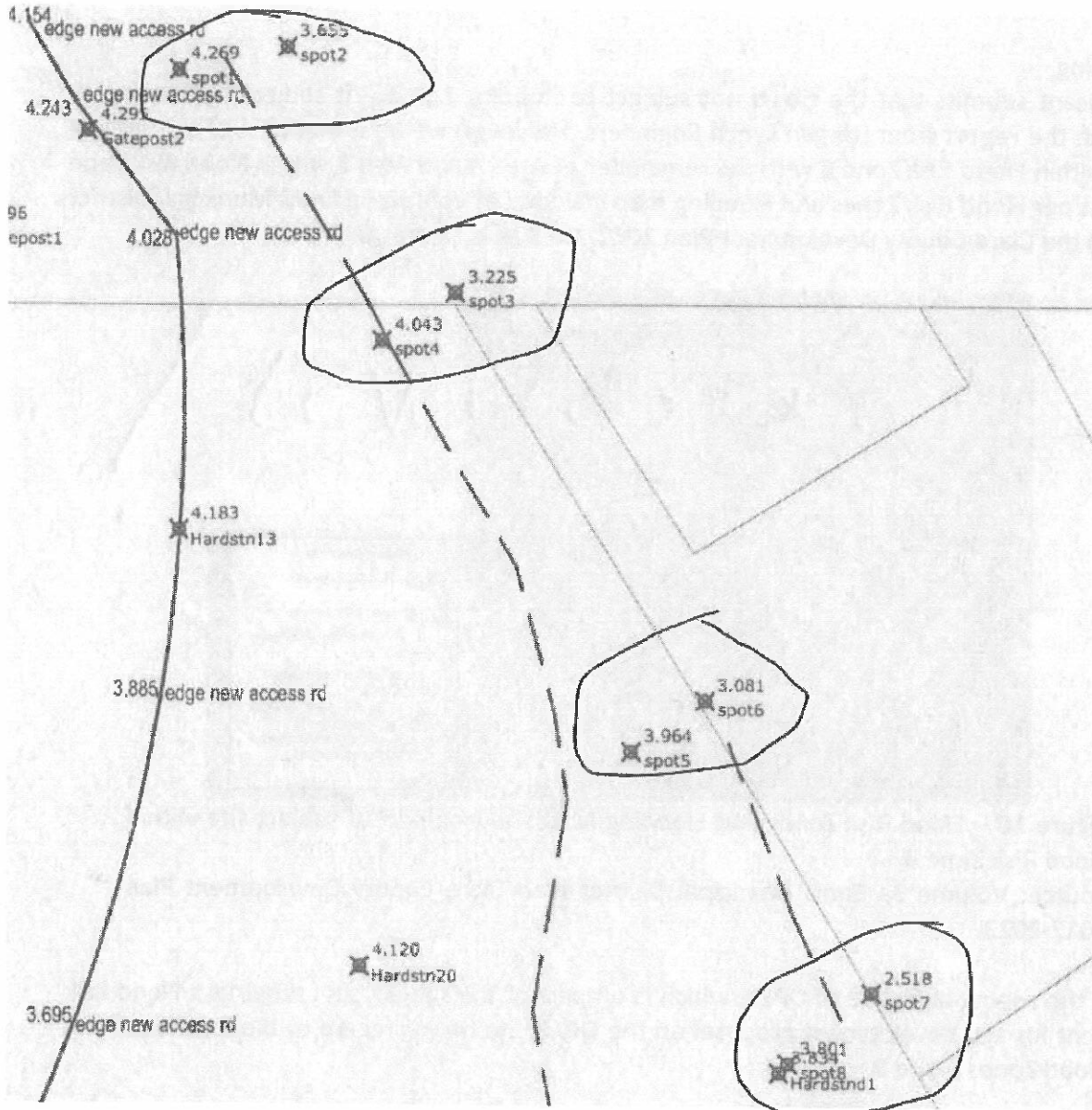


Figure 9 - Part copy of Richard Long Sketch No. 2 (3rd. September, 2014)

We note from Planning File P19-409 that the Flood Risk Assessment Report and the Planning Statement submitted as part of this application both state in relation to the infilling works carried out on the application site (OP18 site within Area A) in 2013/2014 and 2015

".....works has resulted in a significant difference in site levels between the subject site and adjoining lands to the east and west".

Buo
c

Overall, the works have resulted in a uniform increase in ground levels throughout the overall landholding which has severely diminished our Client’s residential amenity. Our Client’s western boundary wall has been made redundant as a result of the infilling of this land thus depriving our Client and his family of the privacy to their own home.

5.6 Flooding

The Applicant submits that the site is not subject to flooding nor was it subject to flooding as detailed in the report from Horgan Lynch Engineers. However, we note that part of the subject site lies within Flood Risk Zone B with the remainder of Area A and Area B within Flood Risk Zone A and B as per Flood Risk Zones and Flooding map included in Volume 3a Ennis Municipal District Plan from the Clare County Development Plan 2017-2023 (See Figure 10 below).

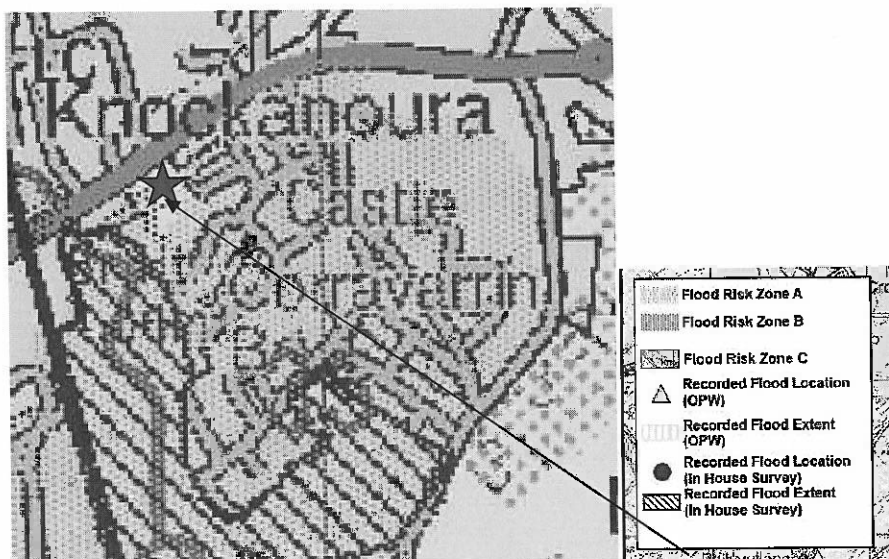


Figure 10 – Flood Risk Zones and Flooding Map showing part of subject site within Flood Risk Zone B.

Source: Volume 3a Ennis Municipal District Plan Clare County Development Plan 2017-2023.

We note the zoning objective of OP18, which is on part of the subject site, requires a Flood Risk Assessment for any development proposal on the OP18 site having regard to the location of the site on Flood Zones A and B.

We refer to a submission made by The Department of Culture, Heritage and the Gaeltacht on Planning Application Ref: P19-409 (subsequently deemed an invalid application) where it was stated:-

“The application area (0.32ha) is part of an area of infilled land (approximately 1.1 ha) adjacent to the River Fergus Minor and to the Lower River Shannon Special Area of conservation SAC (site code 002165). Available imagery shows that these lands supported natural or semi-natural habitats in March, 2012. Reedbeds were lost as a result of infilling, meaning that wetlands were present on at least part of the site in the past”. (Emphasis added)

The Chief Executive's report on the Proposed Amendments to the Draft Clare County Development Plan 2013-2017 in relation to a proposed expansion of the OP18 zoning into the lands to the south (referred to in our Client's submission) stated as follows:-

"I agree that the expansion of site OP18 in a southern direction, onto an area identified as being in Flood Zone A, has the potential to impact negatively on surrounding areas and I have serious concerns about this proposed zoning".

The above information has not been referred to in the Flood Risk Assessment.

6.0 CONCLUSION

This submission together with our Client's submission submits that the Applicant has not adequately demonstrated that "*Exceptional Circumstances*" exist in this case so as to permit the regularisation of the development in question. While we note the Board previously decided that "*Exceptional Circumstances*" exist in their assessment of the Leave to Apply for Substitute Consent application, the new provisions of Substitute Consent in the Act allow for the public to challenge this in the '*Substantive*' application stage. The Board at the '*Substantive*' application stage can only grant Substitute Consent where it is satisfied that "*Exceptional Circumstances*" exist which would justify the grant of such consent and the Board cannot be bound by or have regard to any determination made by it at the '*Leave*' stage as to the existence of "*Exceptional Circumstances*".

Our Client considers that The Applicant cannot claim '*Ignorance*' to the fact that the works are unauthorised, given the knowledge the Applicant's Planning adviser had of the works in 2013- and 2014 and the information publicly available on the case. Not allowing for the statutory 8-week Judicial Review period prior to signing the contracts is a serious failure on behalf of the Applicant particularly given the case history. In our Client's opinion this cannot be deemed to comply with the "*Exceptional Circumstances*" criteria.

Our Client considers the application area is restrictive and will substantially impair the ability to carry out an adequate rNIS to assess the environmental impacts of the full extent of the unauthorised works that have been carried out on the overall landholding (i.e., Area A and Area B). Regularisation of development within the boundary comprised in this application would restrict the area to be assessed for likely significant impacts in a manner which circumvents the purpose and objectives of the Habitats Directive.

The rNIS is deficient in a number of respects. The assessment of the cumulative impacts has not been carried out as part of this current application. It is not clear if mitigation/remediation measures are proposed other than the monitoring program for noxious weeds and invasive weeds. It is submitted that the rNIS is deficient in its current conclusion in terms of informing the AA process.

Based on the lack of evidence included in the rNIS it is our Client's opinion that it is not possible to conclude, beyond scientific doubt, that the unauthorised work would not adversely affect, or has not had an adverse effect on, the integrity of a European site. In such circumstances, by reference to the provisions of Section 177K(1A) of the Act, the Board is precluded from granting Substitute Consent in this case.



The unauthorised works have resulted in significant negative impacts to our Client's residential property in terms of the effects to the integrity of our Client's boundary wall and residential amenities.

This submission together with our Client's submission have demonstrated that permitting this application for Substitute Consent would be contrary to s.177D(1)(b) of the Act, contrary to the objectives of the Habitats Directive and contrary to the proper planning and sustainable development of the area. Our Client requests that the Board refuse this application.

Yours sincerely,

Mandy Coleman

Mandy Coleman
P. Coleman & Associates.

Appendix

Submission from Mr. Pat Quinn with Exhibits 1-12

Submission Of Patrick Quinn

1. Introduction

To procure a substitute consent for the unauthorised development on these lands, the Applicant seeks to avail of the “gateway” afforded by s.177D(1)(a) Planning And Development Act (hereinafter “PDA”) 2000.

In order to lawfully do so, the Applicant has to establish the existence of “*exceptional circumstances*”

The Board must, when considering whether exceptional circumstances exist, have regard to matters specified under s.177(D)(2) *inter alia* viz.,

- (b).....*whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- (g).....*such other matters as the Board considers relevant*

For the reasons as set out hereunder, I say the Applicant has clearly failed to establish that it had, or could reasonably have had a belief that the development was not unauthorised.

2. Relevant Factual Background Regarding “Subject Site” And Public Awareness

On the 16th June 2016, an elected Councillor made a representation to *inter alia* a Senior Planner, a Senior Executive Planner and an Executive Planner of Clare County Council (*hereinafter “CCC”*) regarding the unauthorised development of these lands and the Senior Planner committed to referring the matter to CCC Planning Enforcement Section to investigate.

As of August 2016, the subject lands (along with the remainder of the infilled lands) were being publicly advertised for sale as a “3 acre site – commercial zoning” by Arthur & Lees, Estate Agents and Auctioneers, Francis Street, Ennis. A large sign to effect was prominently displayed on the R352 Tulla Road boundary up until June 2017, if not later. I believe the asking price for the lands at that time was €3,000,000.

There was no “Commercial” zoning on any of the subject lands in 2016. The Selling Agents website states “*This site is zoned commercial under the Draft Clare County Development Plan 2017-2023*”. It was only the front section of Area A which measures approximately 0.79 acres (i.e. subject site) which was subsequently zoned as “Commercial” when the Clare County Development Plan 2017-2023 was adopted on 19th. December, 2016. The remainder of the subject land was reclassified as “Open Space”.

When these lands were subjected to the unauthorised infilling and raising of ground levels, they were designated as Other Settlement Land.

On the 30th September 2016, a local residents association, the Castlerock Residents Association made a submission to CCC (Ref: 013) regarding proposed amendments to the draft Clare County Development Plan 2017-2023 regarding the infilling of the lands at Knockanoura, noting that such development was not provided for at all, in the context of the Part 8 process that was undertaken in connection with the Ennis Flood Relief Scheme.

On the 9th October 2016, I also made a submission (Ref:020) to CCC regarding proposed amendments to the draft Clare County Development Plan 2017-2023 concerning the unauthorised status of the infilled lands at Knockanoura. In his published report on the Submissions received of the 8th November 2016, the Chief Executive of CCC, recites the content of my submission at some considerable length and in “*recognising the serious nature of Mr. Quinn’s concerns*” stated that such is a matter for planning enforcement.



On the 5th December 2016, having observed four Councillors on the subject site, inspecting and traversing same, I brought my concerns about what was evolving in the planning process regarding these lands to the attention of every County Councillor in Clare *via* individual emails.

These lands and the unauthorised infilling thereof were the subject of extensive local media coverage throughout this time also and in particular at pg 12 of the edition of the Clare Champion Newspaper of the 9th December 2016.

Subsequently on the 15th December 2016, the said Castlerock Resident's Association, through its Chairperson, sent letters by way of registered post to Mr. Pat Dowling, the Chief Executive of CCC, to the CCC Director of Service Economic Development & Planning, to the CCC Senior Planner and to CCC Planning Enforcement Section calling for an immediate investigation by the planning authority in relation to the unauthorised filling of lands at Knockanoura, extending over an area in excess of 12,000 m² (ie estimated 3 acres x estimated 3ft minimum fill).

By letters (4 no.), dated December 16, 2016, (2) January 12, 2017(1) and 13TH February 2017 CCC committed to an investigation of matters and the Council's Senior Planner advised the Chairperson that he had passed her complaint of unauthorised development to the council's enforcement section for *"their follow up and investigation"*

As a consequence, CCC opened an U(nauthorised) D(velopment) File Ref: UD17-025 and pursuant to s. 152(1) of the PDA 2000, I believe a Warning Letter would have issued from CCC to Noel Glynn and/or Crossfields Property Company Ltd, (ie the Investment Fund's predecessor in title) being the person who carried out the unauthorised development, requesting the making of written submissions or observations on the matter to the planning authority, within four weeks thereof.

The fact of the service of that Warning Letter would have been entered in the planning register which is maintained by CCC pursuant to s.7 of the PDA 2000, which was at all times available for public inspection during CCC office hours.

Castlerock Residents Association have advised me that it had written to CCC on a number of occasions requesting the planning authority to take appropriate steps to procure the removal of the illegal infill. Castlerock Residents Association have also advised me that they were petitioning Councillors on the matter.

