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The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.
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REGISTERED POST



OUR REFERENCE

MC/6113

YOUR REFERENCE

ABP 03.307625

DATE

13th. August, 2020

RE: ABP REF: 307625-20

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 AT KNOCKANOURA, TULLA ROAD, ENNIS, CO. CLARE.

Dear Sir or Madam,

We refer to your letter dated 21st. July, 2020 seeking submissions or observations on our Client's original Section 5 application to Clare County Council which was subsequently referred to An Bord Pleanála by Clare County Council. On behalf of our Client, we are submitting what is set out hereunder, to accompany what was previously furnished by us to Clare County Council on the 8th June 2020 under s.5 of the Planning And Development Act 2000 (as amended) and wish to advise you, that the combined contents of ours of the 8th June 2020 and of this correspondence, together with the personal statements of our Client both of the 5th June 2020 and of even date, cumulatively constitute the submission to the Board on behalf of Patrick Quinn pursuant to s.129(2) of the Planning And Development Act 2000, as amended.

1.0 Parties to Referral Application

We understand from An Bord Pleanála that both Clare County Council and Crossfields Property Company Ltd. have been provided with a copy of our Clients original Section 5 application in accordance with Section 129 of the Act and are being afforded an opportunity to make a submission or observation on this application.

It is our Clients opinion that Valley Healthcare Fund Infrastructure Investment Fund ICAV should also be provided with a copy of the Section 5 application in accordance with Section 129(1) of the Act and provided with an opportunity to make a submission or observation in relation to this application. We understand from Planning Application Ref: P19-409 (invalid application by Valley Healthcare Fund 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) that Valley Healthcare Fund identified themselves as being the owners of part of the subject lands as identified in Figure 1 below. We also note that they are the applicants of a current Section 177C application for Leave to Apply for Substitute Consent presently before the Board (ABP Ref: 307172-20). Valley Healthcare Fund should therefore be party to this referral application.



Figure A – Application site P19-409 outlined in red. Right of Way marked yellow. Planning File P19-409 noted Valley Healthcare Fund as owners of this site.

Our Client requests that copies of any submissions or observations made by any of the parties on this referral application are made available to him and the opportunity afforded to him to make submissions or observations on these if required.

2.0 Oral Hearing Request

In accordance with Section 134(2)(a) of the Planning & Development Act, 2000 (as amended) our Client requests that an Oral Hearing be held in relation to this referral application. Given the substantial history associated with this site it is our Client's opinion that an Oral Hearing would be the most appropriate forum to address the issues raised in the Section 5 application so as to ensure that a correct determination is made based on all of the relevant information from all parties.

In accordance with Section 134(2)(b)(i) we enclose payment in the sum of €50.00 being the fee due as outlined in A16 of the Board's fee schedule.

3.0 Change in Use of Lands

On 9th July, 2020 the use of the subject lands materially changed and became used for the purposes of an illegal encampment for caravans, campervans, mobile homes and cars. During this time the site became both an environmental and a traffic hazard. While the site has since been vacated a significant amount of litter and human waste has been left throughout the site. Mounds of stone/boulders have been placed at the entrance to the lands within the lands owned by Valley Healthcare. We enclose article from the Clare Champion dated 24th July, 2020 regarding the matter in the Appendix to this submission. As noted in the original Section 5 application this has been a regular occurrence on the subject lands over the years.

4.0 Section 177C application for Leave to Apply for Substitute Consent

We refer to ABP Ref: ABP 3017172-20 which is a Section 177C application submitted to An Bord Pleanála by Valley Healthcare Fund on 12th May, 2020 regarding *"Infilling of Land at Tulla Road, Knockanoura, Ennis, Co. Clare"*. This application is in itself a de facto admission that there has been unauthorised infilling of the lands the subject of that application. Our Client requests that the contents of this Section 177C application be considered in the determination of this Section 5 referral application.

5.0 Relevant Documentation

According to our Client the Board failed to requisition all relevant and necessary information for the purposes of undertaking a true, valid and transparent exercise pursuant to the provisions of Section 5 of the Act as amended in relation to the previous Section 5 Referral on the subject lands, ABP Ref: 03.RL3611. Therefore, the determination of An Bord Pleanála on ABP 03.RL3611 was based on inaccurate and incomplete information. Our Client is requesting that the Board ensure that all the relevant information is requisitioned from the OPW in relation to the River Fergus Lower (Ennis) Certified Drainage Scheme – Phase 2 and from Irish Water in relation to upgrading of watermains contract around the town of Ennis both referred to in our Client's original Section 5 application to ensure that an accurate determination is made in relation to this current application.

