

The Secretary  
An Bord Pleanála  
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AN BORD PLEANÁLA	
LDG- APP.	056329-22
07 JUN 2022 o.k.	
Fee: €	220 Type: Cheque
Time:	By: Reg post

**-: SECTION 5 REFERRAL :-**

3<sup>rd</sup> June 2022  
[By Registered Post]

Dear Sir/Madam,

**RE: SECTION 5(3)(A) - REFERRAL OF A DECLARATION BY A PLANNING AUTHORITY IN RELATION TO A QUESTION AS TO WHAT IS OR IS NOT DEVELOPMENT OR EXEMPTED DEVELOPMENT**

In respect of a

**SECTION 5 DECLARATION IN RELATION TO MAINTENANCE AND IMPROVEMENT WORKS AT CHALET 3, BARRY MORE TOWNLAND, ATHLONE, CO. ROSCOMMON**

**Roscommon County Council Register Reference: DED 515**

**1. Introduction and Background.**

- 1.1. **The Planning Partnership**, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath N91 FAA6 instructed by Edvinaš Cinga and Giedre Cinge (the "Applicants"), 91 Esker Park, Lucan, Co. Dublin, hereby refer (This "Referral") a recent declaration by Roscommon County Council for review by the Board under Section 5 (3)(a) of the *Planning & Development Act 2000-2021 (as amended)* (the "PDA").
- 1.2. The original application under Section 5(1) is at **Appendix A (the "Application")**. Roscommon County Council (the "Planning Authority") issued the *Notification of Decision* dated, 10<sup>th</sup> May 2022 (the "**Decision**"). This is enclosed at **Appendix B**. The Planning Report (the "Planning Report") informing the Decision is at **Appendix C**. The Enforcement Notice issued by the Council pursuant to Section 154 of the PDA is attached at **Appendix D**. The applicable Appropriate Assessment Screening Report (the "AA Report") is attached at **Appendix E**. An ecologist has been engaged by the Applicants in response to the findings of the AA Report. The said ecologist's report (the "Ecology Report") is attached at **Appendix F**.
- 1.3. The requisite fee payable to An Bord Pleanála of €220.00 is enclosed.



- 1.4. We respectfully repeat our submission, as set out in the Application, that the subject works, if considered *development*, are *exempted development* under the PDA and the PDR (where applicable). This Referral should be read in conjunction with the Application. The Referral only addresses matters set out in the Decision, the Planning Report and the AA Report that require comment. These matters are addressed in the following order:
- Preliminary Point in relation to Section 4(1)h of the PDA;
  - The Improvement/Refurbishment of the Chalet (4.a of the Planning Report);
  - Maintenance and Renewal of the Existing Level Access for Parking and Servicing of the Chalet (4.b of the Planning Report);
  - The Clearing of Scrub (was deemed not to be “works” or “development” and therefore not addressed further in this Referral)(4.c of the Planning Report);
  - New Boundary Treatment (4.d of the Planning Report);
  - The Reconnection and Maintenance of Water Supply, Waste Water Connections and Electrical Services (4.e of the Planning Report);
  - The Appropriate Assessment Screening Report;
  - Position in Relation to the Final Assessment and Recommendation of the Planning Report; and
  - Conclusion.

- 1.5. Unless otherwise stated herein, defined terms in the Application have the same meaning in this Referral.

## 2. Preliminary Point in Relation to Section 4(1)h of the PDA.

- 2.1. The reference on page 2 of the Planning Report to 4(1)(h) of the “Planning and Development Regulations, 2001 (as amended)” causes confusion. We assume this should read ‘Planning and Development Act’ as opposed to ‘Planning and Development Regulations’.
- 2.2. This is a (potentially) significant error as it is followed by the heading ‘Article 9 (1) Applies’. Article 9(1) of the PDR does not apply to section 4(1)(h) of the PDA. Article 9(1) applies to Article 6 of the PDR. The Applicants only rely on the Article 6 exemptions under the PDR in relation to the boundary works<sup>1</sup>. This reliance is solely restricted to Classes 9 & 11 (referring to gate and boundary treatments).
- 2.3. As set out in the Application, the restrictions on exempted developments under the PDA are those referred to at 4(4) of the Act. Section 4(4) only applies to (a), (i), (ia) and (l) of subsection 1 and regulations under subsection 2. Therefore, if any part of the development is deemed to be exempt under 4(1)(h) of the PDA, section 4(4) of the PDA does not apply.
- 2.4. While we appreciate the reference to the Planning and Developments ‘Regulations’ as opposed to the Planning and Development ‘Act’ is a typographical error, it is important that this matter is addressed at the outset so that it is made clear that the Article 9(1) restrictions can only be relevant to the Application in respect of the Article 6 exemptions the Applicants seek to rely on i.e. Article 9(1) is only relevant under the heading “The formation of a new boundary treatment not exceeding 1.2m in height and a new gate not exceeding 2m”.

<sup>1</sup> See paragraph 4.8 of the Application.



### 3. The Improvement/Refurbishment of the Chalet (4.a of the Planning Report)

- 3.1. The Planning Authority are of the view that it can say with "*confidence that no one occupied the chalet for a considerable period of time*". The Planning Report goes on to say that the chalet that currently exists on site is of a habitable standard with new windows, doors and new external walls. The former assertion is not accepted, the latter assertion is.
- 3.2. However, it is respectfully submitted that, whether or not, as the planning Authority suggests, the structure retains any of the "*original fabric*" is not relevant. The fact that the works are considered "*maintenance*" as opposed to "*replacement*" works is not relevant<sup>2</sup>. Unless the Planning Authority contend (which it does not) that the Planning Permission associated with the site has been abandoned, whether or not anyone has occupied the chalet for a considerable period of time is not relevant and the fact that the works were carried out off site is not relevant<sup>3</sup>.
- 3.3. The important question is (as set out in 4(1)(h) of the PDA) if the works:
- ...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 neighboring structures...*
- 3.4. Our submission is that the subject works (insofar as they are determined to be 'works' under the PDA) are captured by Section 4(1)(h) of the PDA as they are works which do not materially affect the external appearance of the structure. Please refer to section 6.1 of the Application.

### 4. Maintenance & Renewal of Existing Level Access for Parking and Servicing of the Chalet (4.b of the Planning Report).

- 4.1. The works carried out at the site did not raise the level of any part of the site. The undergrowth was cleared by the scraping back of and removal of the top layer of vegetation and then a new top layer of stone material was added. Please refer to 6.2 of the Application for details.
- 4.2. The Decision or Planning Report does not say that the site level has been raised. The basis for the finding that these works cannot benefit from an Article 6 (of the PDR) exemption is that Article 9 (1) of the PDR applies. In summary, the Planning Authority's view is that the subject works constitute development and the development would require an appropriate assessment because it would be likely to have a significant impact on the integrity of European site(s).
- 4.3. The Planning Report refers to a "hard core"<sup>4</sup> surface and part (b) of Class 6 of Part 1 of Schedule 2 refers to a "hard surface". The AA Report refers to the "*absence of details in relation to the treatment of...surface water collection and disposal...*". The surface referred to is not a hard surface. It is a permeable surface and requires the clearance of vegetation that has grown through the surface over

<sup>2</sup> Incidentally, the Decision seems to focus on the word "*maintenance*" in support of the conclusion and ignores the words "*alteration*".