On the 18th January 2017, I petitioned Minister Simon Coveney, Minister For Housing, Planning, Community And Local Government, to exercise his powers under s.31 of the Planning And Development Act 2000, to direct Clare County Council to take such measures as required, in relation to the Clare County Development Plan 2017-2023, in respect of what had been done to date with respect to these lands. I believe the Castlerock Residents Association made a separate petition of Minister Coveney in similar vein at or about that time.

On the 6th March 2017, I observed people on these lands, who appeared to be conducting surveys/site investigations of a technical or hydrological nature. I suspect such personnel were undertaking preparatory work for the purposes of assessing the suitability of the lands for development.

It is my understanding that the infilling of these lands then became the subject matter of a Notice of Motion (No.23) that was submitted by Councillor Anne Norton to the meeting of CCC of the 12th June 2017, to which CCC responded was a matter that was under investigation by planning enforcement.

[EXHIBIT 1]

In July 2017, Castlerock Residents Association again wrote to CCC's Senior Executive Planner in relation to a series of unauthorised developments upon the lands.



On the 1st August 2017 a further Warning Letter was apparently sent to Noel Glynn c/o Crossfield Property Company Limited by CCC regarding the unauthorised infilling in the context of a separate and earlier CCC U(nauthorised) D(velopment) File Ref:MM/UD15-030 (which, from its reference number would appear to have been opened in 2015)

On the 4th September 2017, CCC referred a question to An Bord Pleanála pursuant to s.5 of the PDA 2000 as to whether groundworks, including the importation and disposition of fill material, creation of a hardstanding area and raising of the land area is or is not development or is or is not exempted development at Tulla Road, Ennis.

To adopt the vernacular, at all material times from June 2016 onwards, the “*dogs on the street*” throughout County Clare (and possibly even beyond) were alive to the fact that, to use the most benign terminology, there obviously was “*a problem*” about the development on these lands most recently undertaken by the infilling works and raising of ground levels.

However, the procedure whereby CCC referred a question to An Bord Pleanála (Ref: 03.RL.3611) on the 4th September 2017 did not provide for any public participation whatsoever, as to permit of provision to An Bord Pleanála by the public, of information relevant to the *bona fides* of the infilling developer with respect to the legal authority for and status of such works.

I was not aware of planning authority ever having referred a question to An Bord Pleanála at the time, nor was I ever requested to make a submission or observation to An Bord Pleanála with respect to the issue, which greatly disturbed me, because as set out above, I had previously made submissions/observations to Clare County Council with respect to the zoning/designation of these lands by the Clare County Development plan and the unauthorized development thereon which had been expressly acknowledged by the Chief Executive of Clare County Council as seriously concerning and I had further petitioned the Minister for Minister For Housing, Planning, Community And Local Government about what had occurred with regard to the subject site. I believe that Castlerock Residents Association were similarly blindsided.

It appears that on the 21st June 2018 and again on the 5th December 2018, a pre-planning meeting was held by representatives of the Investment Fund ICAV with CCC’s Acting Senior Executive Planner [c/f (i) Section 4.0 - Planning Statement Of HRA Chartered Town Planning Consultants received by CCC Planning Section on 22nd May 2019 File Ref: No: P19-409 And (ii) Planning Application Form P19-409 – EXHIBIT 2]

I find it most peculiar that HRA by its Planning Statement has for some reason failed to advert to the pre-planning meeting of the 21st June 2018.

On the 15th January 2019, by Order 03.RL.3611, An Bord Pleanála determined that the infilling of the lands constituted exempted development carried out as part of the River Fergus Lower (Ennis) Certified Drainage Scheme pursuant to the Arterial Drainage Act of 1945.

When I became aware of the said Order, I inspected the Bord’s file and on the 24th January 2019, I sent a registered letter and a Booklet of Documents to the Chairperson of An Bord Pleanala, making the board specifically aware of the true position as regards what had transpired on these lands since 2014, [EXHIBIT 3] that *inter alia*;

“My residence immediately adjoins the infilled site on the Tulla Road and I consider myself the person most directly affected to date by the activity which has taken place on these lands since 2014.

I was not aware of Clare County Council ever having referred a question to you, nor was I ever requested to make a submission or observation to you with respect to the issue and I am greatly disturbed by that as I have previously made submissions/observations to Clare County Council with respect to the zoning/designation of these lands by the Clare County Development plan and the unauthorized development thereon which found favour with and had been acknowledged by the Chief Executive of Clare County Council.

Having been astounded and dismayed by your Order, I proceeded to obtain the complete file from An Bord Pleanála via public access which I received today and the contents of same merely served to confirm for me what I suspected, which is that the information as supplied to you on the referral was inaccurate, incomplete, untrue and misleading.

Contrary to your Order, the portion of the site fronting the Tulla Road (ie "Area A" as described by Inspector Caprani in his report) and immediately adjoining my residence never formed any part of the River Fergus Lower (Ennis) Certified Drainage Scheme pursuant to the Arterial Drainage Act of 1945 and to suggest otherwise is, to use the most benign term, a complete mischaracterization of the true situation.

I am satisfied that the plans, specified and drawings as submitted for the Scheme and as confirmed clearly bear out this important distinction and it is deeply regrettable that neither the Board, nor your Inspector appear to have had adequate regard to them whatsoever.

What developed on the portion of the lands adjacent to my property, whereby they came to be filled and the levels thereof raised to a wholly unauthorised level, grossly interfering with my residential amenity, was as a result of a private arrangement between the owner of the lands and the contractor engaged on the aforesaid Drainage Scheme at the time and wholly extraneous to it and in that regard, I note from Mr. Ciprani's report that "the Planning Authority submissions states that Area A is located outside the flood relief works area".

Thereafter, further infilling continued at the behest of the owner of the lands and to suggest that it was de minimis is a misapplication of that concept.

In other words, there was no legislative authority whatsoever for those works, contrary to what may have been represented to and purportedly found by you.

My reason for saying this is because I am in possession of significant documentation from JB Barry, the employer's site representative and from the scheme contractor, which confirms and verifies this and which I am now attaching for your consideration as Appendix A hereto.

In such circumstances, it is obvious that the Order of An Bord Pleanála is manifestly in error to some degree and requires to be revisited at a minimum, with respect to that portion of the infilled lands fronting the Tulla Road and which immediately adjoins my residence. (ie "Area A")

To date, my private property rights have been entirely abrogated by the owner of these lands and the Order of An Bord Pleanála only serves to compound this injustice for me.

I am requesting An Bord Pleanála to revisit the issue as a matter of urgency in the light of this information which is now made available to you.

In my opinion, a question of law now arises in respect of a matter with which you clearly ought to be concerned, if An Bord Pleanála is to retain any semblance of credibility in the exercise of its statutory functions and having regard to your statutory obligations pursuant to Chapter III of Part VI of the Planning And Development Act 2000.

I am respectfully inviting An Bord Pleanála to refer the matter to the High Court for decision, or alternatively consent to an Order of the High Court quashing/qualifying 03.RL.3611, insofar as it purports to pertain to that portion of the infilled lands fronting the Tulla Road and adjacent to my residence, in the light of the material which you are now in possession of.

Another option might be for An Bord Pleanála pursuant to s.146A(1)(b) of the Planning And Development Act 2000 to amend Order 03.RL.3611 for the purposes of s.146(A)(ii) and/or (iii), so that it excludes that portion of the infilled lands fronting the Tulla Road and adjacent to my residence, in the light of the material which you are now in possession of.

.....

An Bord Pleanála refused to contemplate what I had requested of them with respect to



P. Coleman & Associates

quashing/qualifying or amending Order 03.RL.3611 and on the 11th March 2019 leave to apply for a grant of judicial review quashing the said Order 03.RL.3611 was granted by the High Court in proceedings entitled “*The High Court Record Number 2019 JR 144 Between Peter Sweetman Applicant And An Bord Pleanála First Named Respondent And Ireland And Attorney General Second Named Respondent And Clare County Council, Crossfield Property Company Limited And Commissioners For Public Works, Maurice Buckley, John McMahon, John Sydenham Notice Parties*” (and ultimately the said Order was quashed by the High Court on the 11th February 2020.)

It is significant that Crossfield Property Company Limited was a Notice Party to such proceedings.

On the 22nd May 2019, these lands were the subject matter of an application to CCC by the Applicant (**as owner of the lands**) for planning permission for a development, which application was ascribed the reference P.19-409 by the planning authority. That planning application was declared invalid on the 19th June 2019, because on inspection of the site, the requirements of Article 19(1)(c) of the Planning And Development Regulations 2001 (as amended) had not been met.

In the context of that application a submission was made to the planning authority by the Department of Culture, Heritage and the Gaeltacht which states *inter alia*

“It is understood that the lands were infilled and utilised in connection with with the OPW’s River Fergus (Ennis) Certified Drainage Scheme – Phase 2. Based on the information available including Scheme drawings and the EIS for that project, these lands did not form part of the confirmed scheme, and were not subject to EIA and appropriate assessment as part of the project at the time. This should be taken into account in considering the current proposed development. The Department of Public Expenditure and Reform will have details of the full extent of the scheme, as confirmed, and will have details of the EIA and appropriate assessment which were carried out at the time. Any changes or extensions to the project after the scheme was confirmed may not be covered by the consent and the assessments carried out.”
[EXHIBIT 4]

On the 11th February 2020, by Order of Certiorari of the High Court in the aforesaid proceedings, *Record Number 2019 JR 144*, the said Order 03.RL.3611 of An Bord Pleanála of the 15th January 2019 was quashed.

On the 8th June 2020, I referred a question to CCC for determination as to “whether the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and raising of ground levels at Knockanoura, Tulla Road, Ennis from 2013 onwards is or is not development and is or is not exempted development” and on the 16th July 2020, pursuant to s.5(4) of the PDA 2000, CCC submitted the said question to An Bord Pleanála for its determination.

By order of the 20th April 2021, An Bord Pleanála decided that the works the subject of my referral was development and was not exempted development.

3. The Infilling Of The Lands -How Such Came About – The Obvious Purpose Thereof – The Ramifications

How the unauthorised development came about is a matter that ought to be of material relevance to the Board in its assessment of the matter.

There is a really significant degree of unauthorised development on these lands having regard to the amount of filling deposited. We are not dealing with a trivial or a technical infraction. We are dealing with a gross breach of planning law. This totally militates against fulfilment of the “*exceptionality*” requirement for the purposes of s.177D(1)(a) PDA 2000.

What developed here immediately adjacent to my private residence, whereby such lands came to be filled and the levels thereof raised in a wholly unauthorised fashion, grossly interfering with my residential amenity, was initially as a result of a private commercial arrangement between the owner of the lands (Crossfield Property Company Ltd) and the contractor who was engaged by the OPW on the aforesaid River Fergus Lower (Ennis) Certified Drainage Scheme (Phase 2) at the time and wholly extraneous of it.

The emails which I furnished An Bord Pleanála with, as an accompaniment to my letter of the 24th January 2019 clearly evidenced such private arrangement.

Thereafter further and ongoing infilling and levelling of the lands was undertaken by Crossfield Property Company Ltd. The total infilling of the lands at Knockanoura appears to have extended over an area of 1.214 hectares and entailed a uniform increase of ground levels in excess of 3 feet throughout.

Subject to correction, that appears to me to have amounted to an area of 12,041m². It has to be remembered that this development was effected on lands adjacent to the main R352, one of the principal vehicular traffic arteries serving Ennis Town, East Clare and access to the M18 motorway.

At all times, the officers of Crossfield Property Company Limited were truly aware of the planning status of such unauthorised works and the absence of any legislative authority whatsoever for those works, contrary to what might have been represented on its behalf to CCC, or An Bord Pleanála, or the Applicant at different stages. There can be no question of a mistake on the part of the developer. This entirely militates against fulfilment of the "exceptionality" requirement for the purposes of s.177D(1)(a) PDA 2000.

The sole purpose and/or effect of such disregard for the planning code was designed and/or served to massively enhance the market value of the lands, in readiness of ultimately advertising them for sale, if a rezoning from "other settlement land" to "commercial" could be realised by the developer.

As subsequent events proved, the portion of the lands comprising the "subject site" were rezoned as "commercial" in the Clare County Development Plan 2017-2023 which was adopted on 19th December, 2016 with effect from 25th January, 2017 with the result that Crossfield Property Company Limited are reputed to have ultimately realised an unspecified seven figure sum from the sale to the Applicant Investment Fund ICAV of the portion thereof, the subject matter of the within application.

The obvious reason for the planning infringement and conduct of the infringer, Crossfield Property Company Limited therefore significantly militates against both fulfilment of the requirement of "exceptionality" for the purposes of s.177D(1)(a) PDA 2000 and against a grant of substitute consent for such unauthorised development. Its attitude to planning control and its engagement with the process was lacking in candour. There can be no question of Crossfield Property Company Limited ever having acted in good faith, or upon a mistaken belief, with respect to the legality of the infilling of the lands and raising of ground levels. The established evidence clearly demonstrates the contrary and a clear and culpable disregard of planning control.

The impact on my residential amenity has been quite considerable. For years, I have had to endure a situation whereby my residential amenity has been grossly interfered with. A 6ft wall enclosing my rear garden is now effectively a 3ft wall and a 3 ft wall at the front of my property is wholly redundant, as a result of this unauthorised development, severely diminishing my residential amenity and depriving my family and I, of the privacy we might reasonably expect as occupants of an adjacent private residential dwelling.

Moreover, I have had to regularly endure people peering in my kitchen window at mealtimes and whereas my front driveway was formerly of similar ground level to the site, it is now 3 feet below it.

My residential property has been seriously devalued and damaged by this unauthorised development which is ongoing. For instance, since the unauthorised development works were effected, I have begun to notice subsidence in the cobblelock paving of my rear patio and front driveway, which I truly believe is attributable to the displacement of/interference with the water table, occasioned by the infilling of the lands beside my house.

My lands however are entirely planning compliant.

Unlike others, I have always respected the integrity of the planning system.

4. The Resources Available To Valley Healthcare Fund - Infrastructure Investment Fund ICAV

I understand that the Applicant Investment Fund IC(ollective)A(sset)V(ehicle), (which fund was or continues to be co-managed by AMP Capital and Irish Life Investment Managers), was established in 2017 to invest in the acquisition and development of lands across Ireland, with the ultimate aim of owning between 10 and 20 large sites across the country by 2020.

The Applicant is an investment fund with massive financial resources available to it from its owner (in excess of €100m) and in the period from its inception up until the end of June 2018, had acquired lands in Tralee, Listowel, Mitchelstown, Clonakilty, Wicklow and Mayo.

- Valley Healthcare acquires healthcare centres in Cork and Kerry (irishtimes.com)
Tue, Jun 26, 2018, 10:08 [EXHIBIT 5]
- Fund buys its fourth primary care site - Independent.ie]
April 11th 2018 – 02:30am [EXHIBIT 6]

The Applicant acquired lands in Wicklow and Mayo in February 2017, lands in Tralee in December 2017, lands in Mitchelstown in April 2018, followed by lands in Clonakilty and Listowel in the period up to June 2018.

So ever before it acquired the “subject site” at the Tulla Road in Ennis in 2018, this Investment Fund was engaged in a massive acquisition and investment programme with respect to lands across the country and insofar as the town of Ennis was concerned, it was also involved at the time in the acquisition of other lands at Station Road, Ennis.

