

CASHEL, LAHARDANE, BALLINA, CO MAYO F26 V021  
CATHERINE HEFFERNAN

MOBILE

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

12<sup>th</sup> June, 2021

AN BORD PLEANÁLA	
LDG-	040810-21
ADP-	
15 JUN 2021	
Fee: €	50 Type: cheque
Time:	By: Reg Post

Re: Request for a Review of a Declaration (reference ED 421) (register reference 1523) by  
Kyran Hurley Chairman of the Management Board, Carrowhubbock Village Enniscrone, Sligo

TO WHOM IT MAY CONCERN

I am one of the owners of 41 Carrowhubbock holiday village. A copy of the enclosed application for a review letter was sent to me by email attachment on 9<sup>th</sup> June 2021 by the Management Board of Carrowhubbock Village Enniscrone, Co Sligo.

In my calculation the deadline for a review of this was Friday 4<sup>th</sup> June, 2021

I have inserted my numbered comments (in red) where applicable on the management boards review application letter. (App. 1)

I have also enclosed a list of the exact same numbered comments in a separate document. (App 2)

I enclose a cheque for €50 for your consideration of my points as raised.

I have enclosed a photocopy of the decking as is today. Plus, photoshop pictures of our proposed changes in colour and with lowered side fences to our patio as sent to the board more than 6 months ago. (App 3)

If this review results in the Council changing their existing authorisations which results in the management board legally forcibly removing any part of my existing extension or my having to reapply for planning permission to retain the same. (Which they will inevitably disapprove of and block) What recourse will I have? Is there an ombudsman that supports owners of houses on managed estates? The Chairman of the management Board has made it clear that they will use management board funds for legal expenses



incurred and or for expert advisors (which they have on board already) I don't have this luxury. I have had to engage a solicitor and am prepared to pay for more of his services when deemed appropriate to do so. He is surprised that the Management Board are not 'Statute Barred' and says that it is highly unorthodox that they could overturn planning permission 6 years after it was granted? I am obviously no expert on this and he is not an architect or engineer. I enclose a copy of his letter to the board's solicitor's letter.

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I hope my attempts to lay out my points in a comprehensive manner are acceptable to you.

I would be grateful if you could confirm receipt of this by email (if this is acceptable practice) to ~~XXXXXXXXXXXX~~ and forward any mail by email attachment.

With thanks and warm regards.



Catherine Heffernan

Werner

## APP 1

Re: Request for a Review of a Declaration (reference ED 421) by Sligo County Council under Section 5 of Planning and Development Act 2000 (as amended) regarding a raised timber deck and surrounding boundary fences and supporting pillars constructed at the front (west side) of 41 Carrowhubbock Village, Enniscrone, Co. Sligo (register reference 1523)

**See the owner of no 41, Catherine Heffernan, comments in red as inserted below.**

### Grounds of Appeal Submission to An Bord Pleanala<sup>1</sup>

#### Introduction

I am the Chairman of the Carrowhubbock Management Company CLG (the Company) and I was requested by the Company to submit a request to Sligo County Council (the Council) for a declaration under Section 5<sup>2</sup> of the Planning and Development Act 2000 (as amended). I received a Declaration<sup>3</sup> from the Council dated 7 May 2021 and the Company is now seeking a review by An Bord Pleanala (the Board) of that Declaration.

The Company believes that the Council, in considering in the declaration that *“the construction of a 31 sq m patio to the west elevation of the structure at 41 Carrowhubbock Village is an element of the development permitted under PL 15/23 and is therefore authorized”*, is incorrect in declaring that it is permitted development under PL 1523 having regard for the Planning and Development Act and Regulations.

The Company further believes that the Council, in considering in the declaration that *“the construction of a 1.2 m high glass panel wall along the (front) western edge of the permitted patio is development and is exempted development”*, is incorrect in declaring that this is exempted development within the meaning of the Planning and Development Act and Regulations.

#### Description of Development<sup>4</sup>

The elevated deck structure is located to the front of number 41 Carrowhubbock Village and consists of an 11m x 3m patio deck - 31 sq m approximately - the floor level of which is up to 0.7m above ground level. The deck is surrounded by timber walls and a glass panel wall.

On the north side there is a timber wall 1.5m above the deck floor level and 2m above ground level at its highest. On the south side there is a timber wall 1.25m above the deck floor level and 1.93m above ground level at its highest. On the west side there is a wall of glass panels 1.2m above deck floor level and between 1.71m and 1.88m above ground level and separated by vertical timber supports.

<sup>1</sup> The Submission is an attachment to the completed Planning Appeal Form (6 pages)

<sup>2</sup> See KH Application to Sligo Co. Co. for a Section 5 Declaration dated 7 April 2021 (9 pages) in attachment 8

<sup>3</sup> See Sligo County Council Section 5 Declaration dated 7 May 2021 (3 pages) in attachment 9

<sup>4</sup> See Image, Raised Deck as Constructed (1 page) in attachment 12

1. We have changed the north side fence to 1.2 m (i.e., same height as the glass balustrade) two weeks ago. The southside fence will be changed to 1.2 m next week to be in line with the council's regulations.

The construction of the house extension that was approved under planning register reference PL 1523<sup>5</sup> was completed in May 2019. The image<sup>6</sup> taken in September 2019 shows the completed extension with a newly constructed footpath and newly constructed entrance steps outside the extension and the topsoil graded ready for grass seeding.

2. The first fix was completed at the end of July 2019 and the second fix and internal work was not completed until September/October 2019. Saying it was completed in May is completely wrong.

The construction of the deck structure commenced in late June 2020, almost 12 months after completion of the building of an extension that was approved under planning register reference PL 1523 (which as will be seen below differs markedly from the extension which was actually granted permission).

3. The builder was too busy to complete the decking area in the autumn as was desired and asked if we would wait until the weather was conducive in spring 2021. We did not intend for there to be a gap in completing our extension it was a question of our builder's availability, winter weather, then covid delays.

### **Carrowhubbock Holiday Village<sup>7</sup>**

Carrowhubbock Village is a scheme of 41 holiday homes located to the north of Enniscrone, off the Pier Road. As can be seen from the attached layout the houses are a mixture of individual detached dwellings and terraced or semi-detached houses. The initial development, in the late 1980's, was of 21 single storey houses in units with 2 to 6 houses in each unit all located at the front of the estate. A further 20 detached gable fronted dormers, with an average floor area of approximately 93 sq. metres, were added in 1992 at the rear of the site.