6.0 Summary

We finally ask the Board accept our opinion as expressed in this submission and in our original submission dated 8th. June, 2020 which included our Clients own detailed submission dated 5th. June, 2020 lodged with Clare County Council and to deem the groundworks including the importation and deposition of fill material and the creation of a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road, Ennis to be development which is not exempted development.

Yours sincerely,

Mandy Coleman

Mandy Coleman, MIPI
P. Coleman & Associates.

Encls.

- Statement of Patrick Quinn dated 13th. August, 2020
- Payment of €50.00

Appendix

Clare Champion Article dated 24th. July, 2020.

Clean-up appeal amid Covid fears from illegal Ennis encampment

July 24, 2020 659 Views

RESIDENTS of an Ennis housing estate are appealing for help from the council in clearing a significant amount of human waste and litter left behind after an encampment that sprang up on a vacant site beside their homes, earlier this month.

While a number of caravans left the site beside Castle Rock on the Tulla Road last Tuesday evening, there are still concerns about the hazard posed by the waste, in terms of Covid-19. The area is also expected to be visited in the coming days by judges from the Tidy Towns, prompting further frustration among local residents.

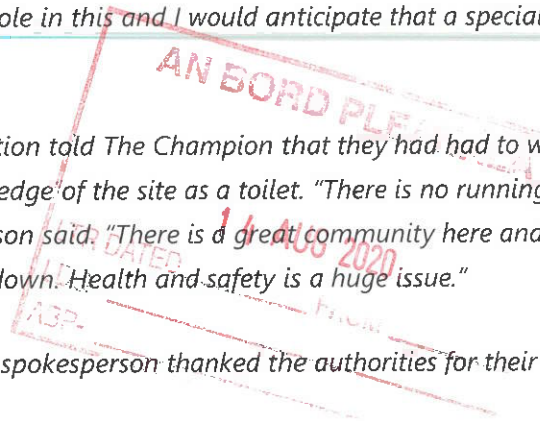
Councillor Johnny Flynn who raised the residents' concerns at a meeting of Clare County Council welcomed the decision of those involved in the encampment to move, and the intervention of Gardaí, said a significant public health issue remains.

"Often, we find ourselves incurring a major costs after an illegal encampment," he said. "In this case, there is a major public health concern in light of the pandemic. I would be hopeful that the multiagency taskforce which involves the HSE and the council would have a role in this and I would anticipate that a specialist contractor would need to be deployed."

A member of the Castle Rock Resident's Association told The Champion that they had had to witness people squatting in front of them, using an area at the edge of the site as a toilet. "There is no running water and the situation is completely unsanitary," a spokesperson said. "There is a great community here and residents have been looking out for each other during the lockdown. Health and safety is a huge issue."

Following the dispersal of the encampment, the spokesperson thanked the authorities for their intervention and appealed for support in the clean-up.

"I would particularly like to see the boundary area leading to the river cleaned up," the representative said. "There is an awful lot of waste left behind and rubbish is flowing down into the river. I would certainly welcome a multi-agency approach, because there will be implications for health and the environment."



Earlier this week, a delegation from Castle Rock on the Tulla Road attended the council meeting where representatives of the Ennis district pleaded with the executive to act on their behalf.

"The area in question includes a place where flood relief has been done along the river and it is now littered with toilet waste," outlined Councillor Johnny Flynn. "It's very upsetting for residents. There are people of a range of ages living in the estate and a great sense of community spirit. People have been very careful during lockdown and the encampment breaches all public health guidelines."

Cathaoirleach, Councillor Mary Howard told residents she was very supportive of their situation. "I have spoken to people who've said they are witnessing going to the toilet in front of them," she said. "It's in appropriate, wrong and horrible. This is a privately owned site, and while there may not be a role for the council, there is a role for the Health Service Executive (HSE)."

Councillor Ann Norton noted that those in the encampment seemed to have chosen the location for a holiday. "These people seem to be travelling around to whatever sites they like on their holidays," the Independent member said. "The situation across Clare must be looked at," she remarked. "It is not acceptable anywhere. The law cannot be broken just because you are from an ethnic minority."

"You and I would be evicted if we behaved like this," Councillor Pat Daly contended. "Ennis does seem to have a long-running problem."