(which subsequently to date have become the focus of decisions of An Bord Pleanála and most recently High Court judicial Review proceedings entitled “*The High Court Record Number 2022/79 JR Between Glencar Healthcare Ltd, Valley Healthcare Fund Infrastructure Investment Fund ICAV and Pames Developments Ltd, Applicants And An Bord Pleanála, Respondent*”)

At all times this Investment Fund has had, inter alia, a swathe of expert planning and legal advisers available to it at all material times on an ongoing basis with respect to its land acquisition and development programme.

This Investment Fund is not some “innocent abroad” with respect to such matters.

As Mr. Philip Doyle, (Principal of the Fund, AMP Capital Co-Manager and non-executive director of the ICAV) stated at the time “*Valley Healthcare is a platform through which we are utilising AMP Capital’s infrastructure management expertise to deliver excellent services while generating stable returns for our twenty-five investors.*”

Irish Infrastructure Fund adds two Primary Care Centres to Valley Healthcare | AMP Capital

- April 24th 2018 - www.ampcapital.com [EXHIBIT 7]

5. The Evidence Adduced By Valley Healthcare Infrastructure Fund - Investment Fund ICAV In Purported Fulfilment Of S.177(D)(2)(b) of the PDA 2000

Before I respond substantively to the assertion that the Applicant purchased the land in the belief that the works undertaken to fill the land were done in accordance with relevant statutory provisions, I wish to observe as follows regarding the content of the HRA Planning Report;

(i) Site Location and Context

As regards "*Site Location and Context*", Castlerock Estate is located to the south of the site, not to the east of it and it is my private residence (which is not referenced at all by HRA) that is located on the eastern boundary of the subject site.

HRA merely reference a "*low block stonewall defining the eastern site boundary*", but neglect to explain that is 6ft boundary wall (enclosing my back garden at the rear), which has necessarily become "*a low block stonewall*", wholly because of the unauthorised development of the subject site by the unauthorised raising of ground levels. Moreover, HRA also fail to reference that such boundary wall at the front of my house has been rendered utterly redundant by such unauthorised filling and raising of grounds levels of the subject site.

(ii) Site Ownership & Basis for Application

As regards "*Site Ownership & Basis for Application*" and the bald assertion that "*previous parties involved operated on the basis that the works were exempted development*", that is not a credible assertion for the following reasons.

- (a) The subject site was never part of the River Fergus (Lower Ennis) Certified Drainage Scheme. All "previous parties involved" knew and have always known that.

The N(atura)l(impact)S(tatement) stated "*details of the works to be undertaken along the River Fergus Channel are as described in the contract specification and drawings and area summarised below*"

As the contract specification and drawings confirmed by the Minister made no reference whatsoever to, or provision for, what has subsequently transpired with respect to "*the subject site*", such could never have formed part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945 and thus constitute an exemption under Article 8 of the Planning And Development Regulations 2001 as amended. All previous parties involved knew and have always known that

- (b) The Scheme as approved provided for access to the works to be achieved at an entry point proximate to Fitzpatrick's (as it then was) Service Station premises. (now O'Brien's). All "previous parties involved" knew and have always known that.

Subsequently, when Mr. Fitzpatrick became aware of this, he made objection, because of apprehended commercial ramifications for his business, which would be occasioned by the vehicular movements accessing and egressing the site works.

Mr. Glynn, the owner of Crossfield Property Company Limited, then offered to afford the Contractor a site access for their vehicles at a point beside my dwellinghouse. In the Summer of 2013, employees of Wills Bros. attended at my house advised me of the foregoing and sought to ascertain my views on same. [c/f EXHIBIT 8 - The email from Malcolm Duncan – Project Manager on behalf of Wills Bros to me of the 6th November 2013 at 13.30 corroborates this]

Because of the social utility of the nature of the works, in order to alleviate flooding in Ennis, I acquiesced in the proposal for an access track at this location, having secured verbal commitment from the Wills Bros. representatives, that the portion of the lands being availed of for the revised access track, would be restored to their original condition, once the works had concluded.

Because of the revised location of the site access, Wills Bros. were then instructed by JB Barry & Partners Ltd (being the Employer's Site Representative) to undertake a pre-works condition survey of my property which was undertaken on the 12th June 2013 by a Patrick Murphy.

In 2014, I had further correspondence with JB Barry and with Wills Bros. This is also contained at EXHIBIT 9 hereto. The most important emails are those from Richard Long to myself of the 19th September 2014 and the 17th October 2014. The attachments to the emails are what Richard Long furnished me with, as attachments to his email on the 17th October 2014 (with my boundary delineated in purple on Sketch No.1)

Whatever about the provision of a temporary track for site access, these emails clearly illustrate what subsequently evolved on "*the subject site*" (whereby a temporary access track metamorphoses incrementally into a completely infilled site in breach of representations made to me by Wills Bros.) had nothing whatsoever to do with the Certified Drainage Scheme works, but arose purely a result of a private arrangement between the contractor and Mr. Glynn and subsequent private arrangements of Mr. Glynn. All "previous parties involved" knew and have always known that.

This was something that was never found by the OPW to be a necessary incidental of the works specified by the statutory scheme and could never have exempted development pursuant to Article 8 of the Planning And Development Regulations. All "previous parties involved" knew and have always known that.

The permanent infilling of "*the subject site*" and raising of grounds levels was not carried out in accordance with requirements under the Arterial Drainage Act of 1945. All "previous parties involved" knew and have always known that. The aforementioned e-mails of Richard Long, Senior Employer's Site Representative to me confirm that.

- (c) There are photographs on the public access file of An Bord Pleanála dated the 16th September 2013 and the 24th September 2013 which illustrate my house and the boundary wall adjoining the site. Even a most cursory examination of the present site level of "*the subject site*" vis a vis my boundary wall, will reveal the extent to which further infilling has taken place on "*the subject site*" since those photographs were taken in 2013.


6. How The Relevant Background History Serves To Undermine The Applicant's Claim Of Exceptional Circumstances

The HRA planning report asserts that the Applicant entered into a contract in 2018 with the owner of the overall landholding to purchase the "*subject site*."

The HRA planning report does not identify the Vendor, who I believe was Crossfield Property Company Ltd (ie Mr. Glynn's company) and would have been the person responsible for the unauthorised infilling and raising of ground levels.

The HRA planning report asserts that,

"the sale of the land was delayed pending the outcome of the Section 5 referral made by Clare County Council to An Bord Pleanála in respect of the status of the infill works. An Bord Pleanála issued a Declaration confirming the infill ground works as exempted development. The Order

 P. Coleman & Associates

delivered certainty as to the planning status of the site and cleared the path for the applicant to purchase the lands and make an application for planning permission. Our client purchased the land in February 2019 and made a planning application to Clare County Council in May 2019.....(P/19/409). In the interim, unbeknownst to our client, judicial review proceedings were brought against the Section 5 Declaration decision of An Bord Pleanála in March 2019, calling into question the planning status of fill on the land (High Court Record No: 2019 JR 144.....In February 2020 the High Court issued an Order of Certiorari quashing the decision of the Board.

.....the Applicant purchased the subject site on the stated basis that the infilling of lands was exempted development and that the land and associated works were in full accordance with relevant statutory provisions”

I wish to respond as follows;

(i)

Ever before it acquired the “subject site” at the Tulla Road in Ennis in 2018, this Investment Fund was engaged in a massive acquisition and investment programme with respect to lands across the country and insofar as the town of Ennis was concerned, it was also involved at the time in the acquisition of other lands at Station Road, Ennis.

(which subsequently to date have become the focus of decisions of An Bord Pleanála and most recently High Court judicial Review proceedings entitled “The High Court Record Number 2022/79 JR Between Glencar Healthcare Ltd, Valley Healthcare Fund Infrastructure Investment Fund ICAV and Pames Developments Ltd, Applicants And An Bord Pleanála, Respondent”)

At all times this Investment Fund has had, *inter alia*, a swathe of expert planning and legal advisers available to it at all material times on an ongoing basis with respect to its massive land acquisition and development programme.

As between the Applicant’s advisers and the advisers of Crossfield Property Company Ltd, a conveyancing transaction of this magnitude involving the subject site would likely have progressed over a very considerable period of months, (if not years) and as between the parties respective legal representatives would certainly have involved the following matters as standard over an extended period;

- Pre-contract enquiries or requisitions made of Crossfield Property Company Ltd by the Applicant.
- A written contract with Crossfield Property Company Ltd specifying the General and any Special Conditions of Sale.
- A Deed of Transfer of the lands from Crossfield Property Company Ltd to the Applicant

The Applicant has conspicuously chosen not to provide the Board with any direct evidence, as to the content of the foregoing, as would indicate to the Board, what exactly was communicated to it by Crossfield Property Company Ltd, throughout the entirety of the transaction, as regards the infilling of the subject site and raising of grounds levels and when.

In order to demonstrate its *bona fides* to An Bord Pleanála, it would have been a simple expedient for the Applicant to have simply produced to An Bord Pleanála, primary documentary evidence of

- (a) The date and content of any replies received by it to all pre-contract enquiries and requisitions made of Crossfield Property Company Ltd with regard to the planning status of these lands and planning matters generally.
- (b) The date of the Contract For Sale and the content of any General of Special Conditions of Sale regarding the planning status of these lands and planning matters generally.
- (c) The date of the Deed of Transfer pertaining to the Applicant’s acquisition of these lands

Any apprehended issue regarding divulgence of commercially sensitive information could easily be overcome by the redaction of such information, with disclosure purely confined to (a) the dates of those material transactions and (b) the content thereof which concerned the planning status of the lands and planning matters generally.

It is significant that the Applicant has chosen not to do so.

In the absence of such primary evidence from the Applicant, An Bord Pleanála could not be satisfied that the Applicant can lawfully avail of the s.177(D)(2) "*exceptional circumstances*" gateway.

(ii)

We know (ie from the content of planning application P19/409) that on the 21st June 2018 and again on the 5th December 2018 pre-planning meetings were held with the planning authority by the Applicant's advisers in order to discuss a development proposal for "*the subject site*" which it was formulating for the said lands and that members of its design team were in attendance.

At all material times, it would have been readily apparent to the Applicant, or to any person on its behalf, who took the simple and minimum precaution of examining the publicly available plans, specifications, drawings and EIS submitted by the OPW for the River Fergus Lower (Ennis) Certified Drainage Scheme (Phase 2) as approved, that the infilling of the lands the subject matter of this application, could not have formed any part whatsoever of such development project, would therefore not have been subject to EIA and appropriate assessment as part of that project at the time and could not have been exempted development.

Did the Applicant, or anybody on its behalf ever undertake that basic and rudimentary exercise? If not, why not? A careless failure to do so, or alternatively, a wilful blindness to any problematical results of such an exercise, either way militates against the fulfilment of the "*exceptional circumstances*" requirement.

Moreover, such pre-planning meetings would have taken place at a time where RL03.3611 was under consideration by the Board and where the position of CCC in the context of its referral of the 4th September 2017, was that the infilling of these lands was outside the works area for the aforesaid Scheme. [This has been expressly recorded by the An Bord Pleanála Inspector in his report on the issue].

Again, the Applicant has conspicuously chosen not to provide the Board with any direct evidence, as would indicate to the Board, the nature, extent and level of investigations and "*due diligence*" if any, as were undertaken by or on behalf of the Applicant with respect to the infilling of lands and raising of ground levels, from once it became interested in acquiring them.

In my submission any such oversight or failure by the Applicant again militates entirely against a finding by An Bord Pleanála, that "*exceptional circumstances*" apply to the Applicant for the purposes of availing of the s.177D(1)(a) gateway.

(iii)

The Applicant asserts that it "*purchased the land in February 2019*"

Because of the failure of the Applicant to adduce primary documentary evidence of the transaction to the Board, it is unclear whether the Applicant only signed a contract to purchase the land in February 2019 with the transaction being completed by Deed of Transfer at some subsequent date, or whether the transaction was wholly complete as of February 2019.

That distinction may be of considerable importance to the Board's determination of the issue pursuant to s.177(D) and in the absence of provision of such information by the Applicant, the Board could not be satisfied that as to the existence of "*exceptional circumstances*" in the Applicant's favour.

Moreover, because of such failure of the Applicant, it is also unclear whether or not the contract for the purchase/sale of the lands was conditional upon the outcome of RL03.3611, or what provision for made for a determination by the Board that was adverse to the interests of either Crossfield Property Company Ltd (as Vendor) and/or the Applicant Investment Fund ICAV (as Purchaser).

Order 03.RL.3611 was made by An Bord Pleanála on the 15th January 2019.

It would be common knowledge amongst the swathe of professional legal and planning advisers who have at all times been engaged by and available to the Applicant, that decisions of An Bord Pleanála are liable to judicial review and that any application for leave to apply for such a judicial review requires to be made within the period of 8 weeks beginning on the date of the impugned decision.

In such instance, the 8 week limitation period expired on the 12th March 2019.

In the light of the foregoing, on any objective assessment of the matter, it would have been grossly remiss of any person, let alone a massively resourced and expertly advised Investment Fund ICAV and its advisers, to seek to rely upon the validity of Order 03.RL.3611 in any material conveyancing transaction, throughout the period up to the 12th March 2019 and until the limitation period for judicial review proceedings had expired.

A prudent legal adviser and/or planning consultant would reasonably be expected to have advised a client of the significant risks of proceeding with any such transaction in advance of the expiry of the limitation period. On the basis of the evidence produced (or rather not produced) by the Applicant, for all I and An Bord Pleanála knows, the Applicant was in receipt of such advice and was nevertheless content to proceed with transaction regardless of a legal challenge materialising and resolved at that time to deal with the matter at a later stage by means of the substituted consent process, should such be necessary.

Furthermore, I had written to An Bord Pleanála by registered post on the 24th January 2019 and I would have expected from An Bord Pleanála that such correspondence was available for public inspection following its receipt of it. In such circumstances, for an Investment Fund ICAV such as the Applicant to have proceeded in the interim up to the 12th March 2019 is all the more egregious as a matter of commercial prudence, unless of course, it was actually content to do so having been made fully aware of the situation.

(iv)

Judicial Review proceedings were commenced on the 11th March 2019.

As and from the 11th March 2019, Order 03.RL.3611 was always liable to be quashed as invalid by the High Court in judicial proceedings and by Order of the High Court on the 11th February 2020 it ultimately was, in complete vindication of everything that I had communicated to An Bord Pleanála by my letter of the 24th January 2019.

Crossfield Property Company Ltd were a Notice Party to such proceedings and was at all times aware of the prospect of Order 03.RL.3611 being invalidated.

HRA asserts on behalf of the Applicant that as of 22nd May 2019 (when it submitted planning application P19/409 to CCC) the Applicant was unaware of the existence of such judicial review proceedings.

However, the Applicant has conspicuously failed to set out for the Board (and by means of direct corroborative evidence) the date and circumstances by which it became aware of the existence of such judicial review proceedings.

In the absence of production by the Applicant of the Contract for Sale and Deed Of Transfer for the "subject site", for all I and An Bord Pleanála knows, the transaction for the acquisition of the "subject site" may not have been completed as of the date of institution of judicial review proceedings under *Record Number 2019 JR 144* of the 11th March 2019 and the Applicant may have been content to proceed with the transaction, notwithstanding such legal challenge.