The layout of the scheme means that the houses are surrounded by open grassed areas, with no walls or hedges, other than at the boundaries of the estate, and pedestrian access to the houses is by footpaths through the grassed areas. Car parking areas are located adjacent to the access road and there are no individual car parking spaces adjacent to each house. The uncluttered common open area is a particular feature of the design of the development. Originally the plot of land owned by each house owner consisted of the area occupied by the house only with the rest of the land in the estate forming the common areas managed by the Company. In 1999, to facilitate the development by individual owners of house extensions and conservatories, the Company offered to transfer to each house owner an additional plot extending 10 feet from the external walls of each house. (The application of this general rule in practice meant that where two houses are located close together, the additional plot granted would be split on a pro rata basis on the measurements from the external walls of both houses.)

The house owners, through their membership of the Company and by resolutions passed at AGMs, have protected the uncluttered common open area and general appearance feature by motions confirming that

<sup>5</sup> See Sligo Co. Co. Grant of Permission dated 11 April 2014 (2 pages) in attachment 1

<sup>6</sup> See Google Maps Image Capture Completed House Extension Sept 2019 (1 page) in attachment 13

<sup>7</sup> See Map of the Estate and Google Maps Image Captures of the Development (7 pages) in attachment 14



there should not be any above ground structures other than building extensions or conservatories and that there should not be any parking on the grassed areas, even of a temporary nature when emptying or loading cars. A particular resolution passed unanimously at the AGM in 2002 specifically stated that no walls were permitted to be built around any house on the basis that it infringed the clauses on the Purchase Contract preventing changes that adversely affected the overall appearance of the estate. The AGM minute also recorded that house extensions and conservatories were welcomed provided they were in keeping with the overall appearance of the village.

4. We purchased our house in around 2007. The resolution made in 2002 is not in the covenants or any set of additional rules that we have been privy to. I have asked the board to provide me with the complete rules/resolutions. I have asked 3 local solicitors (all who have done conveyancing work in Carrowhubock Village, including my own and later my children's different solicitor) if they have copies of these. All I have managed to acquire from August to date is a copy of the original 1995 Covenants. I was only told by one Management Board member 2 weeks ago about this resolution that was written in 2002. And that was when I again asked for all the minutes of past AGMS and any resolutions written before I purchased to check to see what I may have missed regarding decking and safety railings. I have still not received the minutes of past AGMS or subsequent resolutions to the covenants from the Management Board

Despite clause 3 in schedule 4 of the covenants stating:

3. Not to alter in any way the appearance of the Holiday Home or any part thereof but to maintain the same in keeping and in harmony with the appearance of the Block of Holiday Homes as a whole.

- The large majority of houses have added extensions including patios/decks, glass greenhouse type conservatories, wooden fencing surrounds etc.
- The Holiday Homes are no longer just holiday homes but permanent residences for some people and semi-permanent for others.
- We live within a few yards of most management board members ...no one complained during the planning permission stage ...or until the last day of work on our entire extension in late August 2020...by which time we had spent well over €100,000 on our extension which includes approx. €10,000 on our patio/decking. Board members and residents chatted to us in a friendly manner, seemingly admiring the works and gave us no hint that anything was amiss during the build of the extension including the decking area. I informed the secretary of the board that building works would commence 2 - 3 months prior to commencement. She would sometimes text me to let me know whether the builders had turned up or not, we also sometimes sought her friendly guidance on our extension plans at different stages. (She is a retired architect – and a previous employee of a council planning department)

- Since this dispute we have been told, we were obliged to seek the board's approval of our council approved plans but we didn't know this and no-one ever informed us of this. We have been told that the onus was on us to know this and not on the management board, or any individual members of the management board to tell us this. I have had no realistic answer to the question "how else were we meant to know this'?
- We (reasonably, I think) assumed that any issues or objections would be raised during the planning application stage. ...I cannot understand if there were issues why these were not raised before we built and spent our €100,000 plus retirement savings on this. The whole experience has been increasingly intimidating, and has caused my family and I huge anxiety at a time when we thought we would be enjoying our property in our retirement years. We had no intention of doing anything wrong...We used a quality builder, quality materials, built within our boundaries, got planning permission, followed building safety guidelines etc. It seems the Board are blaming everyone else and not taking any accountability for their own lack of timely due diligence and duty of care to owners.

## Planning History

### Planning Application Register Reference 1523

Katherine Heffernan and Martin Lyons applied on 23 January 2015, under planning register reference 1523, to construct a 66.50 sq. metre extension to the rear (east) and side (south) of an existing private holiday home, 41 Carrowhubbock Holiday Village, Enniscrone.

According to the plans submitted to Sligo County Council the proposal would consist of a proposed sunroom, utility, bathroom and bedroom and an extended bedroom on the ground floor. At first floor level the development would consist of a TV room on the east side of the house and an open balcony area on the south side of the house. The first floor would be accessed by an external hardwood stair leading from the ground floor on the west side of the house. Timber trellis and screen planting were proposed at the south side of the external stair leading to the proposed first floor balcony. The drawings<sup>8</sup> noted a "proposed patio"

on the west side (front of the house) with no dimensions (but scales to 3m deep) with a shallow ramp, approximately 250mm high, from the public path to the level of the patio 1.5m from the house at the north end. It is clear that the drawings intended that the patio would be at ground level as there is no cross section showing to the contrary, no reference to any above ground construction and no reference to the need for any "safety features" that might arise if the patio level gave rise to such an issue. The site plan<sup>9</sup> submitted shows the development on the west and south sides - marked in red - and does not show any raised deck with surrounding walls development on the west (front) side of the house.

The front elevation showed the external stairs including trellis cladding/planting. However as noted above no raised decking or fencing around the stair was shown on the front elevation drawing. The only vertical

<sup>8</sup> See PL 1523 Extract Ground Floor Plan 2015 Drg 3 and PL 1523 Ground Floor Plan 2015 Drg 4 in attachment 15

<sup>9</sup> See PL 1523 Extract Site Location Map (1 page) in attachment 16



elements at ground level illustrated was the external stair and trellis/planting to mitigate its impact. The two side elevations – north and south – and the two sections submitted with the application illustrate the stairs leading to the first-floor sunroom and TV room. There is no indication on either the elevations or the sections that there might be a raised patio or deck area to the front of number 41.