Councillor Paul Murphy agreed there was an issue with encampments around the town in areas including Ashline and Killoo. "There are encampments across the town and it can't be tolerated," he said.

**SUBMISSION TO AN BORD PLEANÁLA IN RELATION TO REFERRAL BY
CLARE COUNTY COUNCIL PURSUANT TO S.5(4) PLANNING AND
DEVELOPMENT ACT 2000**

ABP Case Number: – ABP 307625 -20

Planning Authority Reference Number: - 20-25

1. Introduction – Procedural Background

1.01 On the 5th June 2020, I requested Clare County Council (hereinafter “CCC”) as planning authority, to make declarations pursuant to the provisions of S.5 of the Planning And Development Act 2000, (hereinafter “PDA 2000”) as amended on the following questions;

- (i) Is or is not the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from 2013 onwards, development ?
- (ii) Is or is not the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from 2013 onwards, exempted development ?

1.02 It appears that rather than actively exercise its statutory functions pursuant to s.5(2) of the PDA 2000, Clare County Council has chosen instead to avail of the statutory mechanism available to it pursuant to s.5(4) of that Act. Whilst the planning authority has a legal entitlement to adopt such a course of action, it is imperative that An Bord Pleanála actively involve Clare County Council in the process, because I honestly believe that there is a wealth of documentary material, either within its possession, or power of procurement, that is of material relevance and assistance to the determination by An Bord Pleanála.

1.03 I wish to alert the Board to the fact that by my request to the planning authority of the 5th June 2020, I emphasised to the planning authority [c/f paras 1.04, 1.05 and 1.50 of Submission To CCC 5th June 2020] the important necessity of having regard to such material in order to enable it to issue declarations on the questions referred, as part of a true, valid, relevant and transparent exercise of its functions, pursuant to the aforesaid legislation. In similar vein, I am reiterating that request of you, the Board, as it is not apparent to me whether CCC has accompanied its referral to you by such documents or information relating to the referral that is both necessary and appropriate, whether pursuant to s.127(4), or s.128(1)(b) of the PDA 2000.

1.04 In the foregoing circumstances and in the event of a default of the provision of such documentation and information to you by CCC, I am imploring the Board, in the interests of justice to serve notices pursuant to s.132 of the PDA 2000, requiring CCC, the Department of Culture, Heritage and The Gaeltacht, the Department of Public Expenditure and Reform, the Commissioners of Public Works and Irish Water to submit to you all documents, particulars or other information pertaining to

- (i) the ground levels and works pertaining to the filling of these lands in the period from 2013 to date

- (iii) the official statutory basis, lawful entitlement, or development consent, including all maps, drawings and statutory scheme documentation, authorising the performance of the aforesaid works and which evidences same as a constituent thereof.

1.05 I believe the groundworks undertaken on this site from 2013 onwards in the nature of importing and depositing fill to raise the ground levels of the site and of the lands at the rear and western boundary of it to create a hardstanding area constituted development, which was not exempted development and amounts to an unauthorised development of the lands.

1.06 Insofar as a purported determination of the aforesaid questions, was purportedly made by An Bord Pleanála in a decision dated the 15th January 2019, (Ref 03.RL.3611) such decision of the Board was quashed by an Order of the High Court made on the 11th February 2020 in proceedings entitled “*The High Court, 2019 Record No:144 JR 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*”

1.07 I say and believe the information that was provided to the Board for the purposes of Ref 03.RL.3611 was inaccurate and incomplete. Accordingly, I believe that it now behoves the Board in the exercise of its powers pursuant to Part VI Chapter III of the PDA 2000, to requisition all relevant and necessary information on the matter that is available to you from the Department of Culture, Heritage and The Gaeltacht, from the Department of Public Expenditure and Reform, from the Commissioners of Public Works, from Irish Water and from Clare County Council itself, in order to enable you to issue declarations on the questions referred, as part of a true, valid, relevant and transparent exercise of your functions, pursuant to the aforesaid legislation.

1.08 Neither the Department of Culture, Heritage and The Gaeltacht, the Department of Public Expenditure and Reform, the Commissioners of Public Works, or Irish Water participated in the (unlawful) exercise that was (Ref. 03.RL.3611) and Clare County Council are already in receipt of a submission from the Department of Culture, Heritage and The Gaeltacht in respect of a planning application P.19-409 regarding these lands, which notified it that,

“based on the information available in relation to the [OPW’s River Fergus (Ennis) Certified Drainage Scheme – Phase 2] 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.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.”