Either way in any event, any remedy that might be available to the Applicant, as regards any alleged misstatement or misrepresentation, concerning the filling of the subject site and the legal status hereof, which it may or may not be aggrieved by, (if such is the case at all), is something that is properly pursued by the Applicant against Crossfield Property Company Ltd, in the realm of a private law commercial dispute between two commercial entities, as opposed to seeking to avail of an "exceptional circumstances" gateway (where none exists for it) in order to retrospectively validate (to my detriment) an unauthorised development of "the subject site",

Accordingly, from whatever time (ie post August 2016 when the lands were publicly advertised for sale) from which the Applicant first expressed an interest in acquiring these lands, the resounding sound of "alarm bells" and sight of obvious "red flags" regarding the planning status of these lands would have been readily apparent to any commercial entity exercising a scintilla of "due diligence" with respect to a proposed property acquisition of this magnitude and especially as regards the veracity or otherwise of what might have been imparted to it in that regard by the Vendor thereof, particularly in the light of the documentation (i) that was available from An Bord Pleanála following its receipt of my letter of the 24th January 2019 and (ii) that was available for public inspection for many years past concerning the approved River Fergus Lower (Ennis) Certified Drainage Scheme (Phase 2) project.

At a minimum, what falls to be scrutinised in the context of whether the Applicant may lawfully avail of the "exceptional circumstances" gateway are its actions or omissions and degree of knowledge of relevant matters, throughout the materially relevant periods of;

- (i) from August 2016 when the lands were publicly advertised for sale up to the 25th January 2019 being the date of An Bord Pleanála's receipt of my letter, and
- (ii) from the 25th January 2019 up to the 11th February 2020 (and in the particular period from the 25th January 2019 to the 22nd May 2019 - ie by which time it is holding itself out as having acquired ownership of the lands), in the light of the institution on the 11th March 2019 of judicial review proceedings on notice to Crossfield Property Company Ltd.

in the light of (a) the documentation and information which was publicly available for inspection and examination by it, had it undertaken any basic "due diligence" evaluation of the lands and (b) the documentation and information that the Applicant is in possession of regarding the transaction for the acquisition of the lands and which it has consciously chosen to withhold.

At an evidential level, no primary documentation or direct information in such respects has been provided by the Applicant to An Bord Pleanála, as would permit the Applicant to avail of the "exceptional circumstances" gateway, or as would permit An Bord Pleanála to reasonably and lawfully determine that the Applicant has passed the exceptionality threshold.

As matters stand, the position of the Investment Fund ICAV with respect to this application is to be effectively requesting "a Fools Pardon" from An Bord Pleanála

The grant of such a "Fools Pardon" could never satisfy the "exceptional circumstances" requirements for entry through the gateway that is afforded by s.177D(1)(a) PDA 2000.

7. Would The Infilling Of The Lands By Crossfield Property Company Ltd Likely Have Obtained A Grant Of Planning Permission Were A Valid Planning Application In Respect Thereof To Have Been Made To CCC In Advance Of Same ?

Having regard to the nature and extent of the infilling of the lands that was actually effected at Knockanoura by and on the behalf of the developer, I believe it highly unlikely that a proposed development of that order would have obtained a grant of planning permission from CCC, were such planning application to have been made in advance of it at the time.

Throughout the period of time whilst the infilling of these lands was being effected by, or at the behest of, Crossfield Property Company Ltd, such lands were subject to the Ennis & Environs Local Area Plan, whereby they had a zoning designation of "Other Settlement Land" [EXHIBIT 10]

The zoning objective of an Other Settlement Land designation in the Ennis & Environs Local Area Plan was "to conserve and enhance the quality and character of the area, **to protect residential amenity and allow for development that is appropriate to the sustainable growth of the settlement.**"

The proper and sustainable growth of the existing Tulla Road residential settlement at the time, the location, history and characteristics of the site and the established use of adjoining lands would, I believe, have likely dictated a refusal of such a development proposal were it to have been made.

The rezoning for "commercial" of the "subject site" was only procured post unauthorised infilling and raising of ground levels. This rezoning was effective from 25th. January, 2017 in the context of the Clare County Development Plan 2017-2023 process was developer led at the instigation of Crossfield Property Company Limited (ie the infilling developer)

Other factors that would have likely dictated a refusal would have encompassed the significant increase in ground levels on the subject site as a result of the extent of the infilling works *vis a vis* the significantly adverse impact occasioned upon the enjoyment of the amenities of adjoining residential property and therefore contrary to the proper planning and sustainable development of the area.

Furthermore, I am aware that in the period from February 2016 to April 2016 alone, in circumstances where there was unlicensed deposition of inert soil and stone on sites involving farmland in Kilmihil and land at Quin, County Clare, CCC Waste Regulation Enforcement Team were very pro-active in serving Notices pursuant to S.55 of the Waste Management Act 1996 on the persons concerned, instructing immediate cessation of the activity and removal of offending material, which achieved compliant outcomes in each case.

8. The Issue Of Hardship

There is no hardship to the Investment Fund ICAV occasioned by refusal of its application for substitute consent.

On the contrary, all the hardship is occasioned to me, were such application to be granted and I were to have to continue to suffer the effects of the unauthorised development which I have had to endure these past 8 years or more.

9. Other Relevant Matters – The Conduct Of The Applicant And Its Advisers In The Planning Process With Respect To These Lands

We now know from section 4.0 of the Planning Statement submitted by HRA Planning, Chartered Town Planning Consultants to CCC on the 22nd May 2019 for the purposes of the Investment Fund ICAV's planning application P19-409 and from the Planning Application Form submitted for P19-409, that pre-planning meetings were held with CCC planning authority on June 21st 2018 and December 5th, 2018 to discuss the development proposal and that an Acting Senior Executive Planner and members of the Applicant's Design Team were in attendance.

A reasonable inference from this Planning Statement is that the Applicant and by extension HRA Planning had to have been "in the picture" as regards these lands, for some considerable period of time preceding the 21st June 2018 and having regard to the aggressive land acquisition and development programme undertaken by the Investment Fund ICAV ever since its inception.

I honestly believe they were.

At section 3.1 of the said Planning Statement of HRA Planning of the 22nd May 2019 it is stated as follows
"It has been confirmed through a review of pertinent planning documents, that the site was filled with material imported as part of a Certified Drainage Scheme between 2013 and 2015....."

Of course "these pertinent planning documents" as referenced are not identified at all.

I am at a loss to understand what they could possibly be, because the Order of An Bord Pleanála RL03.307625 subsequently confirmed the non-existence of any such planning documents.

I fail to understand how such a representation could have been made to a planning authority by a Chartered Town Planning Consultant in the context of a planning application on behalf of the Applicant in respect of these lands, especially in the light of

- (i) the content of the publicly available plans, specifications, drawings and EIS submitted by the OPW for the River Fergus Lower (Ennis) Certified Drainage Scheme (Phase 2) as approved, which clearly showed that the infilling of the lands the subject matter of this application, could not have formed any part whatsoever of such development project and would therefore not have been subject to EIA and appropriate assessment as part of that project at the time.
- (ii) the information on the An Bord Pleanála file 03.RL.3611 as supplied to it by CCC in the context of its s.5 referral of the 4th September 2017, to the effect that the infilling of these lands was outside the works area for the aforesaid Scheme and which was expressly recorded by the An Bord Pleanála Inspector in his report on the issue.
- (iii) the evidence provided by me to An Bord Pleanála on the 24th January 2019 illustrating the true sequence of events with regard to the infilling of the lands.
- (iv) the fact and content of proceedings entitled "The High Court Record Number 2019 JR 144", which action had been commenced on the 11th March 2019.

HRA Planning are also the Applicant's representative for the purposes of its application for substitute consent.

In the light of what appears to me to be the manifest inaccuracy of the statement made by HRA Planning in its Planning Statement of the 22nd May 2019 as submitted to CCC as an accompaniment to a planning application in respect of these lands, I believe that I have very good reason to suggest to An Bord Pleanála, that the veracity of the factual content of the present application for substitute consent, now requires to be treated with some considerable circumspection and calls for a heightened scrutiny and robust interrogation on the part of the Board and also because,

(i)

Back in September 2014 as the situation was evolving on "the subject site" in a manner which greatly concerned me, (ie this being at a time ever before Valley Healthcare Fund -Infrastructure Investment Fund ICAV was even in existence), I contacted a planning consultant for advice on the matter.

That planning consultant was Mr. Gary Rowan, Director of HRA Planning, whom I initially had a telephone conversation with on the 2nd September 2014 about the subject site.

Mr. Rowan kindly attended at my residence to "review the site" on Monday 8th September 2014 at 10am. Having listened to my story and reviewed the site, it was with the benefit of Mr. Rowan's expert advices that I composed and commenced my email correspondence with Mr. Richard Long of JB Barry & Partners Ltd on the 8th September 2014.

At the time, I furnished Mr. Rowan/HRA with a copy of my email to Richard Long and on that date, Mr Rowan/HRA acknowledged receipt of it with a request to let him know how I got on with this in due course.

(ii)

On the 19th September 2014, I emailed Mr. Rowan/HRA with a copy of the subsequent correspondence as between myself and Richard Long, (ie Richard Long's email to me of the 19th September 2014), updated Mr. Rowan of the position and advised that as soon as I was in receipt of documentation from Richard Long, that I would transmit same to him. [EXHIBIT 11]

Mr. Rowan/HRA's response to me via email at 15.02 on that date was to advise me as follows;
"Patrick thanks for the update,

The issue is clearly starting to register with them. They know what you are looking for. You could revert – thanking Richard for the response noting his opinion the construction drawing is unlikely to reference the works " carried out on Mr Glynn's property adjacent to your property as the leveling out of the site came about after the works were underway as accommodation works for Mr Glynn". You could advise Richard that your interest in this is based on the potential effects that the filling of land has had / is having on your property vis a vis potential effects to the integrity of boundary walls and amenity issues due to new ground levels (beyond the construction programme and beyond that for which the necessary planning consent was likely to have been secured by or on behalf of the contractor). You are now in a position where you need to review the extent of effects on your property as a consequence of development works in order to see if remedial works are required. You will await further feedback before seeking clarification with the planning authority on this point.

The above is only a suggestion with the intention that they may wish to sit down and discuss your/their options to right this. I will leave the next step to your discretion and shall await further instruction."

(iii)

I contacted Mr. Rowan/HRA again on the 1st October 2014 updating him of the situation, voicing my concern that what appeared to be happening on the subject site was a change of use by a degree of stealth, in somewhat similar fashion by which the site had come to be filled in the first place.

Mr. Rowan/HRA's response to me via email at 12.14 on that date was to advise me as follows;

"Hi Patrick,

Thanks for the update. I would agree with your conclusions - a stealth use of the site. A letter would at this stage certainly focus the mind. I suspect though that a letter from me to the site owner/operator would have little further effect. A carefully subtly worded letter drafted to the Planning Authority (Enforcement Section) would certainly bring the matter to a head

will be obliged to act). Though I would suspect this will almost certainly rule out any remedial proposal/works to your property by the developer/operator if that is still the intended and preferred objective. I can proceed and draft the letter for the planning authority at your instruction"

I contacted Mr. Rowan/HRA again via email on the 1st October 2014 at 12.40 enquiring as to whether he might write to Richard Long on my behalf, [explaining that not having heard from him (ie Mr Long) within a reasonable timeframe I had engaged yourself (ie Mr. Rowan) in the matter] requesting to be provided with the documentation sought, specifying a timeframe for receipt and also enclosing a copy of a draft letter which you are considering sending on my behalf to the Enforcement Section of the planning authority about the matter.

Mr. Rowan/HRA's response to me via email on the 15th October 2014 at 13.12 was "Patrick

Apologies, I have been away from the office the past few days.

Just getting back to your email. I completely understand your suggested approach but you will appreciate that the suggested letter to Richard will require a certain tone which would be best coming from your self or other legal professional perhaps. I think my input would be most effective in relaying your communication/concerns with the local authority on the technical planning matters and have no problem representing you in that capacity if/when the needs arise.

*I shall await further.
Best regards"*

I contacted Mr. Rowan/HRA again via email that afternoon at 16.22 with a request of him to draft a letter for me to send to Richard Long.

(iv)

In the interim Richard Long reverted to me via email on the 17th October 2014 at 17.45, with the information which I had sought from him, enclosing a number of attachments, (ie Sketch No.1- Area of Noel Glynn's land stoned, Sketch No.2 -Level Information for Noel Glynn's site, Photos as Access Track is being placed, Photos prior to works getting underway).

As set out above, this email from Richard Long (together with his earlier email of the 19th September 2014) clearly illustrated that what had evolved on "the subject site" (whereby a temporary access track metamorphosed incrementally into a completely infilled site in breach of representations made to me by Wills Bros.) had nothing whatsoever to do with the Certified Drainage Scheme works, but arose purely a result of a private arrangement between the contractor and Mr. Glynn and subsequent private arrangements of Mr. Glynn.

On Monday the 20th October 2014, via email at 08.23, I circulated Mr. Rowan/HRA with the said email (and attachments) of the 17th October 2014 received from Richard Long. [EXHIBIT 12]

This conclusively shows that ever since 20th October 2014, the Applicant's planning consultants HRA, have been aware of the true factual position as regarding the infilling and raising of ground levels of the "subject site".

In such circumstances, I fail to see how the Applicant could remotely approximate to fulfilling the "exceptionality" requirement of s.177(D)(2) of the PDA 2000

10. The Role Of An Bord Pleanála In Assessing This Application

As owner and occupier of the adjacent lands at 5, Knockanoura, Tulla Road, Ennis, I enjoy constitutionally protected property rights pursuant to Article 40 of Bunreacht na hÉireann.

Article 40.5 of Bunreacht na hÉireann “presupposes that in a free society the dwelling is set apart as a place of repose from the cares of the world” [per Hogan J. in *Clare County Council -v- McDonagh & IHR&EC*, Supreme Court, 31st January 2022 at para. 47]

Unlike the lands of the Investment Fund ICAV, my lands encompass a private domestic residence and constitute a “home” within the meaning of Article 8 European Convention Human Rights (hereinafter “ECHR”) as to attract the protection thereof regarding respect for it and for my private and family life.

The Charter of Fundamental Rights of The European Union, which has direct effect in Irish Law provides at Chapter II Article 7 thereof, for my right to respect for my private and family life and home.

In interpreting and applying s.177D(1)(a) PDA 2000, An Bord Pleanála is obliged to perform its functions in a manner compatible with the State’s obligations under the ECHR provisions and to give direct effect to my Article 7 rights as afforded to me by The Charter of Fundamental Rights of The European Union.

Furthermore, by my Submission on this application, An Bord Pleanála owes a public sector duty to me under s.42 of the Irish Human Rights and Equality Commission Act 2014 to protect my human rights as a person to whom it is providing a service.

The consequence of that duty, coupled with the provisions of the ECHR Act 2003, Article 8 of the ECHR and Articles 7, 51 and 52 of the Charter Of Fundamental Rights Of The European Union, is that An Bord Pleanála is under an obligation to carry out a proportionality assessment of the Investment Fund ICAV’s application prior to arriving at its determination thereof.

The Investment Fund ICAV’s application seeks to validate the illegal limitations on the exercise of my Article 7 rights and freedoms as recognised by the said Charter and which I have had to endure for the past 8 years. However the application, because it neither respects the essence of my Article 7 rights and freedoms, nor necessarily and genuinely meets objectives of general interest recognised by the European Union, ought for those reasons alone ought be refused.