Permission was granted for the development on 11 April 2015. In the reasons and considerations for granting permission the Council stated that, subject to compliance with the conditions on the permission, the proposed development would not be injurious to property in the vicinity. Condition 1 of the permission required that **“the development shall be carried out in accordance with the plans and particulars submitted to Sligo County Council on 23 January 2015”**. The reason given for this condition was **“in order to clarify the documents to which this permission relates”**. Condition 2 dealt with the disposal of surface water from the development. No conditions were included in the permission (as provided for under Section 34(5) of the Planning and Development Act) where *“points of detail relating to the permission may be agreed between the Planning Authority and the person carrying out the development”*

### **Proposed “Minor Amendments” under Planning Register 1523**

Almost four years after planning permission was granted for the proposed development the applicant’s agent made a submission to Sligo County Council on 23 January 2019<sup>10</sup> proposing some seven “minor alterations” that the applicant wished to make to the proposed development. None of the seven alterations refer to an elevated deck structure with surrounding walls. These are illustrated in drawings (elevations, floor plans and section) accompanying that submission. The Council agreed on 7 February 2019<sup>11</sup> that the amendments, including removing the proposed balcony and stairs, revising the roof profile and amending the external appearance including fenestration, were minor in nature and confirmed that no new planning application was required.

The “minor amendments/alterations” drawings include a Ground Floor Plan with a shaded area on the west side<sup>12</sup> with a note of “proposed timber decking”. The alteration marked 3 refers to the removal of external stairs and not to the timber decking. The side elevation<sup>13</sup> has a note stating “fit timber decking”. No above ground construction (balustrade or fence) is shown on the elevation and there is nothing to indicate that the proposed deck was to be raised above ground level nor that it would have surrounding walls. No construction details were included to indicate that it would be other than at ground level. The colouring in the drawings mark the outline of the proposed elements to be constructed in red. The timber decking is not marked in red. There is a detailed section showing the construction details from the existing ground level

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where the proposed extension would be built but there is no similar construction detail indicating timber decking raised above ground level and with perimeter fencing/posts and glass panels.

**Accordingly, when, on behalf of the Company, I made a Planning Enforcement Complaint to the Council on 8 February 2021<sup>14</sup>, the assertion was made that the development was unauthorised. There was not any evidence from the planning file PL 1523 either in the planning permission itself and or in the Council’s letter of 7 February 2019 - that planning consent was given to build a raised patio or a raised deck**

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<sup>10</sup> See G Feehan Letter to Sligo Co. Co. dated 8 January 2019 (6 pages) in attachment 2

<sup>11</sup> See Sligo Co. Co. Letter to G Feehan dated 7 February 2019 (1 Page) in attachment 3

<sup>12</sup> See PL 1523 Extract Ground Floor Plan 2019 (1 page) in attachment 17

<sup>13</sup> See PL 1523 Extract South Elevation 2019 and PL 1523 Front, Back Elevations 2019 (2 pages) in attachment 18

<sup>14</sup> See KH Planning Enforcement Complaint to Sligo Co. Co. dated 8 February 2021 (5 pages) in attachment 4

structure nor any balustrade, glass panels or other above ground constructions to the front (west side), of number 41.

There is no indication on any planning application or planning approval document that the "patio" or "timber decking" was other than at ground level. It was stated in an email to me from the Council, in response to the Planning Enforcement Complaint ref ENF 2731, dated 15 February 2021<sup>15</sup> that "following an inspection it appears that the patio/decking area is not inconsistent with the drawings submitted under PL 15/23. Therefore, we do not consider that any enforcement action is warranted". When I queried this finding in a letter dated 22 February 2021<sup>16</sup> the reply letter dated 8 March 2021<sup>17</sup> stated that "the patio/decking area is not inconsistent with the drawings submitted under PL15/23. The inclusion or addition of a handrail would be considered to be a minor alteration from the planning drawings and would not warrant enforcement action".

However, it was and is still unclear to me what planning drawings were referred to in the Council's letters of 15 February 2021 and 22 February 2021. Were they the drawings submitted in 2015, which went through the normal statutory process, or the interactions between the applicant's agent and the Council regarding "minor alterations" which was engaged on in early 2019.

5. I have told the board several times that the level of the balcony was drawn at lounge level by our architect ...i.e., the same level as the rest of our extension and that no changes were made to this in 2019 apart from the stair case being removed. We can see the level clearly on the drawings. The management board asserted in one of their letters to the Council that these drawings were not available for viewing during the planning stage. This worried me but on checking with the council I was assured that the decking drawings were included for viewing.

There is another patio/decking on the estate that also commences at lounge level in line with the rest of their extension. (see app 3) Because both our houses are built on a slope it gives the impression of a raised decking because the land at the front of the house slopes down, meaning in our case, a 31.5-inch drop from the front edge of the decking which requires a safety rail/balustrade. We would not consider moveable plant pots, as now suggested by the board, to be sufficiently safe as these will blow off in heavy winds and could be a danger to the public. Not having fixed safety in place where there is a drop of 31+ plus inches, I believe, would be in contention with our or the boards insurance policy and also building regulations. It would be too dangerous to have this deck without fixed safety in place, not least of all we are now pensioners and have 3 grandchildren under 6 years of age and one more on the way. We would not have built a dangerous deck without the required safety in place. If we had known safety was an issue on this decking, we would have kept to the original plan to have the balustrade balcony above the sun room on the south of the house.

I want to stress here that I like the 'other' patio/deck and have enjoyed a good relationship with the owners, (one of whom who happens to be management board

<sup>15</sup> See Sligo Co. Co. email to KH dated 15 February 2021 (1 page) in attachment 5

<sup>16</sup> See KH Letter to Sligo Co. Co. dated 22 February 2021 (1 page) in attachment 6

<sup>17</sup> See Sligo Co. Co. Letter to KH dated 8 March 2021 (1 page) in attachment 7

member). I had not raised this as an issue with the Management Board until my solicitor recently raised this as being relevant.

### The Minor Alterations

The “minor alterations” could not be regarded in any way as being minor. They were not immaterial deviations from the permission. As stated above the permission contained just two conditions, one of which was that “the development shall be carried out in accordance with the plans and particulars submitted to Sligo County Council on 23 January 2015” with the reason given for this condition being “in order to clarify the documents to which this permission relates”. The “minor alterations” identified by the applicant’s agent were actually seven in number and the extent of which are illustrated by him on his drawings.

It is understood in planning law and practice that some degree of flexibility and some tolerance can be given as issues may arise in carrying out a development which were not foreseen in the consideration and approval of the development e.g. changes to external finishes where a specified material may not be available when construction commences. In addition, “points of detail” may be agreed between the applicant and the Planning Authority following the grant of a permission where this is specified in the permission by condition. However, the Council’s discretion is limited in this regard on the extent of changes it can agree to.