1.09 Furthermore and in the light of the foregoing, I believe that CCC ought to have provided you with a copy of that planning application P.19-409 as such identifies an entity called Valley Healthcare Fund Infrastructure Investment Fund ICAV as the owner, of some, if not all, of these infilled lands.

2. **An Bord Pleanála Ref: PL 03. 307172**

2.01 I note that the aforesaid Valley Healthcare Fund Infrastructure Investment Fund ICAV, as owner thereof, lodged an application with the Board on the 12th May 2020 for leave to apply for substitute consent pursuant to s.177C of the PDA 2000 in respect of "*infilling of land at Tulla Road, Knockanoura, Ennis, County Clare*".

2.02 I believe that such application relates to some, if not all, of the lands the subject matter of this referral. If such is the case, then on any reasonable assessment of the matter, such a course of action by the owner of the lands represents both a *de facto* and *de jure* admission that such infilling of the lands as has taken place, constitutes both development and development other than exempted development. In my view, this situation alone ought to be sufficient to determine the referral in a manner favourable to me.

3. **The Dwellinghouse At 5, Knockanoura, Tulla Road, Ennis**

3.01 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 entry was first made upon them by Wills Bros. Ltd in 2013.

3.02 To date, my private property rights have been entirely abrogated by the (former ?) owner of these lands and by the decision of the Board (Ref 03.RL.3611) of the 15th January 2019, now thankfully invalidated by Order of the High Court.

3.03 On the 9th October 2016, I made an extensive and detailed submission to Mr. Pat Dowling, Chief Executive of the planning authority (which Clare County Council has) with respect to what had transpired on these lands since Wills Bros. Ltd first entered upon them in 2013. Mr. Dowling in providing a report (which CCC are also in possession of) recognised the serious nature of my concerns and advised that it was a matter for planning enforcement. I also note that none of that information was ever transmitted by Clare County Council to the Board as part of the process which culminated in the decision of the Board Ref 03.RL.3611.

4. **An Bord Pleanála Ref: O3.RL3611**

4.01 On the 24th January 2019, I sent a registered letter and a Booklet of Documents to Mr. Dave Walsh, the Chairperson of An Bord Pleanála, which made An Bord Pleanála aware of the position regarding what had transpired on these lands since Wills Bros. Ltd first entered upon them in 2013 and I expect the Board is in possession of this documentation.

4.02 Apart from what I consider to be bald, inaccurate, partial and misleading assertions made to the Board for the purposes of Ref O3.RL.3611, I believe there is no documentation in existence to evidence a finding that the groundworks undertaken including the importation and deposition of fill, the creation of a permanent hardstanding area and the raising of ground levels over the entire area of the subject

lands, or any part of it at all, were works carried out as part of the River Fergus Lower (Ennis) Certified Drainage Scheme under the Arterial Drainage Act of 1945.

- 4.03 I believe that it is indisputable that the portion of the site fronting the Tulla Road (ie "Area A" as described by Inspector Caprani in his report for the purposes of Ref: 03.RL.3611) which immediately adjoins my residence never formed any part of the River Fergus Lower (Ennis) Certified Drainage Scheme pursuant to the Arterial Drainage Act of 1945. I share the view of the Department of Culture, Heritage and the Gaeltacht that an examination of the Scheme drawings and the EIS for the OPW's River Fergus (Ennis) Certified Drainage Scheme – Phase 2 project does indeed reveal that these lands did not form part of the Scheme as confirmed and that they were not subject to EIA and appropriate assessment as part of that project. Hence, the reason for my requests as made of the Board herein set out at paragraph 1 above.
- 4.04 Furthermore, I also believe that the groundworks as were undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels over such area of lands at Knockanoura, Tulla Road, Ennis, County Clare in the period from the entry of Wills Bros. Ltd thereon was development that would have required both an EIS and NIS and/or required to be the subject matter of screening for appropriate assessment under Council Directive 92/43/EU and also subject to the requirements of Council Directive 2014/52/EU and the carrying out of screening for the purposes thereof.
- 4.05 I therefore trust the Board, for the purposes of considering the within referral, shall now *inter alia* actually requisition and examine the plans, specifications and drawings as submitted for the aforesaid Scheme as confirmed and have regard to same, together with the documentation accompanying and referenced by my request in support of my assertions.