Equally, the application is not necessary to protect the rights and freedoms of the Infrastructure Investment Fund ICAV either. The fact of whether or not an Investment Fund ICAV may have “been sold a pup” by Crossfield Property Company Ltd is immaterial to a consideration of the “exceptionality requirement” and wholly a matter for it to pursue in the context of a private commercial dispute with another commercial entity, Crossfield Property Company Ltd, either if it so wishes, or has any grounds to do so.

It is worth echoing the *dicta* of the Supreme Court in *An Taisce (McQuaid Quarries)* case [2020] IESC 39 at paras. 89-91 regarding “exceptional circumstances” emphasising that

“The word or phrase could have a number of different meanings: it could connote something remarkable, extraordinary or special, or that the underlying events must be rare or unusual. However, context is important. When the Court of Justice refers to retrospective regularisation as having to remain the exception, its justification is that otherwise developers may be incentivised to ignore or disregard the requirements of a prior consent EIA:Therefore, such regularisation must remain the exception, rather than the rule. Consequently, the relevant provisions of domestic law cannot permit, allow or facilitate a situation whereby the obtaining of, as in this jurisdiction, a retention permission becomes in any way standard, typical or routine.”

By this application, HRA assert that “the quashing of the An Bord Pleanála decision by the High Court has contributed to the exceptional circumstances that the Applicant now finds himself in”.

In the first instance, there is nothing remarkable, extraordinary, or special about a decision of the High Court quashing a determination of An Bord Pleanála.

In the second instance, the situation in which the Applicant finds itself is purely of its own making, either through carelessness, incompetence, or alternatively by conscious design of its choosing.

On any assessment of the matter, there is nothing remarkable, extraordinary, or special about the Applicant's position, as to make an exception for the *subject site*, in circumstances where the Supreme Court in *An Taisce (McQuaid Quarries)* clearly recognised and acknowledged that "at the level of principle, the entire tenor of the court's jurisprudence is that foremost must be the requirement to obtain pre development consent, and that retrospective regularisation must very much remain a significant understudy to that obligation."

It is also worthy of recitation that in the *An Taisce (McQuaid Quarries)* case, the Supreme Court pertinently observed at paragraphs 128 and 130;

"It must be remembered that the underlying purpose of public participation in environmental matters is to facilitate good, fully informed decision making, it being acknowledged that the public as a whole is one of the greatest repositories of environmental information. Good decision making can take place where the decision maker has the relevant information before it..... the matters which fall to be considered at the leave stage are matters in respect of which the public may have highly relevant information.

*.....
Unquestionably the impact of the development on the environment is, understandably, significant at both the leave and substantive stages. However, it is at the screening point that the Board is expressly asked to have regard to matters such as the applicant's relationship with the planning code, both in terms of the subject development and historically. These, and the other factors referred to in section 177D(2), are matters in respect of which the public may have highly relevant information"*

With regard to the *bona fides* of the infilling developer, it has to be remembered that I was never afforded the opportunity of public participation in the An Bord Pleanála RL 03RL.3611 process, which culminated in the decision of the 19th January 2019.

Once I became aware of it, I immediately provided An Bord Pleanála with relevant information in such respects as of the 25th January 2019, which established that the information that had been provided to it on that referral was inaccurate, incomplete and misleading, as was borne out by the subsequent decision of An Bord Pleanála RL03.307625 on the issue, at the culmination of a process initiated by me, which provided for public participation on the issue. In such circumstances, it could not be seriously contended that the 03RL.3611 process was anything but most unsatisfactory from a public participation perspective, as I believe was confirmed by Order of the High Court of the 11th February 2020.

By this Submission, I continue to supply An Bord Pleanála with all of the information relevant to the matter, which is in my possession. On the basis of what I have set out above, I venture that the same clearly cannot be said for the Applicant.

Having regard to all of the foregoing, the Investment Fund ICAV has not established exceptional reasons specific to the particular unauthorised development at issue, as to why a retrospective validation thereof would be justified. This is because [as emphasised by the Supreme Court in *Meath County Council v Murray [2018] 1 IR 186 @ 236-239*] "the public interest imperative is in upholding and maintaining planning control, planning regulation, orderly and sustainable development and the rule of law" and the focus of the An Bord Pleanála inquiry requires to be on what basis and why a refusal of the application should not follow, from the established evidence set out above.

Accordingly, in this instance, were An Bord Pleanála to properly take account of all the relevant factors, in carrying out the appropriate assessment as to whether the ongoing interference with my rights, that is sought to be retrospectively validated by the Investment Fund ICAV's application, is in accordance with Associates

is objectively necessary in a democratic society and a proportionate interference with my rights under Article 8 ECHR and Article 7 of the Charter, to respect for my home, private and family life, it could only conclude otherwise, in my respectful submission.

Dated 11th April 2022
Patrick Quinn

List of Exhibits

1. Notice of Motion (23)
2. Copy of Page 5 from Planning Application Form P19-409 Question No. 19 – Pre-Planning Meetings dated 21st. June, 2018 and 5th. December, 2018
3. Letter from Pat Quinn to Chairperson, ABP dated 24th. January, 2019.
4. Submission on Planning Application P19-409 by Department of Culture, Heritage and the Gealtacht dated 28th. June, 2019
5. *“Valley Healthcare acquires healthcare centres in Cork and Kerry”* (irishtimes.com) Tue, Jun 26, 2018
6. *“Fund buys its fourth primary care site”* - Independent.ie April 11th 2018
7. *“Irish Infrastructure Fund adds two Primary Care Centres to Valley Healthcare”* www.ampcapital.com April 24th, 2018
8. The email from Malcolm Duncan – Project Manager on behalf of Wills Bros to Patrick Quinn of the 6th November 2013 at 13.30.
9. Correspondence with JB Barry and with Wills Bros. Emails from Richard Long to Pat Quinn of the 19th September 2014 and the 17th October 2014. The attachments to the emails are what Richard Long furnished Pat Quinn with, as attachments to his email on the 17th October 2014 (with Pat Quinn boundary delineated in purple on Sketch No.1).
10. Screen shot of subject site from Zoning Map of Ennis & Environs Development Plan 2008-2014
11. Email from Pat Quinn dated 19th September 2014, to Mr. Rowan/HRA with a copy of the subsequent correspondence between Pat Quinn and Richard Long, (ie Richard Long’s email to Pat Quinn of the 19th September 2014) and Emails from Mr. Rowan/HRA to Pat Quinn, 19th September 2014 at 15.02pm, 1st October 2014 at 12.14pm and 15th October 2014 at 13.12pm.
12. Email from Pat Quinn dated 20th October 2014, to Mr. Rowan/HRA with copy of email (and attachments) of the 17th October 2014 received from Richard Long.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

9th June, 2017

Notice of Motion No. 23. Submitted by Cllr. Norton:-

"I am calling on Clare County Council to provide a written report on all the unauthorised infilling of land in the county, which have been the subject of complaints and or representations/correspondence from residents or residents' groups in the last 18 months.

I request a copy of the council's enforcement policy which outlines the steps the authority takes in relation to complaints about unauthorised infilling of land.

I request a report outlining cases over the last 18 months where the council has requested land owners to restore a site, which has been illegally landfilled, to its original condition."

I wish to reply as follows:

In relation to the query regarding a report on infilling of lands which comes within the remit of the Planning Acts and which are the subject of complaints and or representations or correspondence from residents or residents' groups in the last 18 months, the following is a list of complaints of alleged unauthorised infilling of land in the last 18 months:

UD16-028 - Liscannor Park & Ride Facility - Remove the fill and reduce the levels of the lands from the North West area of the site. Enforcement Notice issued 18/5/16.

UD16-057 - Lands at Knockanean, Ennis, Co. Clare - Raising levels of rear garden and treatment plant area with fill. Warning Letter issued 10/5/16.

UD16-072 - Lands at Cullnang, Quin, Co. Clare - Filling of lands with builders waste. Warning Letter issued 14/6/16.

UD16-091 - Re-leveling of car park at Abattoir, Tulla Road, Ennis, Co. Clare -

Comhshaoil | Environment
Áras Contae an Chláir, Bohar Naas, Inis, Co. an Chláir | Áras Contae an Chláir, Now Road, Ennis, Co. Clare

☎: 065 6846331 F: 065 6846444 ✉: info@clarecoco.ie 🌐: www.clarecoco.ie

Festíocht comhcheleabrúcháin 2017
Comhcheleabrúcháin Contae an Chláir
a chur ar fáil i dtír agus
i nGaeil agus i nGaeil agus i nGaeil



Clare County Council is an
equal opportunities employer
and welcomes applications from all
sections of the Community



P. Coleman & Associates

Carrying out ground works to rear of petrol station. Placing excavated material onto lands within lower River Shannon. Warning letter issued 31/8/16.

UD16-140 – Lands at Burlington Site, Gillogue, Clonlara, Co. Clare – The filling and raising of lands with imported waste material. Warning Letter issued on 15/12/16.

UD17-025 – Development at Tulla Road, Ennis, Co. Clare – Infilling of site – under investigation

UD17-036 – Development at Clonohan, Newmarket-on-Fergus, Co. Clare – Filling in a around a lake – under investigation

Please note in relation to the above, all are - as requested - the subject to complaints of alleged unauthorised development. It should be noted that all of the above are at various stages of the planning enforcement process. Some of these may be at investigation stage, others may be resolved, or may be deemed exempted development whilst others may proceed to legal action. In the interests of fairness and due process including potential legal action, it would not be appropriate to comment in more detail on specific cases.

In terms of enforcement policy under the Planning Acts, please note the following applies to all alleged unauthorised developments regardless of the nature: the Warning Letter, which must be served within six weeks of receiving the complaint, allows a developer up to four weeks to rectify the offence or to make a submission. Regard must be had to any submission received when deciding whether or not to serve an Enforcement Notice. An Enforcement Notice sets out the requirements of the Council to rectify the offence and also contains a timeframe within which the work must be completed. Non compliance with an Enforcement Notice is an offence. Should any person served with an Enforcement Notice fail to comply with its requirements, the Council may institute legal proceedings in the District Court. In urgent cases, the Council may alternatively apply to the Circuit or High Court for an Order directing that particular actions take place or cease, as the case may be. The making of a planning application for retention of an unauthorised development is no longer a reason to delay/suspend the taking of enforcement action by the council

From an Environment Section perspective, correspondence under European Communities Access to Information on the Environment Regulations was received from a residents association in December 2016, in relation to a site on the Tulla Road in Ennis. This site is under investigation by Planning Section as referenced above.

Clare County Council is responsible under the Waste Management Act 1996 and the Waste Management (Facility Permit & Registration) Regulations 2007, as amended for assessing, granting and monitoring legal authorisations for Certificates of Registration and Waste Facility Permits. Certificates of Registration relate to sites with inert (soil and stone) materials up to a maximum quantity of 25,000 tonnes; Waste Facility Permits relate to sites with inert (soil and stone) materials of a quantity from 25,000 to 100,000 tonnes. A copy of the relevant waste management Enforcement Policy is being provided.

The following complaints have been received by the Waste Regulation Enforcement Team since January 2016 regarding unauthorised infill sites in Co. Clare

Feb 2016 - Unauthorised recovery/disposal of inert soil/stone & C&D (concrete) waste on farmland at Kilmihil. Notice pursuant to Section 55 of the Waste Management Act 1996, as amended, served on landowner, instructing immediate cessation of activity and removal of offending waste. Outcome: Landowner complied with Notice, removed offending waste and removed off site to authorised facility. Receipts provided to CCC as proof of correct disposal.

April 2016 - Unauthorised recovery/disposal of inert soil/stone & C&D (concrete) waste on land at Quin. Notice pursuant to Section 55 of the Waste Management Act 1996, as amended, served on landowner, instructing immediate cessation of activity and removal of offending waste. Outcome: Landowner complied with Notice, removed offending waste and removed off site to authorised facility. Receipts provided to CCC as proof of correct disposal.

Environment Section's policy in relation to complaints received is outlined below. A complaints database (the CRM) is maintained for complaints in all sectors. The complaint is typically received by the administration staff and referred to the



relevant staff member in waste, litter control, air pollution, oil pollution or water pollution control.

Complaints are received in numerous formats, mainly:

- Telephone
- Email
- Written correspondence
- Public representative making representations or raising matter at Council meeting
- General public in person
- EPA Referral
- Local Authority personnel who observe incidents and illegal or polluting activities

The complaints are investigated by an appropriate enforcement person who may be diverted from his/her planned duties, inspect the location of the complaint, and make a full enquiry into the nature of the incident including photographing and evidence collection. Resolution of complaints may require remediation work by a premises occupier, owner or land user. The extent of works required determines the resolution process for the complaint. If illegal dumping is identified or if environmental pollution is occurring the inspector will contact the Senior Executive Engineer or Senior Engineer (as appropriate) and advise them of the situation.

Where significant remediation works are involved, the investigating officer will seek support from other (usually senior) staff members, and the direction to be taken will involve a risk assessment. Remedial works will be required to reduce/remove the impact associated with the emission/deposition/discharge. Where works are required to be completed by a person who is deemed to be at risk of causing pollution to any environmental medium, a schedule of works required is provided to the person, with appropriate completion dates (normally agreed with the person taking account of the severity of the pollution risk and a reasonable time frame for undertaking the works). Return visits are required to ensure works are completed in accordance with the works schedule. In the event that the schedule of works is

not progressed, or the risk of pollution is not abated, the matter is normally referred to the Local Authority solicitor. Serious complaints and incidents may require such a major concentration of resources that scheduled inspections may be delayed or their number reduced. In the event that legal proceedings are instigated the investigating Authorised Officer prepares the necessary photographs, documentation, reports, notices, Land Registry searches etc. and forwards them to the Local Authority solicitor. On successful completion of the case the file is closed out

When an assessment indicates the incident is deemed to be minor, it is usually appropriate to issue a warning letter directly to the offending party. The processing and referral of the complaint is addressed by the investigating officer, with reports and written follow up being dealt with by the administration staff.

Signed:



Anne Haugh,
Director of Physical Development,
Transportation, Environment, Water &
Emergency Services Directorate



Gerard Dollard,
Deputy Chief Executive &
Director of Economic
Development

3.2 Planning History

Planning permission was sought by Noel Glynn for the retention and completion of landfill in 2001, under planning reference 01/21152. Further information was sought by Clare County Council but the applicant did not respond.

Planning permission was sought by Noel Glynn and Tom O'Keefe for the construction of a 5 storey mixed use building along with the demolition of existing retail and commercial buildings in 2005, under planning reference 05/21142. Planning permission was refused by Clare County Council for five reasons.

A Section 5 Referral was made to An Bord Pleanála in respect of the subject land, reference RL03.RL3611 by Clare County Council. The question asked was *'whether ground works including importation and deposition of fill material, creation of hard standing area and raising of land area is or is not development and is or is not exempted development'*. The Board determined that the subject fill was development but was exempted development. This decision is significant in that it has influenced the overall planning strategy for the site, by determining that planning permission was not required for the infill works undertaken on the site to date.

4.0 PRE-PLANNING CONSULTATION

A pre-planning meeting was held with the planning authority on December 5th 2018 to discuss the development proposal. In attendance were Garreth Ruane Acting Senior Executive Planner and members of the Design Team.

The planning authority acknowledged that the principle of a primary care centre was acceptable on the site having regard to its commercial use zoning. A high-quality design with good quality finishes was requested. The position of the building on site was discussed having regard to its scale and in particular its height, relative to neighbouring residential properties. It was agreed to further relocate the building to the south west of the site thereby facilitating a greater buffer between the houses in Castle Rock and the proposed primary care unit.