6. The alterations were fundamentally less than originally approved i.e. No outside staircase on the front deck and no balcony and balustrade above the sun room on the southside.

### Planning Authority Obligations

A Planning Authority is required to faithfully implement what has been decided in the permission. In the case of Tracey v An Bord Pleanala [2010] IEHC 13, MacMenamin J. emphasised that the Planning Authority, in agreeing points of detail, is confined to implementing what has already been decided in the parent

permission. This is not what happened in relation to register reference PL 1523 when the Council agreed to a radically altered set of proposals and where the Council had previously stipulated to the applicant (and informed any other interested parties) in condition 1 that “the development shall be carried out in accordance with the plans and particulars submitted to Sligo County Council on 23 January 2015”. It is contended by the Company that the revised proposals put forward by the developer and agreed by the Council required a separate planning permission. It is also contended that the absence of the requirement for a separate planning permission deprived the management company, the other owners in the estate and any other third parties the opportunity to inspect, review and understand the material alterations that were submitted and approved without being publicly advertised. Notwithstanding this, while the alterations proposed in 2019 and subsequently approved did indicate a timber decking at the west (front) side, there was no indication other than it would be at ground level and not surrounded by timber and glass walls.

7. These questions could have been asked during the planning application stage. Or the management board could have looked at our plans before building commenced. Or told us then of the invisible rule that we were meant to run our approved plans by them.

There were two timber side fences in the original drawing which was drawn at lounge level. We chose the more expensive option of glass safety balustrade, as opposed to



railings because it was transparent and therefore more in-keeping with the overall look of the estate.

There are decks, balconies, glass balustrades either beside us or behind us in one form or another. Our neighbour has a glass balustrade as safety over his lounge doors. (because of a drop caused by sloping ground.) The 3 houses behind us have glass balustrades on their balconies at the front of their houses (albeit that these are on Carrowmoor estate). We were originally approved to have a safety balustrade to our balcony above the sun room to the south side of the house.,

We want to paint the wooden fences and posts a cream or white colour and have sent many photoshop proposals of this to the board as an attempt to comply to blend in more with other extensions on the estate

Separately, the Company has been made aware by the owner of No 39 Carrowhubbock Village, a property adjacent to and at a lower floor level than No 41, that he has concerns that his property and his planning rights may have been infringed by the erection of the raised deck structure development at No 41 and the absence of the opportunity for him to have reviewed and objected to that development. There is nothing to suggest that either the developer, or for that matter the Council, gave consideration to the effect of the amendments to the permitted development for the rights of third parties.

8. We purchased our house with 10ft of land on all 4 sides. We got planning permission to build on 3 of those sides. If there is a boundary issue at no. 39 it seems very strange that this is only being mentioned now. This appears to be another shifting of goal posts and a further attempt to get planning authorisation reversed to allow them forcibly remove our decking/balustrade.

I think the owner at 39 could currently build on up to 3 sides of his house. I don't know of anyone who has been able, or has built of all 4 sides of their house.

Having safety features on our deck does not make any difference to his boundary area.

I quote from the Managements boards letter to us dated 26th August 2021...which stipulates their considered compliance to the covenants.

Quote "The Board response, as explained to Martin Lyons on 23rd August last, is as follows- either

(a) removal of all the superstructure elements and painting of the remaining vertical surfaces (ie. The vertical front of the raised deck and the step risers) a cream colour consistent with the external colour of the house.

(b) removal of all the superstructure elements and the lowering of the deck to ground level.

The Board considers that either of the above suggestions would be compliant with the legal agreements but understand that either or both may not be satisfactory to you for other reasons". Unquote

- We have objected to a) on the grounds of safety and b) on the grounds of huge financial loss to remove the existing structure and completely rebuild ..and also if we dug down to achieve a completely ground level deck there would still be a safety issue of people falling into it from public pathways. If we dropped 7 inches or so to 'ground level' there would still be an unsafe drop which we would not risk without safety rails.
- One member of the Management Board has recently inferred/warned us (in writing) that Management Board will try to take the 10ft of land away from us if we don't comply with removing the safety features and said that the boards attitude towards us has 'acutely hardened'. Such assertions are very upsetting and intimidating. but to date we have ignored such comments and have responded calmly and respectfully. The Board have escalated the matter to potential legal proceedings and I have had to employ a solicitor who has responded with questions to their solicitor's letter over a month ago. Before this I wrote to the board suggesting a meeting to discuss any potential compromises. The board have not responded to my request or to my solicitor's letter and requests for clarity.
- We are honest, law-abiding people and have a right to seek fairness without being faced with (in my view) escalating attempts to intimidate or repeatedly having our integrity questioned. My family and I have been an integral part of the Enniscrone community all our lives and anyone who knows us would vouch for our integrity and good will.

**Determination by the Council that in part the raised deck structure is permitted development and also that in part it is exempted development.**

Time may have elapsed from challenging the Council's letter of consent to the changes to the design and layout of the proposed development. However, the determination by the Council that either the initial permission in 2015 or the changes in 2019 are deemed to include permission for a raised deck structure has only been made in May 2021. The position, as it appeared to all third parties up to June 2020 was as follows. The owners of No 41 had applied and received planning permission. They had completed their development including new footpaths around the new house extension, the removal of the contractor's security fencing and the grading and seeding of the newly formed topsoil at the front of their house. This is very clear from the images taken in September 2019. Insofar as third parties had inspected the planning file and discovered the "minor alterations" it seems that this did not provoke any issue for them. It is the further development of a raised deck structure, a year after the completion of the house extension, that has raised the objections of the management company and other third parties and has led to the scrutiny of the planning file and correspondence with the Council regarding the development.

Also, the passage of time from the date on which the Council consented to the 2019 changes does not make what occurred correct or legal and it now has implications for further development on the site viz. the raised



timber decking and surrounding walls and supports which have been erected to the front of number 41 will, in all likelihood, become a precedent for other owners to seek to follow with similar developments. The Company has already been approached by one Member proposing to erect a similar raised deck structure.

9. We were not the first 'raised' deck on the estate. Things have changed in the last 19 years since the 2002 resolution was made or since 1995 when the covenants were written. Peoples needs have changed especially with COVID and post covid where outdoor gatherings are encouraged as opposed to indoor gatherings. It doesn't make sense to me that we can have an enclosed greenhouse type structure but not an outdoor safe space on our 10 ft of land (which equate to the same structure without high walls and a roof!) Also owners are generally spending far more time in their houses and many are full time residents.