5. The Sequencing Of Events 2013 To Date And The Results Thereof

- 5.01 I say that 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 especially note from Inspector Ciprani's report for the purposes of Ref. O3.RL.3611, that "*the Planning Authority submissions states that Area A is located outside the flood relief works area*".
- 5.02 I say that thereafter, further infilling continued at the behest of the owner of the lands and for anybody to suggest that it was *de minimis* is a gross misapplication of that concept. There has been a bald suggestion made that following completion of the aforesaid Drainage Scheme further infilling was undertaken by Ward & Burke contractor for the purposes of provision of a "*site compound*" in connection with a public works contract being undertaken by Irish Water. I say that represents a complete mischaracterization of the use that was actually made of these lands by Ward & Burke for the purposes of endeavouring to ascribe a lawful basis to such works as were actually undertaken on these lands.

- 5.03 Ward & Burke were engaged on behalf of Irish Water as part of a public works contract for the upgrade of water mains on public thoroughfares throughout the town of Ennis and its immediate surrounds. As far as I am aware, the official site compound was on the Quin Road, at Doora, Ennis, thus there was no "need" for any use to be made of these lands by Ward and Burke. [There ought to be official documentation in the possession of both CCC and Irish Water which will corroborate this.]
- 5.04 I believe that what transpired is that whilst they were engaged on watermain rehabilitation works on the eastern side of Ennis in the environs of the Tulla Road, Ward & Burke made some convenient use of the front portion of "Area A" adjoining the R352, as a temporary storage depot for some of their materials, whilst they were engaged upon the said public works contract. This entailed the erection on the existing hardstanding portion of "Area A" of some temporary "security fencing", in order to enclose a portion of "Area A", in order to securely store their materials therein. As far as I am concerned, such use did not require any infilling of these lands, as the portion of the lands which they made use of, were already stoned and hardstanding by that stage.
- 5.05 I do not at all believe the use that was made of these lands by Ward and Burke necessitated the importation of 15 loads of stone as alleged, irrespective of the fact that the receptacle for such loads has not been identified, as far as I can see. Which or whether, if further infilling of these lands were undertaken at that time by Ward & Burke, or at any stage, I do not believe that such works, if they ever took place by them at all, had any statutory authorisation, or approval, or were otherwise exempted from the application to such works of the strictures of planning and development law.
- 5.06 As far as I am concerned, any such "infilling" as alleged, did not encompass the erection, construction, or placing on lands of structures, works, plant or machinery needed temporarily in connection with Irish Water's contract for the upgrade of watermains on public thoroughfares around Ennis in circumstances of the availability of the site compound at Quin Road, Doora Ennis and even if it did, such infilling ought to have been removed once works on that portion of the R352 immediately adjacent to "Area A" had been completed and the lands reinstated to their original level. It is abundantly clear such has not occurred here.
- 5.07 I honestly say and believe there is not, nor has there been, any legislative authority whatsoever for those works, contrary to what may have been represented to and purportedly found by An Bord Pleanala for the purposes of Ref O3.RL.3611 (now invalidated)
- 5.08 I refer to Figures 18-19 of the report of P. Coleman & Associates as submitted on my behalf. In particular, I invite the planning authority to particularly note
- 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.

14 AUG 2020
LTR DATED 14 AUG 2020
LRS
FROM

- 5.09 I say that 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 River Fergus (Ennis) Certified Drainage Scheme – Phase 2. At all times such entry was to be temporary in nature and ostensibly with statutory authority.
- 5.10 I also attach to this submission two further appendices of five photographs each respectively,
- **Appendix A** depicts the situation prior to any works being undertaken on the lands.
 - **Appendix B** depicts the situation pertaining at or about the commencement of 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 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.
- 5.11 What followed thereafter since entry was first made upon these lands seems to me to have entailed a subversion of the planning code by stealth. “*Area A*” (as described by Inspector Caprani in his report for the purposes of Ref: 03.RL.3611) was never part of the River Fergus (Lower Ennis) Certified Drainage Scheme.
- 5.12 The N(atura)I(mpact)S(tatement) for the Scheme 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*”. However, 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.
- 5.13 I believe and have been advised by Wills Bros. that 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 and that 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. I further believe and have also been advised by Wills Bros. that Mr. Glynn, the owner of Crossfield Property Company Limited, then offered to afford that 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 C** - The email from Malcolm Duncan – Project Manager on behalf of Wills Bros to me of the 6th November 2013 at 13.30 corroborates this]