<sup>3</sup> In actual fact the chalet refurbishment was undertaken off site so as not to endanger the surrounding Lough Ree area, which is acknowledged as an SAC (site code 000440) and SPA (site code 004064) site.

<sup>4</sup> Page 5 of the Decision



time. Insofar as Class 6 of Part 1 of Schedule 2 applies<sup>5</sup>, we submit that only "landscaping works" have been carried out such that the said works would benefit from the cited class exemption.

- 4.4. As regards the likelihood of the works under this heading having a significant impact on the subject European site(s), please refer to the Ecology Report at Appendix F.

**5. New Boundary Treatment (4.d of the Planning Report).**

- 5.1. The Planning Report states that the PDA makes no distinction between a house used on an intermittent basis for holidays or as a permanent home. On this basis the Planning Authority are of the view that regardless of whether the development is classed under 5, 9 or 11, the same conditions on limitations apply with the effect that the boundary cannot exceed 1.2 metres.

- 5.2. The Applicant repeats the submission that the development can benefit from the Class 9 and 11 exemptions in part 1 of Schedule 2 of the PDR in circumstances where the structure is a holiday chalet and not a "house" and therefore the subject development is situated "*other than within or bounding the curtilage of a house*". However, in the event that the Board does not accept this position, insofar as the development under this heading exceeds 1.2 metres in any part, this can be reduced to 1.2 metres.

**6. The Reconnection and Maintenance of Water Supply, Waste Water Connections and Electrical Services (4.e of the Planning Report).**

- 6.1. The Planning Report states that the Applicant has given no information in relation to the reconnection to the services and that this is particularly relevant with respect to the treatment and disposal of waste water on the site as in the absence of this information significant impacts on the European Sites cannot be ruled out.

- 6.2. In terms of the claim that the Applicant has given no information in relation to the reconnection to the services, it is respectfully submitted that this is simply not the case. The Applicant has made it clear that all available services associated with power, water supply and wastewater collection are *in situ* and as such have remained continuously in place since the first use of the structure from its original date of first use and occupation as a holiday chalet in 1965.

- 6.3. Please refer to the details under 6.5 of the Application. No works at all have been carried out as no works were necessary. Therefore, no more information can be provided. We respectfully submit that, on the basis that no works under this heading have been carried out, no significant impacts on the applicable European Sites can arise.

**7. The Appropriate Assessment Screening Report.**

- 7.1. In terms of likely direct, indirect or cumulative effects, the AA Report concludes (in relation to the various applicable SACs and SPAs) as follows:

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<sup>5</sup> It should be noted that it is the Planning Authority and not the Applicants introduced Article 6 in respect of the works under this heading. Class 6 of Part 1 of Schedule 2 applies to "landscaping works" associated with 'a house'. The subject structure is a holiday chalet which does not fall within the definition of a 'house' in the PDA and/or PDR.





*It is considered there could be potentially direct and indirect impacts as a result of the development's location within the designated areas. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type of material imported to the site, significant impacts cannot be ruled out and therefore a Stage 2 AA is required.*

- 7.2. Insofar as the treatment and disposal of waste water is concerned, no 'works' have been carried out and all available services associated with power, water supply and wastewater have remained continuously in place since the first use of the chalet. We have assumed that the surface water collection and disposal concern is linked to what is described as the "hard core" and/or "hardstanding" surface. As stated above, the subject surface is permeable. In terms of material imported to the site, please refer to paragraph 6 of the Application ("The Nature of the Works in Question") for details in relation to what has been imported onto the site.
- 7.3. As regards the question of the entirety of the works that have been carried out on the subject site requiring Appropriate Assessment more generally, please refer to the Ecology Report at Appendix F.

## 8. Position in Relation to the Final Assessment and Recommendation of the Planning Report

- a) As per 4(1)(h) of the PDA, the relevant question that arises in terms of the chalet is did the works affect only the interior of the structure and/or 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?

The Planning Report maintains that the works carried out under this heading are to such "a scale and magnitude" that the chalet bears no resemblance to the existing structure. It goes on to state that it is this "material deviation in character" along with the fact that the refurbishment was carried out off site that precludes the Applicants from relying on section 4(1)(h) of the PDA.

In response, it is submitted that is demonstrably not the case that the chalet bears no resemblance to the structure that existed and that present structure reflects a material deviation in character. In this regard, the reader is urged to pay particular attention to section 6.1 of the Application. Further, 4(1)(h) of the PDA does not provide that the works need to be carried out on site and the fact the subject works were not in this case should not preclude the Applicant from relying on this section.

- b) As regards what is referred to by the Authority as the "hardstanding area" and "hard core" area, please refer to paragraphs 4.1 to 4.4 above. We would also urge the reader to consider the Ecology Report in this regard.
- c) Deemed not to be "works" or "development" and therefore not addressed further in this Referral.
- d) The Applicant repeats the submission that the development can benefit from the Class 9 and 11 exemptions in part 1 of Schedule 2 of the PDR. Alternatively, in the event that the Board does not accept this submission, the development under this heading can be reduced to 1.2 metres in accordance with the Decision.
- e) The Planning Report states under this heading that on the basis of the available information significant impacts on the Lough Ree SAC and SPA cannot be ruled. In fact, we submit that the opposite is the case, on the basis that no works under this heading have been carried out, all



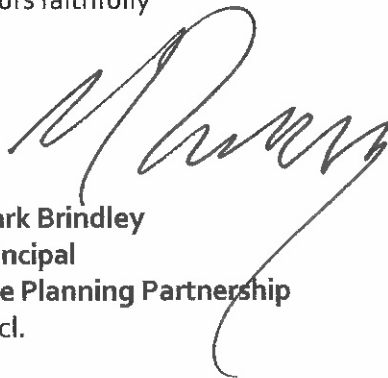
the available information has been provided and no significant impacts can arise. We urge the reader to consider the findings of the Ecology Report in this regard.

## 9. Conclusion

For the reasons set out herein and in the Application – save for the fact that we accept the Decision in relation to the clearing of scrub, undergrowth and overgrowth of self-seeded and other vegetation and replanting of grassland, native trees and general landscaping – pursuant to section 5(3) of the PDA, we refer the Decision in relation to the questions posed in Section 6.6 of the Application to the Board for review.

Should further information be required we are in a position to assist. We look forward to hearing from you.