The Council's error in agreeing to a significantly revised proposal from that permitted in the planning permission has now been further compounded by accepting that the raised decking was permitted under PL 1523. It is not clear whether the Council's declaration relates to the proposals made at the time the permission was granted in 2015 (which refer to a patio) or 4 years later when the applicant's significantly altered proposals (including reference to timber decking) were accepted in the Council's letter to the applicant dated 7 February 2019 without recourse to a new planning application. This is especially the case where the Council appears to be depending on unclear and inconsistent drawings and where this part of the development should have been advertised as part of the planning application in 2015 if one is to follow the Council's contentions. Furthermore, the Council's declaration on 7 May 2021 refers to the construction of a 31 sq m patio being authorized but what is constructed is a raised timber deck elevated 0.5m to 0.7m above ground level and not a paved area at ground level. In this declaration the Council refer to a "patio" whereas the Council letter dated 8 March 2021 refers to a "patio/decking area".

10. We sometimes refer to it as a patio, sometimes as a decking...just as we sometimes we refer to our conservatory as a sun room ...

#### Implications of the Council's Declaration

The Council's declaration on 7 May 2021 states that "the construction of a 1.2 m high glass panel wall along the (front) western edge of the permitted patio is development and is exempted development". I sought clarification of the implications of the declaration on 18 May 2021,<sup>18</sup> in particular, because the owner of No 41 wrote to the Company confirming that she had received a letter from the Council informing her that "you do not need planning permission to lower the side fences at your house to 1.2m. You do not need retention permission if you have already done so".

11. I did not say I had received a letter from the council ...After reading extensive planning rules and determining that the side fences should be lowered to 1.2. metres high to be in line with council regulations...and the board publicly stating at the AGM that I would need to put up notices outside my house and in the papers to obtain permission to lower the said fences I emailed Sligo County Council to ask if this was the case and simply got the above quote back from them by email.

<sup>18</sup> See KH Letter to Sligo Co. Co. dated 18 May 2021 (1 page) in attachment 10

The Council's letter dated 20 May 2021<sup>19</sup> confirms that the alteration of the fences on the northern and southern edges (from the existing 1.5m high and 1.25m high respectively) to 1.2m high would "bring it within the limitations of the exempted development". This means that the effect, taken together, of the Council's declaration on 7 May and the email of 20 May is that the walls surrounding the "patio" that are between 1.7 and 1.9m above ground level and constructed at the front of the house are within the limitations of exempted development.

The Planning and Development Regulations 2001 contain restrictions on what are termed exempted developments. It is the Company's contention that the 1.2m high glass panel wall along the (front) western edge of the raised deck structure the raised patio decking and the other features do not constitute exempted development for the purposes of the Planning Act and Regulations as the carrying out of such development would "contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act" and "consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use" (see article 9(1)(a)(i) and article 9(1)(a)(vii) of the Regulations).

**The Council's Declaration is that "the construction of a 1.2 m high glass panel wall along the (front) western edge of the permitted patio is development and is exempted development".**

The Company asserts that a more accurate description of the development is "a construction of a glass panel wall 1.2m above the floor level of a raised deck structure and between 1.7m and 1.9m above ground level". It is the Company's contention that the Council have erred in making their determination regarding exempt development and the Company is submitting that determination to the Board for review.

**The Company asserts that the entire structure should be the subject of a separate planning submission and no part of it should be considered exempted development.**

### **Planning and Development Act and Regulations**

It is the Company's contention that the entire development, the patio decking, the timber panel walls, the glass panel wall, the balustrades, the steps are not exempted development and the decision of the Council relies on an error in approving the revised proposals without a formal assessment of the impact of those changes and especially their potential effects on third parties.

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Furthermore, the development does not comply with the exemptions provided for under the Planning and Development Acts and Regulations – as follows.

#### **General obligation to obtain planning permission**

The Planning and Development Act 2000 at section 32 states that there is a general duty to obtain planning permission for development.

*"(1) Subject to the other provisions of this Act, permission shall be required under this Part—*

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<sup>19</sup> See Sligo Co. Co. Letter to KH dated 20 May 2021 (1 page) in attachment 11

(a) in respect of any development of land, not being exempted development, and

(b) in the case of development which is unauthorised, for the retention of that unauthorised development.

(2) A person shall not carry out any development in respect of which permission is required by subsection (1), except under and in accordance with a permission granted under this Part."

As there is a general duty to obtain planning permission to carry out development there is an onus on the developer to demonstrate that the development is in fact exempted. An exemption is considered a privilege and so a development must come clearly and unambiguously within the terms of the Regulations (see *Dillon v Irish Cement*, Supreme Court, 26 November 1984). The development carried out at number 41 does not meet this test.

12., if this is an issue why was not raised by the board at the planning application stage. Surely this is the main purpose of the 5 week allocated time slot for objections to be made. House owners, as a result of this dispute, are now clear on this previously invisible ruling, to talk to the board re their plans. But does this exempt the board from examining the plans during this 5 weeks...I am still not clear on this.

#### Development

Section 3(1) of the Planning Act 2000 states that "in this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land".

Works are defined in section 2 of the Act as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure".

The erection of the raised timber deck structure to the front of number 41 Carrowhubbock clearly constitutes development as it involves "works" within the meaning of section 3(1) of the Act.

#### Exempted development.

Section 4(1) of the Act states that a number of forms of development shall be exempted developments for the purposes of the Act. Two of these which are relevant to this case are included at section 4(1)(h) and 4(1)(j).

Section 4(1)(h) states that "development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;" shall be exempted development.

The timber decking and associated development – walls, support piers etc. - at number 41 involve alterations which do materially affect the external appearance of the structure. These works affect not only the appearance of the house itself but also render the appearance of the structure inconsistent with the character of the structure and of neighbouring structures. There are no similar elevated, walled in timber



decks on the front elevations of any of the houses in the Carrowhubbock Village development. There are 5 houses that have constructed patios in recent years and, in keeping with the open layout design of the estate and the member covenants, none of these have walls or fences erected.

13. The steep slope in front of our house necessitates a safety balustrade on our deck. We would not have contemplated building a platform without this safety in place. The board could clearly see the 31.5" drop to the ground when the wooden foundations were laid in June but even then, they didn't check the planning permission or raise any issue with us before we spent considerable further money on the composite decking and glass balustrades not to mention labour costs.