- 5.14 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.
- 5.15 In consequence of the foregoing, JB Barry & Partners Ltd (being the Employer's Site Representative) then arranged for a pre-works condition survey of my property to be undertaken. This exercise was undertaken on the 12th June 2013 by a Mr. Patrick Murphy.
- 5.16 In 2014, I had further correspondence with JB Barry and with Wills Bros. This is also contained at **Appendix C** 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 C 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)
- 5.17 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 Crossfield Property Company Ltd/Mr. Glynn and subsequent private arrangements of Crossfield Property Company Ltd/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 or Article 6 Schedule 2 Part 1 Class 16 of the Planning And Development Regulations 2001 as amended.
- 5.18 Contrary to what has been stated by Inspector Caprani at paragraph 7.0 of his report for the purposes of the exercise that was Ref. O3.RL.3611, 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.
- 5.19 There are photographs on the public access file of An Bord Pleanála (Ref. O3.RL.3611) 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 "*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.
- 5.20 Apart from the provision of a temporary track to facilitate Wills Bros. Ltd's access to embankments on adjoining lands in connection with River Fergus Lower (Ennis) Certified Drainage Scheme, all other works which have taken place on these lands ever since, have been for the purpose of accommodating and facilitating Crossfield Property Company Ltd/Mr. Glynn in the commercial enhancement of the market value of these lands and in readiness of their initial public advertisement for sale in the Summer of 2016.

- 5.21 The result for me is that under the “*guises*” of a statutory scheme and a public works contract, I have been 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.
- 5.22 All of that was done without me being afforded any measure of public consultation whatsoever on the issues.
- 5.23 I also believe that the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of ground levels at Knockanoura, Tulla Road Ennis, County Clare in the period from Wills Bros Ltd first effecting entry thereon, may have been undertaken in the absence of an appropriate assessment, or on the basis of an invalid appropriate assessment screening contrary to the Habitats Directive and Irish law, either in the absence of a proper or any environmental impact assessment, or that screening for same was invalid and contrary to the EIA Directive and/or possibly contrary to the Water Framework Directive also.

6. **The Role Of The Planning Authority – The Requirement Of Board For “*Fact Checking*” & Environmental Analysis & Investigation**

- 6.01 The planning authority has previously described the subject site as being located at approximately 1.5 kilometres to the north east of Ennis town centre, stating that the site is made up of two adjoining parcels of land, one of which “*Area A*” fronts onto the Tulla Road, the other, “*Area B*” adjacent to the River Fergus, part of the Lower River Shannon SAC. I do not believe that is factually correct because at all material times heretofore whilst the infilling works were being undertaken, the site constituted a single parcel of land in the ownership of Crossfield Property Company Limited bounded by the Lower River Shannon SAC as part of a single land folio CE2627F, within which is also registered, the roads and castle of the adjoining Castlerock housing estate. I believe these subject lands were at all material times heretofore mapped on plans numbered E8MR, GH75, E8MM and 3536_2 within that folio.
- 6.02 As planning authority in its s.5 submission to An Bord Pleanála (Ref. O3.RL.3611) CCC has already asserted that “*Area B*” “*relates to the area that the River Fergus Lower (Ennis) Certified Drainage Scheme applied to and which was used for flood defence works*”, while “*Area A*” “*was located outside of the flood relief works area.*”.
- 6.03 I believe that CCC made such assertion of “*Area B*”, without ever producing to the Board any of the River Fergus Lower (Ennis) Certified Drainage Scheme official documentation as approved and it is essential that the Board in its determination of this referral undertakes a forensic analysis of material factual assertions, especially where conflicts of fact exist and that same are resolved by appropriate evidential means.

6.04 I believe that Inspector Caprani in his report for the purposes of Ref. O3.RL.3611, correctly found that the activities undertaken on the subject site involved the importation of fill material which was deposited and levelled on the subject site which resulted in an increase of ground levels and that this comprised of 'works' as defined in the Planning and Development Act, 2000, as amended, and therefore was development.