Yours faithfully



**Mark Brindley**  
**Principal**  
**The Planning Partnership**  
Encl.



APPENDIX A

Section 5 Declaration - Submitted to Roscommon Co. Co. 13<sup>th</sup> April 2022



## Roscommon County Council

Application for a Declaration under Section 5 of the Planning & Development Act 2000,  
regarding Exempted Development

Has an application been made previously for this site	Planning Register Reference: 158
If yes give ref. number (include full details of existing extension, if any)	Permission granted 31st December 1964 for 6 no. Holiday Chalets for Shannonside Holiday Homes
Existing use of land or structure	Holiday Chalet
Proposed use of land or structure	Holiday Chalet
Distance of proposed building line from edge of roadway	as existing
Does the proposed development involve the provision of a piped water supply	as existing
Does the proposed development involve the provision of sanitary facilities	as existing

Signature:

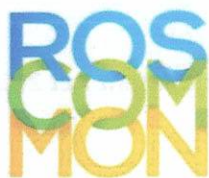


Date:

12th April 2022

**Note:** This application **must** be accompanied by:-

- (a) €80 fee
- (b) Site Location map to a scale of 1:2500 clearly identifying the location
- (c) Site Layout plan to the scale of 1:500 indicating exact location of proposed development
- (d) Details specification of development proposed



Comhairle Contae  
Ros Comáin  
Roscommon  
County Council

Áras an Chontae,  
Roscommon,  
Co. Roscommon  
Phone: (090) 66 37100  
Email: [planning@roscommoncoco.ie](mailto:planning@roscommoncoco.ie)

## Roscommon County Council

Application for a Declaration under Section 5 of the Planning & Development Act 2000,  
regarding Exempted Development

Name:	Edvinas Cinga & Giedre Cinge
Address:	91 Esker Park, Lucan, Co. Dublin
Name & Address of Agent:	The Planning Partnership The Bank Building 52 Oliver Plunkett Street Mullingar Co. Westmeath
Nature of Proposed Works	Maintenance and improvement of existing holiday chalet Section 4 (1.) (h.) of the Planning & Development Act 2000 (as amended)
Location (Townland & O.S No.)	Chalet 3, Barry More Td., Hodson Bay, Athlone
Floor Area	see attached drawings
Height above ground level	see attached drawings
Total area of private open space remaining after completion of this development	holiday chalet use n/a
Roofing Material (Slates, Tiles, other) (Specify)	Timber
Proposed external walling (plaster, stonework, brick or other finish, giving colour)	Timber
Is proposed works located at front/rear/side of existing house.	holiday chalet - n/a





Principal Officer  
Planning Department  
Áras an Chontae  
Roscommon County Council  
Co. Roscommon  
F42 VR98

## -: SECTION 5 DECLARATION :-

12<sup>th</sup> April 2022  
[By Registered Post]

Dear Sir/Madam,

RE: SECTION 5 DECLARATION IN RELATION TO MAINTENANCE AND IMPROVEMENT WORKS AT CHALET 3, BARRY MORE TOWNLAND, ATHLONE, CO. ROSCOMMON.

This Section 5 Declaration is structured as follows:

1. INTRODUCTION & BACKGROUND;
2. SUMMARY OF APPLICANT'S POSITION;
3. QUESTIONS POSED;
4. STATUTORY BACKGROUND;
5. THE CHARACTER OF THE SURROUNDING AREA CURRENT (& EMERGING);
6. THE NATURE OF THE WORKS IN QUESTION;
7. DECLARATION SOUGHT; AND
8. CONCLUSION.

### 1. INTRODUCTION & BACKGROUND

- 1.1. *The Planning Partnership*, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath as instructed by *Edvinas Cinga and Giedre Cinge*, 91 Esker Park, Lucan, Co. Dublin, hereby seek a declaration from Roscommon County Council under Section 5 of the *Planning & Development Act 2000-2021 (as amended)* (the "PDA").
- 1.2. This application seeks confirmation that no act of development requiring planning permission has been undertaken. Our professional planning opinion regarding the status of the site is supported by the provision of the considered requisite information and the appropriate fee of €80.00 (*eighty euros*).
- 1.3. This application this is made in accordance with Judge King's direction in District Court proceedings of *Roscommon County Council v Edvinas Cinga* and *Roscommon County Council v Giedre Cinge*. (Please see Appendix C).

## 2. SUMMARY OF APPLICANT'S POSITION

- 2.1. We respectfully submit, for the reasons set out therein, that no act of development requiring planning permission has occurred to date. In our opinion, only refurbishment of the pre-existing Chalet – with existing associated services (power, water and wastewater supply) *in situ* – has been carried.
- 2.2. It is important to note that the existing planning permission (the "Planning Permission" – Roscommon County Council Register Reference No. 158) is for a holiday let and not a permanent dwelling and the subject chalet has been continuously used as such.
- 2.3. The chalet refurbishment was undertaken off site so as not to endanger the surrounding Lough Ree area, which is acknowledged as an SAC (site code 000440) and SPA (site code 004064) site. In our view, the refurbishment of the chalet and all associated works carried out, do not trigger the need for Appropriate Assessment Screening (Stage 1) or Stage 2 Appropriate Assessment / NIS.
- 2.4. The refurbished chalet remains on the existing foundations and no material change of use has occurred. We submit that the character and appearance of the refurbished chalet does 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.<sup>1</sup>
- 2.5. It seems to us (although we stand open to correction on this point) that a number of the chalets that were granted planning permission in 1964 (*RCC Reg. Ref: 158*) have been refurbished from time to time since then without being the subject of enforcement action and that some chalets even appear to have transitioned to more permanent dwellings.

## 3. QUESTIONS POSED

- 3.1. The Applicant seeks the Planning Authority's determination in relation to the following:
- a) *Whether the carrying out of works for the improvement / refurbishment of the existing chalet is or is not development and, if deemed development, is or is not exempted development under the PDA<sup>2</sup>.*
  - b) *Whether the maintenance & renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle (referred to in the subject enforcement notice dated the 23<sup>rd</sup> of February 2021 (the 'Enforcement Notice') as the 'Raised Stone Platform'), is or is not development, and, if deemed development, is or is not exempted development under the PDA;*
  - c) *Whether the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping*

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<sup>1</sup> See section 4(1)h of the PDA

<sup>2</sup> Unless otherwise stated hereafter, the use of the words 'works', 'development' and 'exempted development' when *italicised* are used as defined in the PDA.

*is or is not development and, if deemed development, is or is not exempted development under the PDA;*

- d) *Whether the formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2 metres in height (Class 11 exemptions as refers to all other scenarios not associated with a domestic dwelling) and a new gate not exceeding 2 metres (Class 9 Exemptions) is or is not development and is or is not exempted development under the PDA; and*
- e) *Whether the reconnection and maintenance of existing water supply, wastewater connections and electrical services is or is not development and, if deemed development, is or is not exempted development under the PDA;*

**Points 3.1 (b) to (e) referred to hereinafter collectively as the "Ancillary Works".<sup>3</sup>**

#### 4. STATUTORY BACKGROUND

4.1. Section 3(1) of the PDA defines *development* as:

*[...] 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 structure or other land.*

4.2. *Development* therefore, is either *works* or a 'material change of use' and requires planning permission unless exempt from this requirement.

4.3. If the refurbishment *works* are classified as *development* under Section 3(1) of the PDA, then the questions arises as to whether they are *exempted development* as defined under Section 4(1) of the PDA, which reads as follows:

*4.(1) The following shall be exempted developments for the purposes of this Act—*

*[...] (h) 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;*

4.4. In our opinion, for the reasons set out herein, the subject works (insofar as they are determined to be *works* under the PDA) are captured by Section 4(1)(h) of the PDA as they are *works* which do not materially affect the external appearance of the structure.

4.5. Section 4(4) of PDA limits the exemptions available under 4(1)h of the PDA as follows:

*(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

<sup>3</sup> Purely referred to as such for ease of reference in this application. No suggestion is being made that "Ancillary Works" are defined in the PDA or other relevant legislation.