We did not set the precedent on having a raised front edge decking/patio due to sloping ground at the front of our house. Nor were we the first on the estate to use a glass balustrade for safety.

Section 4(1)(j) of the Act states that "development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such" shall also be exempted for the purposes of the Act. Thus, the general use of one's garden, patio etc. do not come within the scope of planning legislation. However, it should be noted that this exemption is confined to "use" not "works". In the current case it is the works that are being/have been carried out prior to any use of the structure is the first issue to be addressed. The development works required permission and any use following these works would not enjoy the benefits of any exemption under Section 4(1)(j).

#### Planning and Development Regulations

The Planning and Development Act at section 4(2)(a) provides that "the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) *by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development..." (My underline).*

These regulations – the Planning and Development Regulations 2001 (as amended) – contain detailed provisions in Schedule 2, Part 1 regarding exempted development. Classes 1 to 8 in Part 1 deal with developments within the curtilage of a house. Article 6(1) of the Regulations state that - "Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1." Thus, the benefit of exemptions (and as mentioned earlier in this submission) is dependent on the restrictions on exemption set out in article 9 viz. if the carrying out of such development would contravene a condition attached to a permission under the Act or would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. As can be seen above the elevated front decking at number 41 does not comply with these restrictions and therefore does not enjoy the benefits of the exempted development provisions.

Again, in this case the most relevant classes are Classes 3 and 5 which are set out below – the different classes of development and the conditions and limitations on each class. I have also added the Company’s observations on the different classes where it applies to the subject case.

It should also be noted that the issue of ground levels is also of relevance as the decking has been erected above ground level as have the walls surrounding the decking together with their piers/pillars. Article 5(2) of the Planning and Development Regulations 2001 (as amended) state that:

In Schedule 2, “unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it”.

Extract from the Planning and Development Regulations 2001 (as amended), Schedule 2, Part 1

<b>Column 1 Description of Development</b>	<b>Column 2 Conditions and Limitations</b>	<b>Observations of Management Company</b>
<i>Development within the curtilage of a house</i>		
<b>CLASS 3</b>		
<i>The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</i>	<i>No such structure shall be constructed, erected or placed forward of the front wall of a house. (Remainder of conditions don't apply)</i>	While this class appears to refer to covered structures it is noted that “no such structure shall be constructed, erected or placed forward of the front wall of a house”. The raised patio deck structure is constructed at the front of the house, Accordingly, as it not clearly and unambiguously within the Conditions and Regulations it does not enjoy the benefit of exemption.
<b>CLASS 5</b>		



<p><i>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i></p>	<ol style="list-style-type: none"> <li>1. <i>The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</i></li> <li>2. <i>Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</i></li> <li>3. <i>No such structure shall be a metal palisade or other security fence.</i></li> </ol>	<p>As has already been pointed out in this submission, the walls and piers/pillars in front of the house, considered as being exempt development by the Council are between 1.7m and 1.9m above ground level. As these exceed 1.2 metres in height above ground level it follows that the raised deck structure is de-exempted.</p>
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## Conclusion

I and the other Directors of Carrowhubbock Management Company CLG act in a voluntary capacity in managing the affairs of the owner's management company in the interests of the 41 members/owners.

I confirm that I was asked by the Company to request a review by the Board of the Declaration ref ED 421 that the Council made dated 7 May 2021 regarding "a raised timber deck and surrounding boundary fences and supporting pillars constructed at the front(west) side at 41 Carrowhubbock Village, Enniscrone, Co Sligo".

The Declaration Order stated that the development in question was not "exempted development". However, the reasons explaining the order confirm that the Council consider part of the development to be permitted under PL 1523 and part of it to be exempted and a further part again to be not exempted. The Council thereafter clarified that if the 'not exempted' elements were adjusted in height the entire development would be considered either authorised or exempted development.

In requesting An Bord Pleanala to review the Declaration ED421 the Company contends that the entire development, the patio decking, the timber panel walls, the glass panel wall, the balustrades, the steps are not exempted development and the decision of the Council relies on an error in approving the revised proposals without a formal assessment of the impact of those changes and especially their potential effects on third parties.

14. If we had proceeded to build the original extension approved in 2015 which included the said decking at lounge level plus a stair case from this leading up to a balcony over the conservatory on the south plus 2 side wooden fences...would the board be asking us to remove the decking and the balcony over the conservatory. Is it acceptable for them to witness an owner spending 10s of thousands of Euros on a council approved extension only to ask them to remove it on completion? Surely if they felt we were in the wrong for

not discussing our approved plans with them they could simply just have told us this. Since this dispute they are making this rule very clear to all other house owners but they did not communicate this to us when needed beforehand.

Confirming also that the Company is sending a copy of this submission to Catherine Heffernan, an owner of the property at 41 Carrowhubbock Village, as it has previously done with each submission that was made to the Council.

15. I am not sending a copy of this to the management board for fear of them even further 'acutely hardening' their attitude towards us. However, If there is a mandatory obligation to copy them in on this I will do so. The things I have asserted here are not hearsay ...they are in the written communication that we have received. I have many more written examples of the boards inappropriate ( in my view) written communication.

I would like to add that before this we have never had any issues with any of the Management board or any house owners/residents on the estate. We have never been taken to court or threatened with court proceedings before this.

**Kyran Hurley**

**Chairman**

**Carrowhubbock Management Company CLG**

## APP 2

### **Collated Points raised by Catherine Heffernan as inserted by number into the appropriate places on the Management Boards Request for a Review (ref ED 421) (register reference 1523)**

1. We have changed the north side fence to 1.2 m (i.e., same height as the glass balustrade) two weeks ago. The southside fence will be changed from 1.25 m to 1.2 m next week to be in line with the council's regulations. (See APP 3 )
2. The first fix was completed at the end of July/beginning of August 2019 and the second fix and internal work was not completed until September/October 2019. Saying it was completed in May is way off the mark.
3. The builder was too busy to complete the decking area in the autumn as was desired and asked if we would wait until the weather was conducive in spring 2021. We did not intend for there to be a gap in completing our extension it was a question of our builder's availability, winter weather, then covid delays.
4. We purchased our house in around 2007. The resolution made in 2002 is not in the covenants or any set of additional rules that we have been privy to. I have asked the board to provide me with the complete rules/resolutions. I have asked 3 local solicitors (all who have done conveyancing work in Carrowhubcock Village, including my own and later my children's different solicitor) if they have copies of these. All I have managed to acquire from August to date is a copy of the original 1995 Covenants. I was only told by one Management Board member 2 weeks ago about this resolution that was written in 2002. And that was when I again asked for all the minutes of past AGMS and any resolutions written before I purchased to check to see what I may have missed regarding decking and safety railings. I have still not received the minutes of past AGMS or subsequent resolutions to the covenants from the Management Board

Despite clause 3 in schedule 4 of the covenants stating:

**3. Not to alter in any way the appearance of the Holiday Home or any part thereof but to maintain the same in keeping and in harmony with the appearance of the Block of Holiday Homes as a whole.**

- The large majority of houses have added extensions including patios/decks, glass greenhouse type conservatories, wooden fencing surrounds etc.