6.05 However, without questioning the purpose of the hard-standing works or any requirement for the hard-standing works, Inspector Caprani then fell into error by purportedly finding they "*were carried out in accordance with requirements under the Arterial Drainage Act of 1945*", despite admitting that he "*cannot conclusively state that the works undertaken were strictly and fully in accordance with the drawings submitted.*"

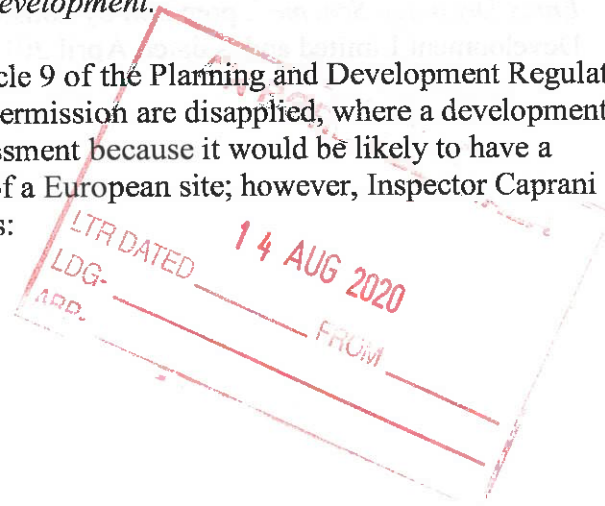
6.06 As far as I am concerned, Inspector Caprani impermissibly regarded the appearance of a lack of concern by the planning authority in relation to the hardstanding construction, coupled with a (factually incorrect) submission on behalf of the owner that as part of the Certified Drainage Scheme, a large portion of the site was required to be filled with imported material, to arrive at wrongful conclusion that the works "*would appear to be exempted by virtue of Article 8 of the Planning and Development Regulations 2001 (as amended).*"

6.07 In my submission, any lack of concern heretofore by the planning authority in relation to the hardstanding construction truly has to be seen though, in the context of the direct and/or indirect (and unauthorised) uses made of the site since 2014 (ie as car park for Fleadh Ceoil na hEireann 2016-17 – Munster Senior Hurling Championship matches – A depot for road lining contractors engaged by the roads authority) in facilitation and/or to the benefit of the local authority.

6.08 Article 8 of the Planning and Development Regulations, 20001, as amended purports to give a blanket exemption from the requirement to hold planning permission for any works, even if only incidental to, the works specified in a drainage scheme confirmed by the Minister for Finance:

"Works specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995), carried out by, on behalf of, or in partnership with, the Commissioners, with such additions, omissions, variations and deviations or other works incidental thereto, as may be found necessary by the Commissioners or their agent or partner in the course of the works, shall be exempted development."

6.09 As a general rule, pursuant to Article 9 of the Planning and Development Regulations, 2001, exemptions from planning permission are disappplied, where a development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site; however, Inspector Caprani noted in relation to drainage works:



“.. that exemption from obtaining planning permission for drainage works under Article 8 of the Regulations are independent for many restrictions and exemptions under Article 9 of the said Regulations. The restrictions on exemption under Article 9 solely relate to development to which Article 6 relates. As such the fact that the works are located adjacent to a European site would not trigger any de-exemption under the provisions of Article 9(viib) (or any other restrictions under Article 9 for that matter). As such, de-exemption only relates to development under Article 6 and not under Article 8.

- 6.10** On foot of his interpretation of Articles 6, 8 and 9 of the Planning and Development Regulations 2001, as amended, Inspector Caprani appears to have decided the provisions of Article 6 of the Habitats Directive, do not apply to development on the subject site or indeed any development specified in a drainage scheme confirmed by the Minister for Finance under Part II of the Arterial Drainage Act 1945 (No. 3 of 1945) or the Arterial Drainage (Amendment) Act 1995 (No. 14 of 1995) or development determined by the Drainage Commissioners to be incidental to such development.
- 6.11** Additionally, in relation to any material allegedly imported by Ward & Burke into the site in 2015 to allegedly “*create a compound for the watermain refurbishment works*”, Inspector Caprani determined that “*a strong case could be made for exempting the use of the site as a temporary compound under Article 6, Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001*”, without conducting any reasonable investigative exercise in relation to such allegations.
- 6.12** It appears to me that Inspector Caprani recorded no screening for appropriate assessment and no appropriate assessment in his report or recommendations to An Bord Pleanála in this regard, for the purposes of Ref. O3.RL.3611 Inspector Caprani had no regard to the effect of the development on the water quality objectives of the River Fergus under the Water Framework Directive.
- 6.13** On or about 31st August 2018, An Bord Pleanála issued a notice to the planning authority pursuant to s.132 of the Planning and Development Regulations, 2000, as amended, requesting a copy of the Natura Impact Statement carried out in respect of the River Fergus Lower (Ennis) Certified Drainage Scheme or any Appropriate Assessment Screening carried out prior to the commencement of the works and made a direction in that regard.
- 6.14** By letter dated 7th September 2018, the planning authority wrote to An Bord Pleanála enclosing a copy of what it referred to as the “*AA Screening Report in relation to the Ennis Drainage Scheme*”, prepared by consultants Aquafact International Development Limited and is dated April 2011.