In terms of traffic and transport issues, the planning authority required formalisation of entry points into the site with the provision of low boundary treatment to the front of the site. It was confirmed that a Traffic & Transport Assessment (TTA) was required for the site. There was discussion regarding the provision of additional parking off site on land adjoining. However, it was noted that the planning authority were not supportive of this proposal.

All issues raised by the planning authority have been addressed by the design team and the additional reports required in support of the proposed development accompany this planning application. A holistic approach has been taken to development on the wider site providing for future traffic and pedestrian connectivity. The proposed four storey building seeks to maximise the potential of the land whilst providing a contemporary building on an otherwise infill and brownfield site.

18. SITE HISTORY:

Has the site in question ever, to your knowledge, been flooded? Yes No

Are you aware of previous uses of the site e.g. dumping or quarrying (please tick appropriate box)? Yes No

If "Yes", please give details:

Note - The site was filled and has been determined by An Bord Pleanála to be exempted development (see Planning Statement)

Are you aware of any valid planning applications previously made in respect of this land/structure (please tick appropriate box)? Yes No

If yes, please state planning reference number(s) and the date(s) of receipt of the planning application(s) by the planning authority if known:

Reference No.	01/21152	Date (DD/MM/YY)	2001
Reference No.	05/21142	Date (DD/MM/YY)	2005
Reference No.	RL03 RL3611	Date (DD/MM/YY)	2017
Reference No.		Date (DD/MM/YY)	

If a valid planning application has been made in respect of this land or structure in the 6 months prior to the submission of this application, then the site notice must be on a yellow background in accordance with Article 19(4) of the Planning and Development Regulations 2001 as amended

Is the site of the proposal subject to a current appeal to An Bord Pleanála in respect of a similar development¹³ (please tick appropriate box)? Yes No

An Bord Pleanála Reference No.:

19. PRE-APPLICATION CONSULTATION:

Has a pre-application consultation taken place in relation to the proposed development¹⁴ (please tick appropriate box)? Yes No

If yes, please give details:

Reference No. (if any):	N/A
Date(s) of Consultation (DD/MM/YY)	21st June 2018 5th December 2018
Persons involved:	Garreth Ruane - Clare County Council John O'Sullivan - Clare County Council (present 21st June only) Mary Hughes - HRA Planning Martin O'Halloran - Primary Project Management Paul O'Brien - Reddy A+U

Exhibit No. 3

**5 Knockanoura,
Tulla Road,
Ennis,
Co. Clare**

**Tel: (086) 8200041
Email: pquinnbl@eircom.net**

Date: January 24th, 2019

**Mr. Dave Walsh,
Chairperson,
An Bord Pleanala,
64 Marlborough Street,
Dublin 1
D01 V902**

Re: Order 03.RL.3611

Dear Mr. Walsh,

I am writing to you in relation to the above mentioned Order of An Bord Pleanala determining a question apparently referred by Clare County Council on the 4th September 2017.

I reside at 5, Knockanoura, Tulla Road, Ennis, County Clare.

My residence immediately adjoins the infilled site on the Tulla Road and I consider myself the person most directly affected to date by the activity which has taken place on these lands since 2014.

I was not aware of Clare County Council ever having referred a question to you, nor was I ever requested to make a submission or observation to you with respect to the issue and I am greatly disturbed by that as I have previously made submissions/observations to Clare County Council with respect to the zoning/designation of these lands by the Clare County Development plan and the unauthorized development thereon which found favour with and had been acknowledged by the Chief Executive of Clare County Council.

Having been astounded and dismayed by your Order, I proceeded to obtain the complete file from An Bord Pleanala *via* public access which I received today and the contents of same merely served to confirm for me what I suspected, which is that the information as supplied to you on the referral was inaccurate, incomplete, untrue and misleading.

Contrary to your Order, the portion of the site fronting the Tulla Road (ie "*Area A*" as described by Inspector Caprani in his report) and immediately adjoining my residence never formed any part of the River Fergus Lower (Ennis) Certified Drainage Scheme pursuant to the Arterial Drainage Act of 1945 and to suggest otherwise is, to use the most benign term, a complete mischaracterization of the true situation.

I am satisfied that the plans, specified and drawings as submitted for the Scheme and as confirmed clearly bear out this important distinction and it is deeply regrettable that neither the Board, nor your Inspector appear to have had adequate regard to them whatsoever.

What developed on the portion of the lands adjacent to my property, whereby they came to be filled and the levels thereof raised to a wholly unauthorised level, grossly interfering with my residential amenity, was as a result of a private arrangement between the owner of the lands and the contractor engaged on the aforesaid Drainage Scheme at the time and wholly extraneous to it and in that regard, I note from Mr. Ciprani's report that "*the Planning Authority submissions states that Area A is located outside the flood relief works area*".

Thereafter, further infilling continued at the behest of the owner of the lands and to suggest that it was *de minimis* is a misapplication of that concept.

In other words, there was no legislative authority whatsoever for those works, contrary to what may have been represented to and purportedly found by you.

My reason for saying this is because I am in possession of significant documentation from JB Barry, the employer's site representative and from the scheme contractor, which confirms and verifies this and which I am now attaching for your consideration as **Appendix A** hereto.

In such circumstances, it is obvious that the Order of An Bord Pleanala is manifestly in error to some degree and requires to be revisited at a minimum, with respect to that portion of the infilled lands fronting the Tulla Road and which immediately adjoins my residence. (ie "*Area A*")

To date, my private property rights have been entirely abrogated by the owner of these lands and the Order of An Bord Pleanala only serves to compound this injustice for me.

I am requesting An Bord Pleanala to revisit the issue as a matter of urgency in the light of this information which is now made available to you.

In my opinion, a question of law now arises in respect of a matter with which you clearly ought to be concerned, if An Bord Pleanala is to retain any semblance of credibility in the exercise of its statutory functions and having regard to your statutory obligations pursuant to Chapter III of Part VI of the Planning And Development Act 2000.

I am respectfully inviting An Bord Pleanala to refer the matter to the High Court for decision, or alternatively consent to an Order of the High Court quashing/qualifying O3.RL.3611, insofar as it purports to pertain to that portion of the infilled lands fronting the Tulla Road and adjacent to my residence, in the light of the material which you are now in possession of.

Another option might be for An Bord Pleanala pursuant to s.146A(1)(b) of the Planning And Development Act 2000 to amend Order O3.RL.3611 for the purposes of s.146(A)(ii) and/or (iii), so that it excludes that portion of the infilled lands fronting the Tulla Road and adjacent to my residence, in the light of the material which you are now in possession of.

=====
=====

I am also attaching for your attention weblinks to some photographic evidence of the lands, with my residence adjoining, as pertained at all material times up to Summer 2014 and as they now pertain.

These photographs are from Google Maps Street View

- As at **June 2009** - <https://www.google.ie/maps/@52.8548626,-8.9688281,3a,75y,180h,90t/data=!3m6!1e1!3m4!1s6c4dPzFh8UxFqT446muFAw!2e0!7i13312!8i6656>



- As at **January 2010** - <https://www.google.ie/maps/@52.8548189,-8.9689742,3a,75y,180h,90t/data=!3m6!1e1!3m4!1sf-d7wGdPpcX-ett0IVBQYA!2e0!7i13312!8i6656>
- As at **March 2011** - <https://www.google.ie/maps/@52.854835,-8.9688251,3a,75y,180h,90t/data=!3m6!1e1!3m4!1sfGmAPWRWYgc8XvV-qc8VDw!2e0!7i13312!8i6656>

The following is a link to an aerial photograph

- As at **May 2016** - <https://www.google.ie/maps/@52.854231,-8.9705939,3a,75y,90t/data=!3m8!1e2!3m6!1s-r8re6atCg5U%2FV4x86zXNull!%2FAAAAAAAAAOBE%2FJk0-AvaepuwQilZfWXghsghtWUJcuuAAACLIB!2e4!3e12!6s%2F%2Fih5.googleusercontent.com%2F-r8re6atCg5U%2FV4x86zXNull!%2FAAAAAAAAAOBE%2FJk0-AvaepuwQilZfWXghsghtWUJcuuAAACLIB%2Fs203-k-no%2F!7i4000!8i3000>

In particular, I would ask you to note particularly

- the boundary wall of my residence which was constructed in accordance with the grant of planning permission for my residence.
- the manner by which the boundary wall afforded privacy to the rear of my dwellinghouse and protection of my residential amenity.
- the ground levels of the adjoining lands *vis a vis* the boundary wall of my dwellinghouse.

Commencing in 2013 entry was made through these “*adjoining lands*”, ostensibly for the sole purposes of creating a vehicular track, to facilitate construction works along the boundary with the Fergus Minor River, which were provided for as part of the Ennis Flood Relief Scheme. At all times such entry was to be temporary in nature and ostensibly with statutory authority.

I also attach to this submission two further appendices of three and eight photographs respectively,

- **Appendix B** depicts the situation prior to any works being undertaken on the lands.
- **Appendix C** depicts the situation pertaining to the temporary provision of the vehicular access track which is what the front portion of the lands were ostensibly to be used for throughout the currency of the Ennis Flood Relief Scheme and thereafter restored to their original condition, as was originally represented to me by the Contractor and what has subsequently evolved for me as I stand in my back garden.

What has followed thereafter to date, seems to me to have entailed a gross subversion of the planning code by stealth, which I hope is not compounded further by inactivity on the part of An Bord Pleanála, having been appraised of the true position by me.

The True Factual Background

Contrary to the submission of the Owner/Occupier of the lands, “*Area A*” was never part of the River Fergus (Lower Ennis) Certified Drainage Scheme.

The N(atura)I(m pact)S(tatement) states “*details of the works to be undertaken along the River Fergus Channel are as described in the contract specification and drawings and area summarised below*”

As the contract specification and drawings confirmed by the Minister made no reference whatsoever to, or provision for, what has subsequently transpired with respect to "Area A", such could not have formed part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945 and thus constitute an exemption under Article 8 of the Planning And Development Regulations 2001 as amended.

The Scheme as approved provided for access to the works to be achieved at an entry point proximate to Fitzpatrick's (as it then was) Service Station premises.

Subsequently, when Mr. Fitzpatrick became aware of this, he made objection, because of apprehended commercial ramifications for his business, which would be occasioned by the vehicular movements accessing and egressing the site works.

Mr. Glynn, the owner of Crossfield Property Company Limited, then offered to afford the Contractor a site access for their vehicles at a point beside my dwellinghouse. In the Summer of 2013, employees of Wills Bros. attended at my house advised me of the foregoing and sought to ascertain my views on same. [c/f Appendix A - The email from Malcolm Duncan – Project Manager on behalf of Wills Bros to me of the 6th November 2013 at 13.30 corroborates this]

Because of the social utility of the nature of the works, in order to alleviate flooding in Ennis, I acquiesced in the proposal for an access track at this location, having secured verbal commitment from the Wills Bros. representatives, that the portion of the lands being availed of for the revised access track, would be restored to their original condition, once the works had concluded.


Because of the revised location of the site access, Wills Bros. were then instructed by JB Barry & Partners Ltd (being the Employer's Site Representative) to undertake a pre-works condition survey of my property which was undertaken on the 12th June 2013 by a Patrick Murphy.

In 2014, I had further correspondence with JB Barry and with Wills Bros. This is also contained at Appendix A hereto. The most important emails are those from Richard Long to myself of the 19th September 2014 and the 17th October 2014. The attachments to the emails which I am also forwarding to you at Appendix A hereto are what Richard Long furnished me with, as attachments to his email on the 17th October 2014 (with my boundary delineated in purple on Sketch No.1 for ease of reference by you)

Whatever about the provision of a temporary track for site access, these emails clearly illustrate what subsequently evolved on "Area A" (whereby a temporary access track metamorphoses incrementally into a completely infilled site in breach of representations made to me by Wills Bros.) had nothing whatsoever to do with the Certified Drainage Scheme works, but arose purely a result of a private arrangement between the contractor and Mr. Glynn and subsequent private arrangements of Mr. Glynn. This was something that was never found by the OPW to be a necessary incidental of the works specified by the statutory scheme and is not exempted development pursuant to Article 8 of the Planning And Development Regulations and I find it peculiar that, as with myself, the OPW does not appear to have been invited to comment on the s.5 referral either.

Contrary to what has been stated by Inspector Caprani at paragraph 7.0 of his report, the permanent infilling of "Area A" was not carried out in accordance with requirements under the Arterial Drainage Act of 1945. The aforementioned e-mails of Richard Long, Senior Employer's Site Representative to me confirm that.

I also note the photographs on the public access file dated the 16th September 2013 and the 24th September 2013 which illustrate my house and the boundary wall adjoining the site. Even a most

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cursory examination of the present site level of *Area A* vis a vis my boundary wall, will reveal the extent to which further infilling has taken place on *Area A* since those photographs were taken in 2013.

The result is that under the "*guise*" of a statutory scheme, I am left in a situation whereby my residential amenity has been grossly interfered with. A 6ft wall enclosing my rear garden is now effectively a 3ft wall and a 3 ft wall at the front of my property is redundant, as a result of the infilling of *Area A*, thus depriving my family and I of the privacy we might reasonably expect as occupants of an adjacent private residential dwelling.

All of this is done without me being afforded any measure of public consultation whatsoever on the issue. An Bord Pleanála by its Order 03.RL.3611 purport to retrospectively approve this activity and the OPW compensate Mr. Glynn with public monies for doing it. All the while, my family and I are left to "*twist in the wind*" without any redress whatsoever. There is something seriously wrong here.

I shall look forward to hearing from you as a matter of urgency.

Thanking you in anticipation.

Yours sincerely,

Patrick Quinn

An Roinn Cultúir,
Oidhreacht agus Gaeltachta
Department of Culture,
Heritage and the Gaeltacht



Planning Ref: 19/409
(Please quote in all related correspondence)

28/06/2019

Director of Services – Planning
Clare county council
New Road
Ennis
Co Clare

Re: Notification to the Minister for Culture, Heritage and the Gaeltacht under Article 28 (Part 4) or Article 82 (Part 8) of the Planning and Development Regulations, 2001, as amended.

Proposed Development: for a four storey care health facility with photovoltaic arrays on the roof comprising a maximum gross floor area of 2623m²; (i) on site car and bicycle parking provision, (ii) associated building signage, (iii) landscaping and all ancillary signage; and (iv) all associated site development works at Tulla Road, Knockanoura, Ennis, Co. Clare

A chara

On behalf of the Department of Culture, Heritage and the Gaeltacht, I refer to correspondence received in relation to the above.

Outlined below are heritage-related observations/recommendations of the Department under the stated heading.

Nature Conservation

The following observations are made by the Department in its role as a prescribed body under planning legislation and as the authority with overarching responsibility for nature conservation and the nature directives (i.e. the Birds and Habitats Directives). The observations are not exhaustive and are intended to assist the Council in its review and evaluation of the current proposal in the context of, among other things, obligations and commitments in relation to European sites, biodiversity and environmental protection, proper planning and sustainable development, and the screening for appropriate assessment which has to be carried out.