- The Holiday Homes are no longer just holiday homes but permanent residences for some people and semi-permanent for others.
- We live within a few yards of most management board members ...no one complained during the planning permission stage ...or until the last day of work on our entire extension in late August 2020...by which time we had spent well over €100,000 on our extension which includes approx. €10,000 on our patio/decking. Board members and residents chatted to us in a friendly manner, seemingly admiring the works and gave us no hint that anything was amiss during the build of the extension including the decking area. I informed the secretary of the board that building works would commence 2 - 3 months prior to commencement. She would sometimes text me to let me know whether the builders had turned up or not, we also sometimes sought her friendly guidance on our extension plans at different stages since 2014. (She is a retired architect – and a previous employee of a council planning department)
- Since this dispute we have been told, we were obliged to seek the board's approval of our council approved plans but we didn't know this and no-one ever informed us of this. We have been told that the onus was on us to know this and not on the management board, or any individual members of the management board to tell us this. I have had no realistic answer to the question "how else were we meant to know this'?"
- We (reasonably, I think) assumed that any issues or objections would be raised during the planning application stage. ...I cannot understand if there were issues why these were not raised before we built and spent our €100,000 plus retirement savings on this. The whole experience has been increasingly intimidating, and has caused my family and I huge anxiety at a time when we thought we would be enjoying our property in our retirement years. We had no intention of doing anything wrong...We used a quality builder, quality materials, built within our boundaries, got planning permission, followed building safety guidelines etc It seems the Board are blaming everyone else and not taking any accountability for their own lack of timely due diligence and duty of care to owners.

5. I have told the board several times that the level of the balcony was drawn at lounge level by our architect ...i.e., the same level as the rest of our extension and that no changes were made to this in 2019 apart from the stair case being removed. We can see the level clearly on the drawings. The management board asserted in one of their letters to the Council that these drawings were not available for viewing during the planning stage. This worried me but on checking with the council I was assured that the decking drawings were included for viewing.

There is another patio/decking on the estate that also commences at lounge level in line with the rest of their extension. (see app 3) Because both our houses are built on a slope it gives the impression of a raised decking because the land at the front of the house slopes down, meaning in our case, a 31.5-inch drop from the front edge of the decking which requires a safety rail/balustrade. We would not consider moveable plant pots, as now suggested by the board, to be sufficiently safe as these will blow off in heavy winds and could be a danger to the public. Not having fixed safety in place where there is a drop of 31+ plus inches, I believe, would be in contention with our or the boards insurance policy and also building regulations. It would be too dangerous to have this deck without fixed safety in place, not least of all we are now pensioners and have 3 grandchildren under 6 years of age and one more on the way. We would not have built a dangerous deck without the required safety in place. If we had known safety was an issue on this decking, we would have kept to the original plan to have the balustrade balcony above the sun room on the south of the house.

I want to stress here that I like the 'other' patio/deck and have enjoyed a good relationship with the owners, (one of whom who happens to be management board member). I had not raised this as an issue with the Management Board until my solicitor recently raised this as being relevant.

6. The alterations were fundamentally less than originally approved i.e. No outside staircase on the front deck and no balcony and balustrade above the sun room on the southside.
7. These questions could have been asked during the planning application stage. Or the management board could have looked at our plans before building commenced. Or told us then of the invisible rule that we were meant to run our approved plans by them.

There were two timber side fences in the original drawing which was drawn at lounge level. We chose the more expensive option of glass safety balustrade, as opposed to railings because it was transparent and therefore more in-keeping with the overall look of the estate.

There are decks, balconies, glass balustrades either beside us or behind us in one form or another. Our neighbour has a glass balustrade as safety over his lounge doors. (because of a drop caused by sloping ground.) The 3 houses behind us have glass balustrades on their balconies at the front of their houses (albeit that these are on Carrowmoor estate). We were originally approved to have a safety balustrade to our balcony above the sun room to the south side of the house but we decided not to have this in addition to what we thought was going to be a safe decking area in front of our house.



We want to paint the wooden fences and posts a cream or white colour and have sent many photoshop proposals of this to the board as an attempt to comply to blend in more with other extensions on the estate

8. We purchased our house with 10ft of land on all 4 sides. We got planning permission to build on 3 of those sides. If there is a boundary issue at no. 39 it seems very strange that this is only being mentioned now. This appears to be another shifting of goal posts and a further attempt to get planning authorisation reversed to allow them forcibly remove our decking/balustrade.

I think the owner at 39 could currently build on up to 3 sides of his house. I don't know of anyone who has been able, or has built of all 4 sides of their house.

Having safety features on our deck does not make any difference to his boundary area.

I quote from the Managements boards letter to us dated 26th August 2021...which stipulates their considered compliance to the covenants.

Quote "The Board response, as explained to Martin Lyons on 23rd August last, is as follows- either

- (a) removal of all the superstructure elements and painting of the remaining vertical surfaces (ie. The vertical front of the raised deck and the step risers) a cream colour consistent with the external colour of the house.
- (b) removal of all the superstructure elements and the lowering of the deck to ground level.

The Board considers that either of the above suggestions would be compliant with the legal agreements but understand that either or both may not be satisfactory to you for other reasons". Unquote

- We have objected to a) on the grounds of safety and b) on the grounds of huge financial loss to remove the existing structure and completely rebuild ..and also if we dug down to achieve a completely ground level deck, with no drop, there would still be a safety issue of people falling into it from public pathways. If we dropped 7 inches or so to 'ground level' there would still be an unsafe drop which we would not risk without safety rails.
- One member of the Management Board has recently inferred/warned us (in writing) that the Management Board will try to take the 10ft of land away from us if we don't comply with removing the safety features and said that the boards attitude towards us has 'acutely hardened'. Such

assertions are very upsetting and intimidating. but to date we have ignored such comments and have responded calmly and respectfully. The Board have escalated the matter to potential legal proceedings and I have had to employ a solicitor who has responded with questions to their solicitor's letter over a month ago. Before this I wrote to the board suggesting a meeting to discuss any potential compromises. The board have not responded to my request or to my solicitor's letter and requests for clarity.