- 4.6. Section 4(4) only applies to (a), (i), (ia) and (l). Therefore, if a *development* is deemed to be exempt under 4(1)(h), section 4(4) does not apply.
- 4.7. Article 6 of the Planning and Development Regulations 2001-2022 (the "PDR") reads as follows:
6. (1) *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.*
- 4.8. For the reasons set out under the heading 'Boundary Works' below, the Applicant seeks to rely on Article 6(1) in connection with the renewed boundary treatment (**only**).

## 5. THE CHARACTER OF THE SURROUNDING AREA (CURRENT & EMERGING)

- 5.1. The subject site is located on the Hodson Bay area, in County Roscommon, approximately 8.5 km from Athlone Town Centre. The subject area is in close proximity to the Hodson Bay Sports area and the Athlone Golf Club. There are a number of permanent residential units in proximity. Further east of the subject site, it appears (although we are open to correction on this point also) Chalets 4 - 6 may have transitioned into permanent residences. The neighbouring chalets (1 & 2) appear to present as the intended holiday homes.
- 5.2. Of significance and importance is the current Roscommon County Development Plan 2022-2028 and the associated Hodson Bay / Barrymore Area Plan which seeks to retain and promote the tourism potential of the area, and states as follows:

*Hodson Bay / Barrymore is an important destination in County Roscommon in terms of its leisure tourism and recreation offering. Tourism activity within the Plan area is centered on Lough Ree and the adjacent facilities and amenities, including particularly the marina, hotel, caravan park, golf course and watersports centre.*

*The Council recognise the potential of this area to develop further as an important amenity and tourism asset and the Council will seek to support this, whilst ensuring the protection of the sensitive environment of the lake and its shores from inappropriate tourism development. Tourism development that may potentially have a detrimental impact on the amenity of the lake or surrounding environment will not be permitted.*

*The Council will seek to encourage and support the retention and appropriate expansion of existing facilities and also to accommodate appropriate forms of additional leisure, tourism and amenity related development, subject to satisfying all environmental considerations and normal siting and development criteria. In particular, appropriate low intensity green tourism developments adjacent to the shore of Lough Ree will be supported. Roscommon County Council will also engage with relevant stakeholders to carry out a feasibility study into the further development of Hodson Bay / Barrymore as a major amenity area<sup>4</sup>*

- 5.3. It seems the Plans intent is to extend recreational and tourism opportunities north of the existing established chalets. It seems therefore that the intended use and the appearance of the subject chalet will remain in character with the 'future plan intentions' for the Barry More area.

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<sup>4</sup> [Roscommon County Development Plan 2022-2028 – Volume II: Area Plans 4.1 Hodson Bay/Barrymore Area Plan, Page 165]

- 5.4. The surrounding and nearby recreational uses establish the character of the surrounding area as a recreational and '*occasional*' destination with holiday residences established and not one associated for permanent residence.
- 5.5. In this regard, there is a recognised and material difference (in terms of planning law) between a holiday home and a permanent residence, not least of all because of the difference these types of residences have on infrastructural and wastewater loadings, but also on the local environment and receiving waters generally.
- 5.6. The intermittent and occasional use of the subject chalet which has occurred since circa. 1965, in our respectful opinion removes any consideration of the property as a 'house' and, as a consequence, any consideration of the term 'derelict' (as those terms are defined in the PDA).

## 6. THE NATURE OF THE WORKS IN QUESTION

### 6.1. THE STRUCTURE/CHALET

6.1.1. Under this heading the Applicant seeks a determination on the following question:

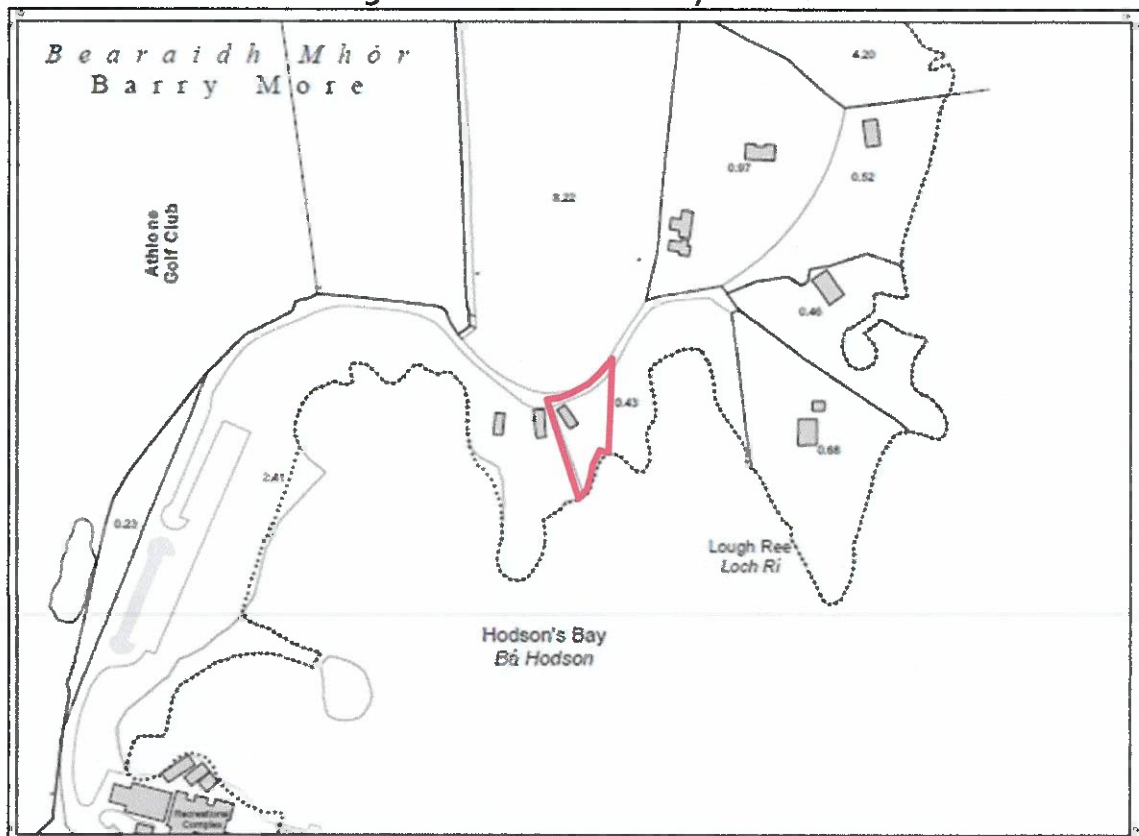
*Whether the carrying out of works for the improvement / refurbishment of the existing chalet is or is not development and, if deemed development, is or is not exempted development under the PDA;*

6.1.2. The proposed / undertaken works are documented in the enclosed drawings prepared by MMA Architects (Appendix A - Drawing Ref: 21.17-MMA-A-203 & 21.17-MMA-A-205) and the site is identified in the OS Map at Figure 6.1 (below). The pre-works structure is documented by photographic and mapping evidence as enclosed (**Appendix B**).

6.1.3. We respectfully submit that the proposed external changes to the building in the form of a purely refurbished / renovated / maintained chalet:

- a) **Will not** materially affect the external appearance of the permitted structure (RCC Reg. Ref: 158) so as to render the structure's appearance inconsistent with the permitted structure or with neighbouring structures; and
- b) **Will not** affect the permitted use of the building (as a Chalet / Holiday Let) as per originating permission and, as such, no change of use is occurring.