The application area (0.32ha) is part of an area of infilled land (approximately 1.1ha) adjacent to the River Fergus Minor and to Lower River Shannon Special Area of conservation SAC (site code 002165). Available imagery shows that these lands supported

Aonad na nIarratas ar Fhorbairt, Bóthar an Bhaile Nua, Loch Garman, Y35 AP90
Development Applications Unit, Newtown Road, Wexford, Y35 AP90
manager.dau@chg.gov.ie
www.chg.gov.ie



natural or semi-natural habitats in March 2012. Reedbeds were lost as a result of infilling, meaning that wetlands were present on at least part of the site in the past.

It is understood that the lands were infilled and utilised in connection with the OPW's River Fergus (Ennis) Certified Drainage Scheme – Phase 2. Based on the information available, including scheme drawings and the EIS for that project, these lands did not form part of the confirmed scheme, and were not subject to EIA and appropriate assessment as part of the project at the time. This should be taken into account when considering the current proposed development. The Department of Public Expenditure and Reform will have details of the full extent of the scheme, as confirmed, and will have details of the EIA and appropriate assessment which were carried out at the time. Any changes or extensions to the project after the scheme was confirmed may not be covered by the consent and the assessments carried out.

You are requested to send further communications to this Department's Development Applications Unit (DAU) via eReferral, where used, or to the following address:

The Manager
Development Applications Unit (DAU)
Department of Culture, Heritage and the Gaeltacht
Newtown Road
Wexford
Y35 AP90

Is mise le meas,



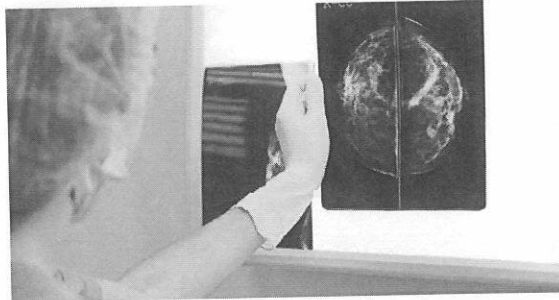
Margaret Cloney,
Development Applications Unit
Tel: (053) 911 7434

Valley Healthcare acquires healthcare centres in Cork and Kerry

Acquisitions bring Valley's portfolio to six

© Tue, Jun 25, 2018, 10:08 Updated: Tue, Jun 25, 2018, 10:35

Eoin Burke-Kennedy



The four other centres in the Valley Healthcare portfolio are located in counties Kerry, Cork, Wicklow and Mayo

Valley Healthcare, which is owned by the State-backed Irish Infrastructure Fund (IIF), has acquired two primary healthcare centre sites, in Cork and Kerry, for an undisclosed sum.

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The centres in Clonakilty and Listowel brings its portfolio of centres to six. The IIF, which is jointly managed by AMP Capital and Irish Life Investment Managers, established Valley Healthcare last year to invest in primary care centres across Ireland.

Clonakilty and Listowel are the first greenfield sites for the fund. Both sites have planning permission and are ready for construction to begin. The sites will be occupied by the Health Service Executive (HSE), GP practices and other health-related services, when operational.

'Exciting step'

"The acquisitions are an exciting step in the growth of Valley Healthcare and marks an evolution from our prior acquisitions of operational primary care centres and completed sites. By acquiring construction sites, we are creating new capacity for the HSE and delivering convenient, high-quality health services to new communities," Philip Doyle, IIF principal, said.

The four other centres in the Valley Healthcare portfolio are located in Counties Kerry, Cork, Wicklow and Mayo.

Glencar Healthcare manages the operation and development of Valley Healthcare's facilities. Bringing expertise in healthcare management, it will be responsible for the construction and ongoing management of the new centres.

Fund buys its fourth primary care site



Stock photo



John Mulligan

April 11 2018 02:30 AM



Valley Healthcare, a vehicle owned by the State-backed Irish Infrastructure Fund, has acquired a primary care centre in Mitchelstown, Co Cork.

It brings to four the number of primary care centres that Valley Healthcare now controls.

It bought a new primary care centre in Tralee, Co Kerry, in December, and also owns two other operational primary care centres, in Wicklow and Mayo.

Valley Healthcare is managed by Glencar Healthcare, a firm chaired by former HSE chief executive Brendan Drumm. Glencar's founder is surgeon John Drumm.

The Irish Infrastructure Fund (IIF) is co-managed by Irish Life Investment Managers and Australia's AMP Capital.

The IIF was established in 2012, with a €250m commitment from the sovereign Ireland Strategic Investment Fund.

The primary care centres owned by Valley Healthcare in Wicklow and Mayo are operating under 25-year leases from the Health Service Executive.

Last year, Philip Doyle, the principal of the IIF at AMP Capital, said that Valley Healthcare ultimately aims to own between 10 and 20 primary healthcare centres in Ireland by about 2020.

He said yesterday that the acquisition of the primary care centres in Cork and Kerry would "make high-quality healthcare available to the local communities of Tralee and Mitchelstown".

Mr Doyle also said the latest acquisition by Valley Healthcare reflects the "strong investment opportunity we see in the healthcare sector" and that stable returns for 25 investors would be secured.



Valley Healthcare has completed the acquisition of Mitchelstown Primary Care Centre (PCC), an operating PCC in County Cork. The agreement follows the acquisition of a new PCC in Tralee, County Kerry in December 2017.

Valley Healthcare is owned by the Irish Infrastructure Fund, co-managed by Irish Life Investment Managers and AMP Capital. It currently owns two operational PCCs in Wicklow and Mayo, which were acquired in February 2017. Primary care centres offer patients in local communities a full range of non-critical healthcare and social services, reducing pressure on full-service hospitals.

Valley Healthcare acquired Mitchelstown PCC in April 2018. The 20,000 square foot centre is occupied by the Health Service Executive (HSE), a GP practice and other health related service providers.

The other recently acquired PCC is CentrePoint, a 105,000 square foot facility in the heart of Tralee, County Kerry. To date the Centre has acted as a public service hub for the local community. A 42,000 square foot space has been designated for use by the HSE to provide a comprehensive array of primary care services. Fit-out works are underway to accommodate the HSE services and GP practice. Valley Healthcare plans to over time bring in additional health-related service providers.

Philip Doyle, Fund Manager of the Irish Infrastructure Fund, said: "The Irish Infrastructure Fund invests into assets and businesses which support the Irish economy and provide essential services to the community. We develop and invest in infrastructure across Ireland, including rural areas and regions where the availability and quality of infrastructure and services require improvement.

"The acquisition and development of these sites will make high quality healthcare available to the local communities of Tralee and Mitchelstown."

Glencar Healthcare manages Valley Healthcare. Bringing expertise in healthcare management, it is responsible for developing and managing the centres.

Professor Brendan Drumm, chairman of Glencar Healthcare, stated: "Glencar Healthcare is delighted to have the opportunity to work with Valley Healthcare and the Irish Infrastructure Fund in providing state-of-the-art healthcare facilities across Ireland. The centres in Mitchelstown and Tralee provide superb infrastructure to underpin the work of the highly skilled healthcare professionals working in these communities."

The services provided in the centres alongside the general practitioners will include mental health, occupational therapy, physiotherapy, dental, speech and language therapy and audiology.

Philip Doyle added: "The addition of these two PCCs to Valley Healthcare's business reflects the strong investment opportunity we see in the healthcare sector. Valley Healthcare is a platform through which we are delivering a regional healthcare offering in Ireland, utilising AMP Capital's infrastructure management expertise to deliver excellent services while generating stable returns for our twenty-five investors."

- INFRASTRUCTURE
- MEDIA RELEASES

Exhibit No. 8

From: Malcolm Duncan [<mailto:malcolmduncan@willsbros.com>]

Sent: 06 November 2013 13:30

To: 'Patrick Quinn'

Cc: 'Patrick Murray'; 'Jonathan Noonan'; 'Richard Long'; 'Tom McKeown'; michaelcarroll@willsbros.com; michaelgoherly@willsbros.com; eugenemulhall@willsbros.com

Subject: RE: Mr Pat Quinn Tulla rd Ennis SoC report

Dear Patrick,

Apology for the delay in returning to you as I've been off work since 25th October. I thought this matter was dealt with. I can confirm that both Tony Lowe and Patrick Murray brought this issue to my attention. We would like to acknowledge that Wills Bros Ltd were instructed by the Employer's Representative to carry out a survey on your property due to the revised location of the site access off Tulla Rd. Our contract with the OPW does not allow us to provide these reports to third parties unless an instruction or approval is provided by the ER. We have discussed the matter further with Mr Richard Long (Employer's Site Representative) today who has granted approval of the submitted attached document. Please confirm that you received this ok. The report was issued to the Client for comment and some minor amendments may follow in a final report, however the content will be much the same.

I hope this is satisfactory and should you have any further queries regarding the River Fergus project, please do not hesitate to contact me.

Regards,

Malcolm Duncan

Project Manager

For and behalf of Wills Bros Ltd

Mob 00353 87 9447063

Email: malcolmduncan@willsbros.com



P. Coleman & Associates

Exhibit No. 9

From: Richard Long <rlong@jbbarry.ie>
Sent: 17 October 2014 17:45
To: Patrick Quinn <pquinnbl@eircom.net>
Cc: Tom McKeown <tmckeown@jbbarry.ie>; Jonathan Noonan <jnoonan@jbbarry.ie>;
Fearghus Ryan <fearghus.ryan@jbbarry.ie>
Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick,

Please be advised that to date the ER has not received any 'Post Constriction' Condition Survey reports for the River Fergus Lower (Ennis) Certified Drainage Scheme from WBL or Thorntons Chartered Surveyors the independence surveying firm acquired by WBL to carry out the necessary condition surveys. As indicated to you previously once the various reports are issued to the ER for review, a copy of the report relating to your property will be made available to you.

For clarity, please note that I have requested that WBL give the ER a time line for when they expect the various reported to be issued, as a number of property owns (yourself included) have request copies. As of yet I have not received an update on this request.

On the issue of the Mr Glynn's site and the levelling out of the property, please find attached for your records a number of photos taken of the area prior to and during the works. As you are no doubt aware the landscape of the area has been changed from what was present when the works got underway in the area back in March 2013. As noted to you previously the top section of Mr Glynn site was not intended to be part of the River Fergus Lower (Ennis) Certified Drainage Scheme Contract and during our conversation on the 4th April '13 with regards to noting access to Mr Glynn's site there was no intentions of carrying out any works on this section of Mr Glynn's property. This issue changed however during the extent of the works following various discussions with Mr Glynn with regards to the interference on this property for the duration of the works and compensation. Mr Glynn requested that his site be levelled out with all scrub removed. Additionally that the top section of the site be stoned. Mr Glynn had look to the entire site to be stone out, however this was not carried out by WBL to date. Mr Glynn made carry this out on this own accord in the near future. Please note attached sketch that was previously drawn up by WBL which gives an approx. indication of the areas that was stoned and that not stoned just levelled out.

On the issue of site levels, the existing site had numerous mounds of material deposited throughout the site with the site over grown with scrub at the time the River Fergus Lower (Ennis) Certified Drainage Scheme works started. Following on from your meeting of the 2nd Sept'14 I have tried at acquire and collate all surveying information available for the area. Due to the over grown nature of the site and the fact that it was not intended to carry out any works on this section, the site had not been surveyed. All existing survey information that I have obtained for the area relates to the river embankment. Prior to entering the area WBL did however carried out a minor survey along the track path which I have acquired. This information has been inputted with the survey information that was taken of the site on the 3rd Sept'14. From looking at the level that have been acquired for the track and what is present on the site at the moment the levels in and around the entrance has remained somewhat the same, as you work your way along the track the area has been raised by approx. 300mm which increase to 700mm as you make your way towards the petrol station area and then back to 350mm at the back of the petrol station. Please note the attached level sketch for your records which indicates the level of the site as it stand in red against the levels taken for the access track in green.

I know that this is not much to go by for your property but I hope this provided you with some information. If I can be of any further assistance or you wish to discuss this matter further please do not hesitate to contact me.

Regards

Richard

Page 64

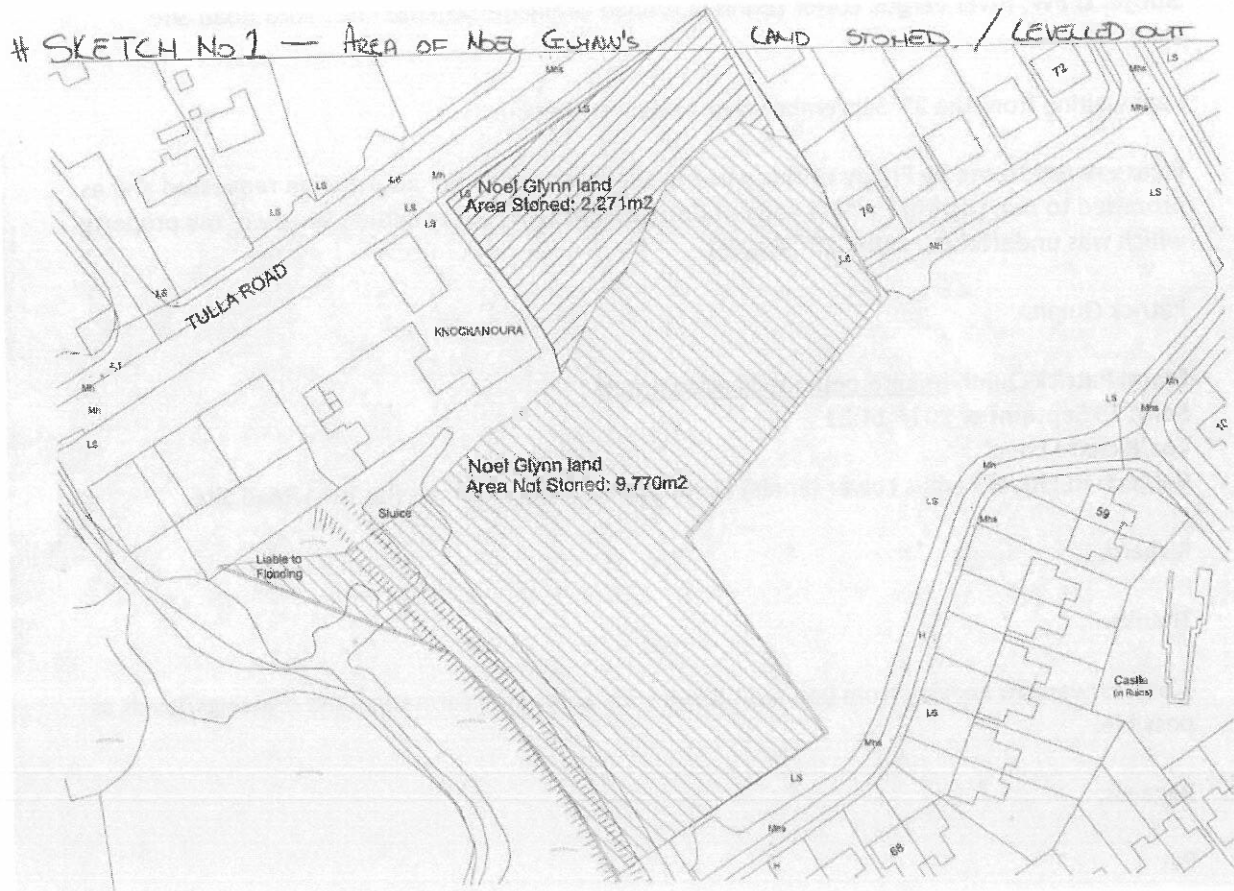
Richard Long
Senior Employer's Site Representative
J.B. Barry and Partners Limited
in association with Byrne Looby Partners