- 6.15 It is not apparent to me from that 2011 report whether it was compiled to inform an appropriate assessment screening, or a full stage 2 Appropriate Assessment. I do not believe that such satisfies the legal test for either an appropriate assessment screening, or a full stage 2 appropriate assessment for what has transpired on these lands since Wills Bros Ltd first effected entry thereon in 2013. In my opinion, such required that an Appropriate Assessment or appropriate assessment screening be undertaken and recorded, as well as a reasoned Environmental Impact Assessment, or an Environmental Impact Assessment Screening for the purposes of a complete determination of the questions referred.
- 6.16 It also seems to be the case that in order to enable you to issue the declarations on the referral of questions (i) and (ii) above, it probably behoves you to also exercise the powers available to you pursuant to s.6 of the Planning And Development Act 2000 to examine, investigate and survey these lands, in relation to the nature, extent and effect of the material deposited on the subject site and its potential to adversely affect the surrounding environment, including but not limited to the River Fergus (as part of the Lower River Shannon SAC) as well as my property, because I believe that since the filling of these lands there has been some displacement of the water table and/or shifting of the ground conditions in the area, as evidenced by subsidence and settlement of brick pavoirs comprising the patio at the rear of my dwellinghouse.
- 6.17 In the exercise of your statutory functions as requested of you pursuant to s.5 of the PDA 2000, I believe that, at a minimum, it is essential you procure the appropriate before and after ground level measurements/surveys of the lands that would have been taken by the Commissioners of Public Works, its servants, agents or contractors, as well as expert laboratory testing of the material filled on the lands, in order to properly determine the nature, extent and volume of the fill and its potential to adversely affect the surrounding environment, including but not limited to, the River Fergus and my lands.
- 6.18 The wording of Article 6(3) of the Habitats Directive provides:

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

- 6.19 I believe that the assessment report prepared by Aquafact International Services Limited in April 2011 was neither an appropriate assessment, nor an appropriate assessment screening, nor even a recommendation in relation to such, that it could ever be relied by you in conducting an appropriate assessment, or appropriate assessment screening of the groundworks undertaken, including the importation and deposition of fill material to create a hardstanding area and the raising of the ground levels of these lands, in the period since entry was first made thereon by Wills Bros. Ltd in 2013 and onwards to date.
- 6.20 In advance of the undertaking of the groundworks, including the importation and deposition of fill material to create a hardstanding area and the raising of the ground levels of these lands, in the period since entry was first made thereon by Wills Bros. Ltd in 2013 and onwards to date, I believe that there has been no assessment made of the cumulative environmental impacts of the filling of the site combined with the arterial drainage project, which, being flood relief works involving a length of river channel greater than 2 kilometres, required an Environmental Impact Assessment under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.
- 6.21 In circumstances where I believe no screening for Appropriate Assessment, or Appropriate Assessment was carried out with respect to the infilling works which have come to be undertaken on these lands since Wills Bros Ltd first made entry thereon in 2013, such development cannot be either "*Article 8 development*", or development of a class specified by Article 6 Schedule 2 Part 1 Class 16 of the Planning And Development Regulations 2001 as amended, as to be exempted development.

7. **Conclusion**

- 7.01 In the light of the foregoing, combined with the contents of the report of P.Coleman & Associates, I respectfully submit it is now without question that the infilling of these lands in the period from 2013 onwards constituted development, which was not exempted development.
- 7.02 If however, notwithstanding the wealth of information I have brought to its attention, the Board were to even remotely consider any alternative scenario in the light of whatever assertions to the contrary might be made to it on this referral, pursuant to s.134(2) of the PDA 2000, I am respectfully requesting the Board to convene an oral hearing of the referral, in order that any factual conflict(s) arising, might be appropriately resolved and determined and in conjunction with the exercise by the Board of its powers pursuant to either ss.131-132 of the PDA 2000 as so requested of it above.

Dated the 13th August 2020

PATRICK QUINN