**Figure 6.1: Ordnance Survey Extract**



Source: Ordnance Survey (Reproduced under OS Licence AR0114722)

6.1.4. While we acknowledge the refurbishment works undertaken will be defined as *works*, in our opinion, we consider such *works exempt* under section 4(1)(h).

### Exemptions Tolerant to 'Non- Material' External Appearance Changes

- 6.1.5. In our opinion, the works associated with the subject chalet are typically within the tolerances of Section 4 (1.) (h.). Furthermore, perceived or actual increases in the dimensions associated with the footprint, heights or principal elevations of a pre-existing structure will not necessarily mean Section 4 (1) (h) cannot be relied on, if same 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.*

- 6.1.6. In our view, in considering whether the refurbishment is captured under section 4(1)(h), the question that has to be answered is:

*Is the character of the structure inconsistent with a permitted 'chalet' structure i.e. does it appear as something other than a chalet or has its use changed to render development requiring permission?*

### Dimensional Alterations De Minimis

- 6.1.7. Notwithstanding the fact that perceived or actual increases in the dimensions associated with the footprint of a structure will not necessarily mean a party seeking to rely on 4(1)(h) is precluded from doing so, we consider any increases in the footprint (insofar as this is the case) to be *de minimis*.
- 6.1.8. Therefore, we consider any dimensional alterations to be: a) *de minimis*; and/or b) consistent with the appearance of the structure or neighbouring structures' to allow a Declaration as an exempted development.
- 6.1.9. An extract from the SAC (Site Code: 000440) reads as follows:

*The main threat to the aquatic life in the lake comes from artificial enrichment of the waters by agricultural and domestic waste, and also by peat silt in suspension which is increasingly limiting the light penetration, and thus restricting aquatic flora to shallower waters. (Site Synopsis Site Name: Lough Ree SAC Site Code: 000440)<sup>5</sup>*

- 6.1.10. An extract from the SPA (Site Code: 004064) reads as follows:

*The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. Lough Ree SPA is of high ornithological importance for both wintering and breeding birds. (Site Synopsis Site Name: Lough Ree SPA Site Code: 004064)<sup>6</sup>*

- 6.1.11. In our opinion the works for the maintenance and improvement of the structure present no 'potential' harmful effects in respect of either the 'water quality associated with aquatic life' or 'wintering and breeding birds'.

<sup>5</sup> [Department of Arts, Heritage and the Gaeltacht – Site Synopsis Site Code 000440 - <https://www.npws.ie/>]

<sup>6</sup> [Department of Arts, Heritage and the Gaeltacht – Site Synopsis Site Code 004064 - <https://www.npws.ie/>]

## Maintenance and Refurbishment of Holiday Chalets a Common Occurrence

6.1.12. Finally, as regards the structure, it is worth noting that it is commonplace countrywide that plots designated for prefabricated holiday chalet structures (connected to existing available infrastructure) include structures similar to this chalet which are refurbished from time to time and the said refurbishment is not deemed *development* in circumstances where the use is consistent with the character of the permitted use and the neighbouring structures. Please see supporting imagery at Appendix D.

### 6.2. THE ANCILLARY WORKS

#### 6.2.1. THE RAISED STONE PLATFORM (APPENDIX C).

6.2.2. Under this heading the Applicant seeks a determination on the following question:

*Whether the maintenance & renewal of the existing level access for parking and servicing of the holiday chalet by motorised vehicle (referred to in the Enforcement Notice as the "Raised Stone Platform"), is or is not development and is or is not exempted development.*

6.2.3. As we understand things now, the Raised Stone Platform was the initial concern of the planning authority.

6.2.4. The works carried out at the site did not raise the level of any part of the site. We appreciate now that it may appear that what is being described as the Raised Stone Platform represents works that would require planning permission, however, in fact the undergrowth was cleared by the scraping back of and removal of the top layer of vegetation. Then a new top layer of stone material (as might normally be referred as 804<sup>7</sup> and as subsequently compacted and indicated in Plate 2, below) was added so that the level remains unchanged.

**Plate 1 – Foreground Area of Levelled Access 'Overgrown'**



Source: Blair Adamson (MMA Architects) – circa. June 2020

<sup>7</sup> Clause 804 is a standardised grade of aggregate up to 75mm with a mix of fines down to dust. Mostly used for base layers it compacts well to provide a firm substrate



- 6.2.5. That Applicant accepts that whilst *works* may have been undertaken in respect of renewal of a surface treatment to an existing level access to the property, no act of development as requiring permission has taken place. Simply put, in our opinion, only '*landscape*' or '*groundworks*' to renew and refresh the appearance have been carried out while access level to the chalet unit remains unchanged. Therefore, to the extent that the works are considered *development*, our opinion is that the said works are a form of groundworks not affecting a structure, nor materially changing the use of the lands and as such can be considered *exempted development*.

**Plate 2 – Area of Renewed and Maintained Level**



Source: Edvinas Cinga

**Plate 3 – Levelled Access**



Source: Edvinas Cinga

6.2.6. It is important to note that whilst it might appear in Plate 3 as a 'raised level' the curtain walls of the maintained and refurbished chalet building now extend down to ground level to match the established ground level. The maintained and refurbished structure as placed on the established and pre-existing raised concrete block piers whilst presenting a changed or altered appearance does not, we respectfully submit, impact on the character or appearance of the structure nor the character and appearance of neighbouring structures.

### 6.3. LANDSCAPE AND MAINTENANCE WORKS

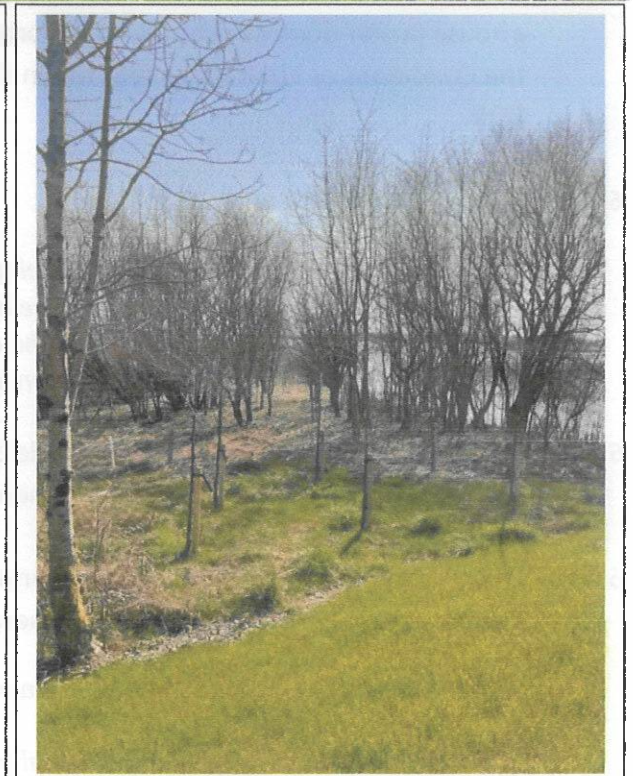
6.3.1. Under this heading the Applicant seeks a determination on the following question:

*Whether the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native species and general landscaping works is or is not development and is or is not exempted development.*

**Plates 4 & 5 Google Streetview 2009 & 2021**



### Plates 6, 7 & 8 Grassland Seeding & Native Species Planting to Boundary Fence & Site



6.3.2. On site scrub clearance and landscaping *works* have occurred, however, we submit that these *works* are not *development*. Similarly, we submit that the seeding of the grass and planting of native tree species is neither *works* nor *development*.