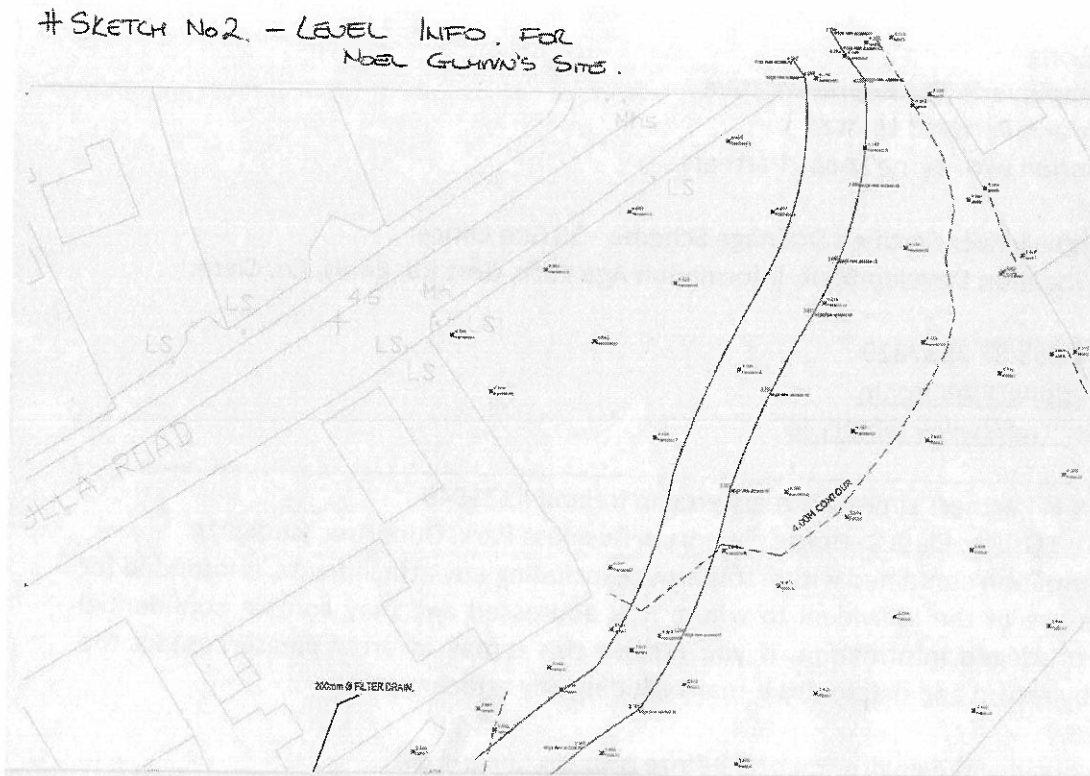
River Fergus Lower Certified Drainage Scheme - ER Site Office
Suite 9, Shannon Development, Information Age Park, Gort Rd, Ennis, Co. Clare

Tel: + 353 87 2537829
E-mail: rlong@jbbarry.ie
Website: <http://www.jbbarry.ie>

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Registered Office: Classon House, Dundrum Business Park, Dundrum, Dublin 14
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From: Patrick Quinn [pquinnbl@eircom.net]
Sent: 13 October 2014 16:02
To: Richard Long
Subject: FW: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site
 Dear Richard,

I am waiting from the 2nd September now to hear from you.

Please revert to me by Friday of this week at the latest, with the information requested and as promised to me, together with a copy of Patrick Murray's post condition survey of my property which was undertaken on the 29th August.

Patrick Quinn

From: Patrick Quinn [mailto:pquinnbl@eircom.net]
Sent: 19 September 2014 14:21
To: 'Richard Long'
Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Richard,

Thanks.

I look forward to hearing from you next week with as much information and drawings/levels as possible.

Regards,

Pat

From: Richard Long [mailto:rlong@jbbarry.ie]

Sent: 19 September 2014 13:58

To: Patrick Quinn

Cc: Tom McKeown; Jonathan Noonan; Fearghus Ryan

Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick

Please note that I am in the process of gathering information together for you on this matter as discussed at our meeting on the 2nd Sept'14. Following on from our meeting, I arranged to have the area in question surveyed. This was carried out on the 3rd Sept'14. The survey info has been reviewed with a sketch/drawing with the relevant levels been drafted up for how the property stand at present. Furthermore I am in the process of acquiring information from WBL for the area in question prior to the works getting underway. I am not sure however to what extent that they have in and around your property as that would of been considered to be outside of there works area.

With regards to the construction drawing for that of Cappahard Area and those specifically in relation to Mr Glynn's Site, the Tulla road and your property. As indicated to you previously the construction drawing for the Cappahard area relates to the various embankment and drainage works for the flood relief scheme itself. That the construction drawing would not make reference to the works carried out on Mr Glynn's property adjacent to your property as the leveling out of the site came about after the works were underway as accommodation works for Mr Glynn. I can possible provide you with a copy of the construction drawing relating to this section of the scheme however they most likely will not provide you with any information in relation to the matter at hand.

I will endeavour to revert back to you late next week with as much information as I can on this matter.

If you wish to discuss further please do not hesitate to contact me on this matter.

Regards

Richard

Richard Long
Senior Employer's Site Representative
J.B. Barry and Partners Limited
in association with Byrne Looby Partners

River Fergus Lower Certified Drainage Scheme - ER Site Office
Suite 9, Shannon Development, Information Age Park, Gort Rd, Ennis, Co. Clare

Tel: + 353 87 2537829

E-mail: rlong@jbbarry.ie

Website: <http://www.jbbarry.ie>

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Registered Office: Classon House, Dundrum Business Park, Dundrum, Dublin 14

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From: Patrick Quinn [pquinnbl@eircom.net]
Sent: 17 September 2014 12:37
To: Richard Long
Subject: FW: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site
Richard,

You might please come back to me with respect to matters.

Thanks,

Pat Quinn

From: Patrick Quinn [mailto:pquinnbl@eircom.net]
Sent: 08 September 2014 10:57
To: 'Richard Long'
Subject: Re: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Richard,

Many thanks for meeting with me last Tuesday 2nd inst.

I was wondering if you have made any progress in the interim, in retrieving for me, as promised, copies of,

- (i) The construction drawing (which specifically indicates levels of "Noel Glynn's site" as between it and (a) the public road and also as between it and (b) my adjoining property).
- (ii) Any remedial drawing (which specifically indicates finished levels of "Noel Glynn's site" as between it and (a) the public road and also as between it and (b) my adjoining property).

that were prepared, submitted and agreed, with the Council and/or the OPW for this Scheme insofar as it relates to the Tulla Road.

If You cannot locate them, could you please give me the contact details of the appropriate person in the Council to whom such documentation/drawings would have been supplied ?

You might please also furnish me with copies of the pre-works survey of levels of "Noel Glynn's site" as between it and (a) the public road and as between it and (b) my adjoining property and a copy of the survey of levels which was undertaken last Wednesday September 3rd.

Thanking you in anticipation.

Kind Regards

Pat Quinn



Subject Site – Other Settlement Land Zoning – Ennis & Enviros Development Plan 2008-2014

Exhibit No. 11

From: Gary Rowan | HRA PLANNING <gary.rowan@hraplanning.ie>

Sent: 15 October 2014 13:12

To: 'Patrick Quinn' <pquinnbl@eircom.net>

Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick

Apologies, I have been away from the office the past few days.

Just getting back to your email. I completely understand your suggested approach but you will appreciate that the suggested letter to Richard will require a certain tone which would be best coming from your self or other legal professional perhaps. I think my input would be most effective in relaying your communication/concerns with the local authority on the technical planning matters and have no problem representing you in that capacity if/when the needs arise.

I shall await further.

Best regards

Gary Rowan MIPI MRTPI
Chartered Town Planning Consultant
Environmental and Ecological Consultant
Director

HRA | PLANNING
Chartered Town Planning Consultants
3 Hartstonge Street
Limerick

T 061 435000
F 061 405555
W www.hraplanning.ie

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From: Gary Rowan <gary.rowan@hraplanning.ie>

Sent: 01 October 2014 12:14

To: Patrick Quinn <pquinnbl@eircom.net>

Subject: Re: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Hi Patrick,

Thanks for the update. I would agree with your conclusions - a stealth use of the site. A letter would at this stage certainly focus the mind. I suspect though that a letter from me to the site owner/operator would have little further effect. A carefully subtly worded letter drafted to the Planning Authority (Enforcement Section) would certainly bring the matter to a head (as the p.a. will be obliged to act). Though I would suspect this will almost certainly rule out any remedial proposal/works to your property by the developer/operator if that is still the intended and preferred objective. I can proceed and draft the letter for the planning authority at your instruction.

I shall await further.

Kind regards

Gary Rowan

From: Patrick Quinn <pquinnbl@eircom.net>

Sent: 01 October 2014 08:18

To: Gary Rowan

Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Hi Gary,

Just to let you know, I have received nothing whatsoever from Richard Long. Matters rest with my e-mail to him of the 19th September at 14.21.

For your information, up to 12 motor vehicles are now permanently stationed on the site. These are parked at a location adjacent to the petrol station/garage premises. At first, there were 2/3, but numbers have gradually increased so that there are 11 present as of this morning. They do not display "for sale" signs or anything like that, but I am certain that they are either for hire/sale by Banner Motors, which is the garage business operated by the owner of the petrol station/supermarket. (ie Pat Fitzpatrick who is Noel Glynn's brother in law).

Truth told, these vehicles are not bothering me at all, but what would appear to be happening is a change of use by a degree of stealth, in somewhat similar fashion by which the site came to be filled in the first place.

I suspect that Richard Long has no real urgency about reverting to you and I think that if you were to now write a letter on my behalf, it might concentrate minds. What do you think ?

Kind Regards,

Pat



P. Coleman & Associates

From: Gary Rowan | HRA PLANNING [<mailto:Gary.Rowan@hraplanning.ie>]
Sent: 19 September 2014 15:02
To: Patrick Quinn
Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Patrick thanks for the update,

The issue is clearly starting to register with them. They know what you are looking for. You could revert – thanking Richard for the response noting his opinion the construction drawing is unlikely to reference the works "carried out on Mr Glynn's property adjacent to your property as the leveling out of the site came about after the works were underway as accommodation works for Mr Glynn". You could advise Richard that your interest in this is based on the potential effects that the filling of land has had / is having on your property vis a vis potential effects to the integrity of boundary walls and amenity issues due to new ground levels (beyond the construction programme and beyond that for which the necessary planning consent was likely to have been secured by or on behalf of the contractor). You are now in a position where you need to review the extent of effects on your property as a consequence of development works in order to see if remedial works are required. You will await further feedback before seeking clarification with the planning authority on this point.

The above is only a suggestion with the intention that they may wish to sit down and discuss your/their options to right this. I will leave the next step to your discretion and shall await further instruction.

Regards

Gary Rowan MIPI MRTPI
Chartered Town Planning Consultant
Environmental and Ecological Consultant
Director

HRA | PLANNING
Chartered Town Planning Consultants
3 Hartstonge Street
Limerick

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W www.hraplanning.ie

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From: Patrick Quinn [mailto:pquinnbl@eircom.net]

Sent: 19 September 2014 14:26

To: Gary Rowan | HRA PLANNING

Subject: FW: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Hi Gary,

Further to our meeting on the 8th inst., to update you, I attach a copy of the subsequent correspondence as between myself and Richard Long.

I propose waiting until the 26th next to hear back from him and if I have not heard from him propose reverting to you on the 29th next to progress matters further.

Obviously, as soon as any documentation has been provided to me by Richard Long, I shall transmit same to you.

Kind Regards,

Pat Quinn

Exhibit No. 12

From: Patrick Quinn <pquinnbl@eircom.net>
Sent: 20 October 2014 08:23
To: 'Gary Rowan' <gary.rowan@hraplanning.ie>
Subject: FW: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site

Dear Gary,

FYI – Response from Richard Long.

What do you make of it all ? I have no idea what status the “sketches” have, when they were prepared, or for what purpose.

Kind Regards,

Pat Quinn

From: Richard Long [<mailto:rlong@jbbarry.ie>]
Sent: 17 October 2014 17:45
To: Patrick Quinn
Cc: Tom McKeown; Jonathan Noonan; Fearghus Ryan
Subject: RE: River Fergus Lower (Ennis) Certified Drainage Scheme - Re: Tulla Road Site


Patrick,

Please be advised that to date the ER has not received any 'Post Constriction' Condition Survey reports for the River Fergus Lower (Ennis) Certified Drainage Scheme from WBL or Thorntons Chartered Surveyors the independence surveying firm acquired by WBL to carry out the necessary condition surveys. As indicated to you previously once the various reports are issued to the ER for review, a copy of the report relating to your property will be made available to you.

For clarity, please note that I have requested that WBL give the ER a time line for when they expect the various reported to be issued, as a number of property owns (yourself included) have request copies. As of yet I have not received an update on this request.

On the issue of the Mr Glynn's site and the levelling out of the property, please find attached for your records a number of photos taken of the area prior to and during the works. As you are no doubt aware the landscape of the area has been changed from what was present when the works got underway in the area back in March 2013. As noted to you previously the top section of Mr Glynn site was not intended to be part of the River Fergus Lower (Ennis) Certified Drainage Scheme Contract and during our conversation on the 4th April'13 with regards to noting access to Mr Glynn's site there was no intentions of carrying out any works on this section of Mr Glynn's property. This issue changed however during the extent of the works following various discussions with Mr Glynn with regards to the interference on this property for the duration of the works and compensation. Mr Glynn requested that his site be levelled out with all scrub removed. Additionally that the top section of the site be stoned. Mr Glynn had look to the entire site to be stone out, however this was not carried out by WBL to date. Mr Glynn made carry this out on this own accord in the near future. Please note attached sketch that was previously drawn up by WBL which gives an approx. indication of the areas that was stoned and that not stoned just levelled out.

On the issue of site levels, the existing site had numerous mounds of material deposited throughout the site with the site over grown with scrub at the time the River Fergus Lower (Ennis) Certified Drainage Scheme works started. Following on from your meeting of the 2nd Sept'14 I

 P. Coleman & Associates

have tried to acquire and collate all surveying information available for the area. Due to the overgrown nature of the site and the fact that it was not intended to carry out any works on this section, the site had not been surveyed. All existing survey information that I have obtained for the area relates to the river embankment. Prior to entering the area WBL did however carry out a minor survey along the track path which I have acquired. This information has been inputted with the survey information that was taken of the site on the 3rd Sept'14. From looking at the level that have been acquired for the track and what is present on the site at the moment the levels in and around the entrance has remained somewhat the same, as you work your way along the track the area has been raised by approx. 300mm which increase to 700mm as you make your way towards the petrol station area and then back to 350mm at the back of the petrol station. Please note the attached level sketch for your records which indicates the level of the site as it stand in red against the levels taken for the access track in green.

I know that this is not much to go by for your property but I hope this provided you with some information. If I can be of any further assistance or you wish to discuss this matter further please do not hesitate to contact me.

Regards

Richard

Richard Long
Senior Employer's Site Representative
J.B. Barry and Partners Limited
in association with Byrne Looby Partners

River Fergus Lower Certified Drainage Scheme - ER Site Office
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