- We are honest, law-abiding people and have a right to seek fairness without being faced with (in my view) escalating attempts to intimidate or repeatedly having our integrity questioned. My family and I have been an integral part of the Enniscrone community all our lives and anyone who knows us would vouch for our integrity and good will.

9. We were not the first 'raised' deck on the estate. Things have changed in the last 19 years since the 2002 resolution was made or since 1995 when the covenants were written. Peoples needs have changed especially with COVID and post covid where outdoor gatherings are encouraged as opposed to indoor gatherings. It doesn't make sense to me that we can have an enclosed greenhouse type structure but not an outdoor safe space on our 10 ft of land. (which equate to the same structure without high walls and a roof!) Also owners are generally spending far more time in their houses and many are full time residents.
10. We sometimes refer to it as a patio, sometimes as a decking...just as we sometimes we refer to our conservatory as a sun room
11. I did not say I had received a letter from the council. After reading extensive planning rules and determining that the side fences should be lowered to 1.2 metres high to be in line with council regulations...and the management board publicly stating at the AGM that I would need to put up notices outside my house and in the papers to obtain permission to lower the said fences I emailed Sligo County Council to ask if this was the case and simply got the above quote back from them by email.
12. , if this is an issue why was not raised by the board at the planning application stage. Surely this is the main purpose of the 5 week allocated time slot for objections to be made. House owners, as a result of this dispute, are now clear on this previously invisible ruling, to talk to the board re their plans. But does this exempt the board from examining the plans during this 5 weeks...I am still not clear on this.
13. The steep slope in front of our house necessitates a safety balustrade on our deck. We would not have contemplated building a platform without this safety in place. The board could clearly see the 31.5" drop to the ground when the wooden

foundations were laid in June but even then, they didn't check the planning permission or raise any issue with us before we spent considerable further money on the composite decking and glass balustrades not to mention labour costs.

We did not set the precedent on having a raised front edge decking/patio due to sloping ground at the front of our house. Nor were we the first on the estate to use a glass balustrade for safety.

14. If we had proceeded to build the original extension approved in 2015 which included the said decking at lounge level plus a stair case from this leading up to a balcony over the conservatory on the south plus 2 side wooden fences...would the board be asking us to remove the decking and the balcony over the conservatory. Is it acceptable for them to witness an owner spending 10s of thousands of Euros on a council approved extension only to ask them to remove it on completion? Surely if they felt we were in the wrong for not discussing our approved plans with them they could simply just have told us this. Since this dispute they are making this rule very clear to all other house owners but they did not communicate this to us when needed beforehand.

15. I am not sending a copy of this to the management board for fear of them even further 'acutely hardening' their attitude towards us. However, if there is a mandatory obligation to copy them in on this I will do so. The things I have asserted here are not hearsay ...they are in the written communication that we have received. I have many more written examples of the boards inappropriate (in my view) written communication.

I would like to add that before this we have never had any issues with any of the Management board or any house owners/residents on the estate. We have never been taken to court or threatened with court proceedings before this.



**APP. 3.**



Back to neighbours house with side deck and glass balustrade across his front French doors. Behind you can just see one of the 3 houses that run behind my house with balconies and glass balustrades,

No 41 back right my house.

PTO





No 41 my house and to the right No 39 House. Who the board are now suddenly alleging may have there building rights disturbed by the balustrade.





Some of the photoshop pics sent to the board last year of proposed changes







Next door deck .....28" drop



Front Door window at same height with glass safety balustrade in place

Messrs. Callan Tansey,  
Solicitors,  
Crescent House,  
Boyle,  
Co. Roscommon.  
**Dx NO. 65 004 BOYLE**

Your Ref: CAR353/1  
Our Ref: M/MC/HEFCA.  
19<sup>th</sup> May 2021

RE: Your Client: Carrowhubcock Management Company CLG  
41 Carrowhubcock Village  
Our Clients: Catherine Hefferman & Others

Dear Sirs,

Your letter of the 14<sup>th</sup> April last addressed to our clients has been passed to us with instructions to respond to same.

From the outset our clients wish to make it clear that they have no desire that this matter should deteriorate into litigation and wish to resolve same as expeditiously and amicable as possible. However, in order to enable us to properly guide our clients we require you, from the outset, to advise as to how your client believes they have in any way breached the covenants and conditions contained in the fourth schedule of the originating Deed of Transfer pursuant to which the original purchaser of the house became the registered owner thereof.

It is our belief, having carefully considering the covenants contained in the fourth schedule aforesaid, that there is nothing therein that in any way inhibited our clients from applying for planning permission for the construction of the deck and the installation thereof on foot of the said permission. When our clients applied for planning permission they had to publicly advertise same on the property as well as in a local newspaper and at no time did your client object to the application of which it must have been aware as some of the members of the Board that manages your client have houses within the development.

In addition as result of Covid-19 it took our clients a considerable period of time to construct the deck and at no time during the construction process did anybody approach them to make a complaint. It is therefore clear that your client allowed our clients to expend money procuring planning permission in addition to constructing the deck and indulged our clients, if that is the correct terminology, in the whole process and yet now think that they can force them to alter the deck to suit their own subjective opinions as to how it should have been constructed in the first place.

Clearly, your clients are guilty of laches not to mention estopped from legitimately pursuing legal action in relation to this matter at this remove. However, as stated from the outset our Clients are anxious to resolve the matter bearing in mind that this suggestion is strictly without prejudice to their legal entitlement to defend any legal action your clients may care to pursue. If your client has reasonable suggestions as to how the matter can be resolved

then please provide details of them to us in a manner that is clearly understandable and on foot thereof we will take instructions from our clients and revert to you in due course.

Finally, in case you have not been enlightened there is another house within the development that erected a deck some time ago and no legal action whatsoever was taken against the owners of that house, as far as our clients are aware, nor did your client make any compliant relative thereto.

Yours faithfully,

MICHAEL G. BOHAN & CO.



When please provide details of them to us in a manner that is clearly understandable and on foot thereof we will take instructions from our clients and revert to you in due course.

Finally, in case you have not been enlightened there is another house within the development that erected a deck some time ago and no legal action whatsoever was taken against the owners of that house, as far as our clients are aware, nor did your client make any compliant relative thereto.

Yours faithfully,

MICHAEL G. BOHAN & CO.