6.3.3. It is respectfully submitted that the landscape works referred to under this heading are excluded from the definition of *works* on the following basis:

*"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*

6.3.4. However, if deemed to be *works*, the PDA describes *development*, as follows:

*"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.*

6.3.5. It is respectfully submitted that if the landscaping works are deemed to be works than same should be categorised as *exempted development* on the basis of the foregoing.

#### 6.4. SUNDRY WORKS – THE MAINTENANCE OF THE GATED ENTRY & BOUNDARY FENCE

6.4.1. The questions related to the boundary fence and gated entry are herein presented as exempt under the PDR. Under this heading the Applicant seeks a determination on the following question:

*Whether the formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2 metres in height (Class 11 exemptions as refers to all other scenarios not associated with a domestic dwelling) and a new gate not exceeding 2 metres (Class 9 Exemptions) is or is not development and is or is not exempted development, and*

6.4.2. In our opinion the replacement boundary and gated access associated with the chalet use, not being a house (a non-domestic structure) importantly and significantly, are captured by the exemptions in the Conditions or Limitations referred in Column 2 of Schedule 2, nor restricted by Article 9 of the PDR.

6.4.3. Article 6 of the PDR reads as follows:

*6. (1) 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.*

6.4.4. The Applicant only seeks to rely on Article 6(1) in connection with the renewed boundary treatment. Schedule 2, Part 1, Exempted Development – General refers at Class 9 & Class 11 (Sundry Works).

6.4.5. Certain exemptions as pertaining to boundary treatments and gates are as referred under Schedule 2, Part 1, Exempted Development – General and whereby Class 9 & Class 11 (Sundry Works) refers;

*Column 1 - Description of Development*

##### **CLASS 9**

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

*Column 2 - Conditions and Limitations*

*The height of any such structure shall not exceed 2 metres*

*Column 1 - Description of Development*

##### **CLASS 11**

*The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –*

*(a) any fence (not being a hoarding or sheet metal fence), or*

*(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.*

*Column 2 - Conditions and Limitations*

1. *The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.*

2. *Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.*

6.4.6. The Applicants seeks a declaration from the Authority that the high quality weld mesh fence (being a repair or replacement of previous concrete pole and wire fence) while defined as *works* and *development* is *exempted development*.

6.4.7. In this regard, we respectfully submit that, having particular regard to sections 2(1) and 3(1) of the PDA and Articles 6(1) and 9(1) and Schedule 2, Part 1, of the PDR, it is open to Roscommon County Council Roscommon County Council to declare that:

- a) *development* has taken place on the site;
- b) The fence, being a repair or replacement of previous concrete pole and wire fence constitutes *works*, is *development* but is *exempted development*;
- c) Similarly, the erected gate represents *works*, is *development* but is deemed *exempted development*; and
- d) no restrictions on exemption apply under Article 9(1) of the Regulations.

## 6.5. THE MAINTENACNE OF INFRASTRUCTURAL CONNECTIONS

6.5.1. Under this heading the Applicant seeks a determination on the following question:

*Whether the reconnection and maintenance of existing water supply, wastewater connections and electrical services is or is not development and is or is not exempted development.*

6.5.2. All available services associated with power, water supply and wastewater collection are *in situ* and as such have remained continuously in place since the first use of the structure from its original date of first use and occupation as a holiday chalet in 1965.

6.5.3. The site has a water and a wastewater connection serving the chalet site for flushing toilet, bathing and kitchen connections. The site is linked to the original septic tank to the north of Chalet's 1-3 and on the north side of the access road.

6.5.4. ESB connections have been maintained to the site. ESB Supply can simply be reconnected with no on-site additional works necessary. It should be noted that the ESB have erected new infrastructure recently in the locality to serve the Chalets 1-3 accordingly.

6.5.5. Photographic evidence associated with the service connections existing and maintained are provided in Appendix E.

6.5.6. On the basis of the foregoing, it is respectfully submitted that no *works* under this heading have been carried out.

## 6.6. DECLARATION SOUGHT FROM ROSCOMMON COUNTY COUNCIL

6.6.1. In respect of the questions set out at 3.1 (a) – (e) above, having regard to section 2(1), 3(1) and 4(1)(h) of the PDA, Articles 6(1) and 9(1) and Schedule 2, Part 1, of the PDR, the planning history of the site, the pattern of development in the area, the nature of the structure and the Ancillary Works carried out to date, we respectfully submit it is open to Roscommon County Council to conclude as follows:

- a) Some *development* has taken place;
- b) the maintenance and improvement works associated with the chalet have not materially altered the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures. Therefore, the *development* is captured under 4(1)(h) and is *exempt*;
- c) the maintenance & renewal of existing level access represents renewal of a surface treatment to an existing level access to the property. Therefore, these works are captured under 4(1)(h) are exempt;
- d) the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native species and general landscaping works is not works, and is not development;
- e) that the maintenance of all available services associated with power, water supply and waste water collection are *in situ* and as such is not *works*;
- f) that the permitted use of the building as a Chalet / Holiday let is in accordance with the original planning permission and, as such, no change of use is occurring; and
- g) that no 'Appropriate Assessment' under the PDA is required for development under Section 4(1)(h) by virtue of Section 4 (4).

6.6.2. In light of the foregoing, it is submitted that it is open to Roscommon County Council, in exercise of the powers conferred on it by Section 5 of the PDA, to declare that the any of the subject works, where determined to constitute *development*, are *exempted development*.

## 6.7. CONCLUSION

The Applicant seeks the Planning Authority's determination as to whether the subject works are considered *exempted development* under Section 4(1)(h) of the PDA and a determination as to whether the replacement boundary fence and gates are considered *exempted development* under Schedule 2, Part 1, of the PDR.

Should further information be required we are in a position to assist. We look forward to hearing from you.

Yours faithfully

**Mark Brindley**  
**Principal**  
**The Planning Partnership**  
Encl.





## Appendix A

Drawing Refs: *21.17-MMA-A-203* & *21.17-MMA-A-205*



## Appendix B

○ The pre-existing structure as documented by photographic and mapping evidence

1995



2000



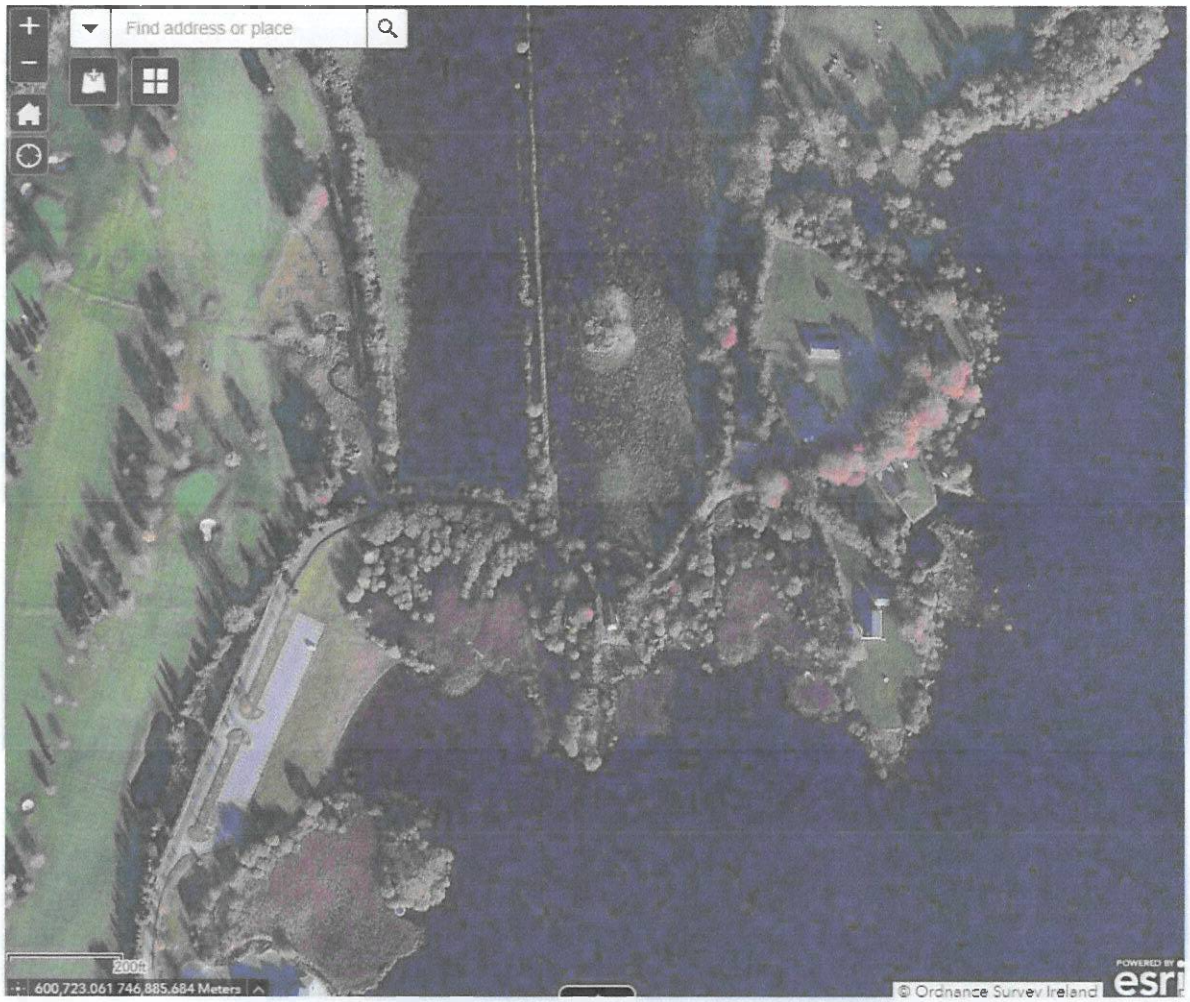
2005



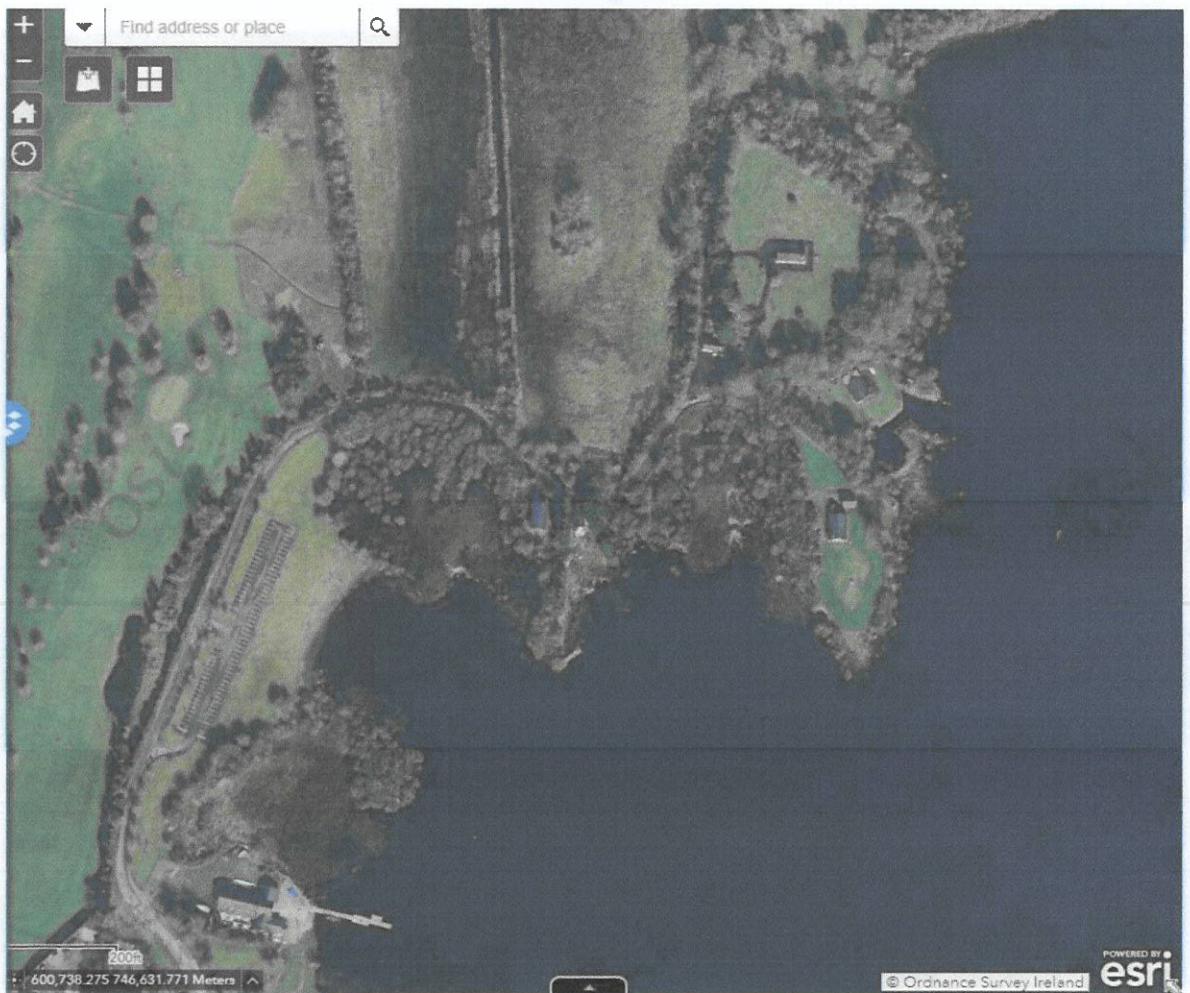
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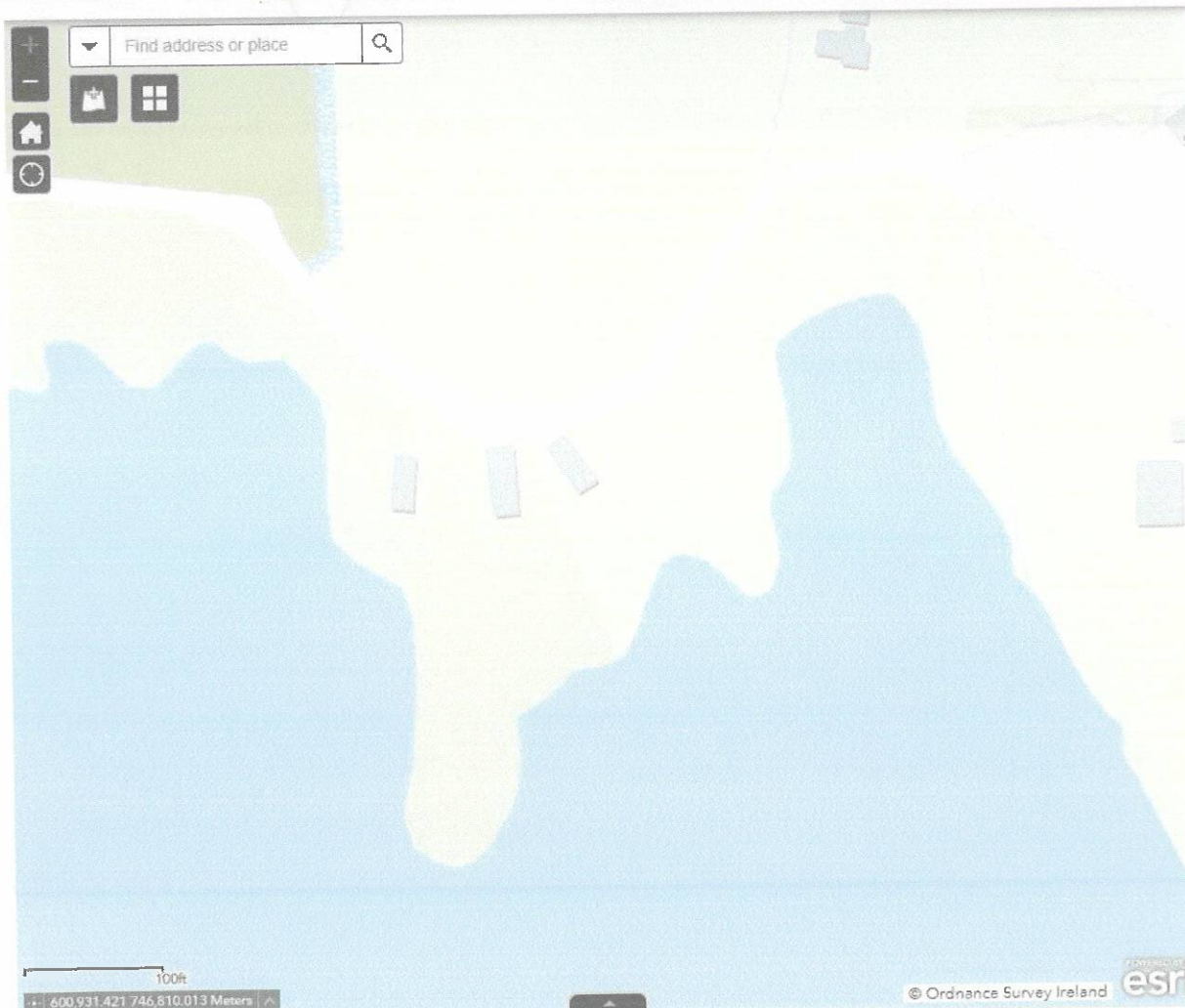


### 2011-2013



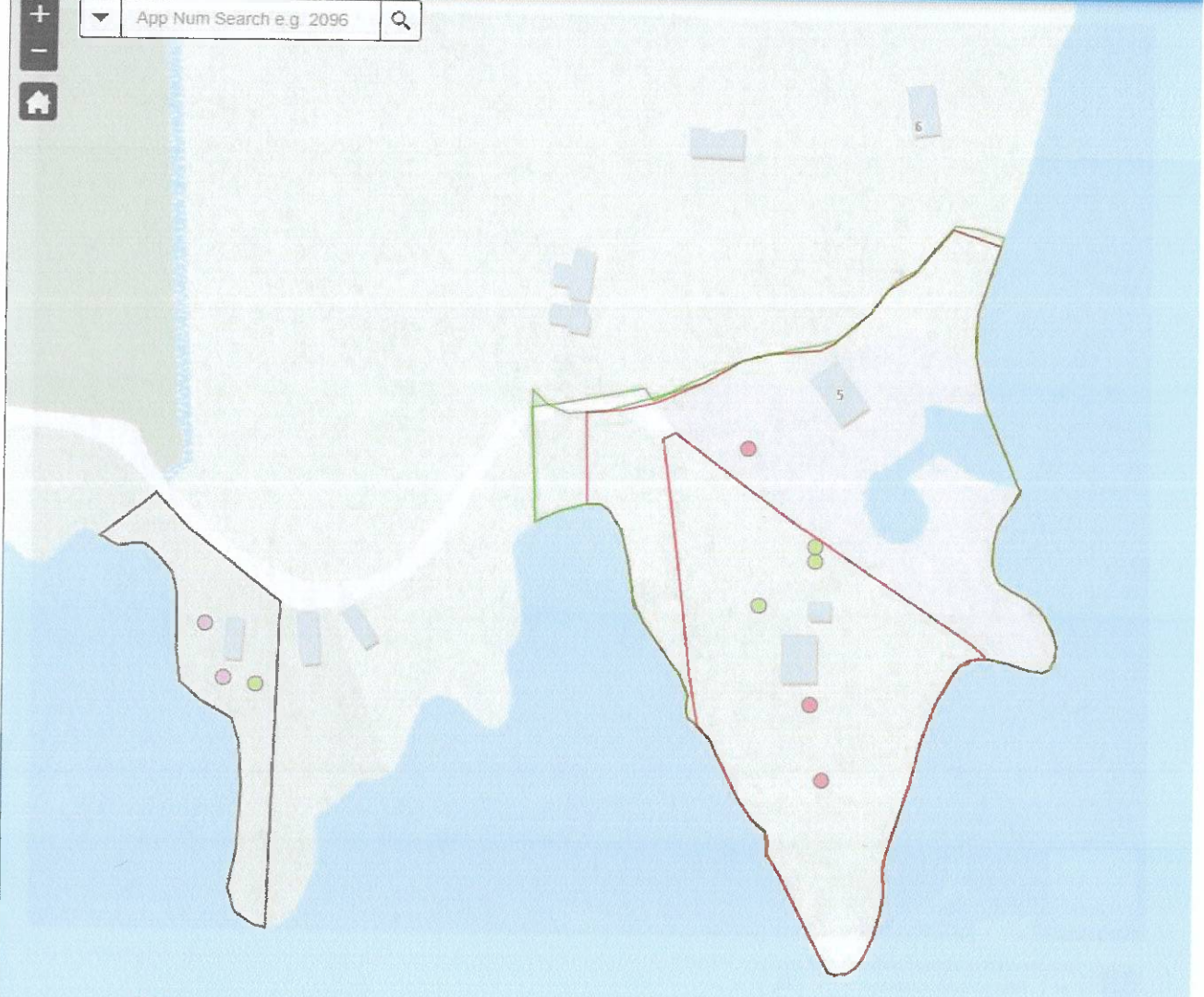
### 2013-2018







App Num Search e.g. 2096



40m  
100ft  
53.470301 -7.980532 Degrees





