

ROSCOMMON COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

NOTIFICATION OF DECISION

Edvinas Cinga & Giedre Cinge,

Reference Number: DED 515

Application Received: 13th April, 2022.

Location: Chalet 3, Barrymore Townland, Hodson Bay, Athlone, Co. Roscommon.

WHEREAS Whereas questions have arisen as to whether:

- (a) The carrying out of works for the improvement/refurbishment of the existing chalet
- (b) The maintenance and renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle
- (c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping
- (d) The formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2metres
- (e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services

is or is not development or is or is not exempted development.

AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:

- (1) Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended)
- (2) Articles 6 & 9 of the Planning and Development Regulations 2001 (as amended)
- (3) Class 5, 9 & 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (4) Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (5) Article 6 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended.
- (6) The planning history of the site.
- (7) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);

AND WHEREAS Roscommon County Council has concluded that:

in respect of (a), (b), (d) & (e):

- 1) The proposed development constitutes development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations;
- 2) The proposed development is not exempted development as defined in the Planning & Development Act 2000(as amended) and associated Regulations.
- 3) The likelihood of significant impacts on European Sites as a result of the proposed development cannot be ruled out and Stage 2 Appropriate Assessment is required;

and in respect of (c):

- 1) The proposed works does not constitute development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations;

NOW THEREFORE:

By virtue of the powers vested in me by the Local Government Acts 1925 – 2019 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and, having considered the various submissions and reports in connection with the application described above, it is hereby declared that the said works outlined consisting of:

- (a) The carrying out of works for the improvement/refurbishment of the existing chalet
- (b) The maintenance and renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle
- (d) The formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2metres
- (e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services,

at Barrymore Townland, Hodson Bay, Athlone, Co. Roscommon constitutes development that is not exempted development as defined within the Planning and Development Act 2000 (as amended) and associated Regulations; and

- (c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping

at Barrymore Townland, Hodson Bay, Athlone, Co. Roscommon does not constitute development as defined within the Planning and Development Act 2000 (as amended) and associated Regulations.

Signed on behalf of the Council:



Senior Staff Officer, Planning.

Date: 10th May, 2022

CC: The Planning Partnership,
The Bank Building,
52 Oliver Plunkett Strett,
Mullingar,
Co. Westmeath.

**Planner's Report on application under Section 5 of the
Planning and Development Act, 2000, as amended**

Reference Number: DED 515

Name and Address of Applicant: Edvinas Cigna & Giedre Cinge

AGENT: The Planning Partnership, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co Westmeath

WHEREAS a question has arisen as to whether the following is development and if it is exempt development

- a) the improvement/refurbishment of existing chalet,
- b) the maintenance and renewal of the existing level access for parking and servicing of the chalet,
- c) the clearing of scrub,
- d) the formation of new boundary treatment not exceeding 1.2 m in height and a new gate not exceeding 2 m.
- e) the reconnection and maintenance of water supply, waste water connections and electrical services.

1.0 Site Location and Description

The site is located along the shores of Lough Ree in the Hodson Bay area of Co. Roscommon. The site which appears independent of other sites in the vicinity and has definite boundaries, consists of a recently constructed wooden holiday chalet, a hard surfaced area and a combination of a wooden panelled fencing and wire mesh fencing along the front boundary. There are two other chalets west of the subject site on independent sites.

2.0 Planning History

Planning Ref. No. 158: Planning permission for the erection of six chalets at Hodson Bay
Granted on 31st December 1964 subject to 13 Conditions

3.0 Relevant Legislation

I have considered this question, and I have had regard particularly to –

- (a) Sections 2, 3, 4 and 5 of the Planning and Development Acts 2000 (as amended);
- (b) Article 6 & 9 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 5, 9 & 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (d) Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (e) Article 6 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended.
- (f) The planning history of the site.
- (g) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);

Planning and Development Act, 2000 (as amended)

Section 2 (1)

“works” includes 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.

Section 3 (1)

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.

Section 4 (2) of the Planning and Development Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations.

Planning and Development Regulations, 2001 (as amended)

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

Article 9 (1) applies;

Development to which article 6 relates shall not be exempted development for the purposes of the Act—
(a) if the carrying out of such development would—

viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

Article 6 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended.

Roscommon County Council is the competent authority to make the key decisions within the Article 6(3) and (4) assessments.

Class 5, 9 and 11 of Part 1 of Schedule 2: Exempted development -General

Description of Development	Conditions and Limitations
<p>CLASS 5 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.</p> <p>CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.</p> <p>CLASS 11 The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –</p> <p>a) any fence (not being a hoarding or sheet metal fence), or</p> <p>(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete</p>	<p>1. 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.</p> <p>2. 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.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p> <p>1. The height of any such structure shall not exceed 2 metres.</p> <p>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.</p> <p>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.</p>

Class 6 of Part 1 of Schedule 2: Exempted development -General

Description of Development	Conditions and Limitations
<p>CLASS 6</p> <p>(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.</p> <p>(b) Any works within the curtilage of a house for—</p> <p>(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,</p> <p>(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.</p>	<p>Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,</p> <p>or</p> <p>if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground</p>

4.0 Planning Assessment

The question to be determined in this Section 5 declaration is whether ‘the maintenance and improvement of existing holiday chalet’ is or is not development, and is or is not exempted development. Having considered the definition of both “works” and “development” outlined above, I would deem that the aforementioned forms of development constitute works and is therefore development.

The second question to be determined declaration is whether ‘the maintenance and improvement of existing holiday chalet’ is or is not exempted development as outlined in 4 (1) (h) of the planning and development Act as amended.

There are five elements to the works carried out in the applicant’s submission:

- a) the improvement/refurbishment of existing chalet,
- b) the maintenance and renewal of the existing level access for parking and servicing of the chalet,
- c) the clearing of scrub,
- d) the formation of new boundary treatment not exceeding 1.2 m in height and a new gate not exceeding 2 m.
- e) the reconnection and maintenance of water supply, waste water connections and electrical services

Each of these will be dealt with separately

a) **Improvement/refurbishment of existing chalet:**

Planning permission was granted for a holiday chalet in 1964. This chalet was erected on site and evidently from the photographs submitted with the application fell in to disrepair as it was over grown, boarded up, not accessible and not inhabited. The extent of the site's limited accessibility, as it was overgrown by trees, woodland and vegetation etc., can be seen in the aerial photography taken in 2000, 2005 and between 2011 and 2013 below. From these images it can be ascertained with confidence that no one occupied the chalet for a considerable period of time.

The applicant carried out works to the chalet which they claim fall into the remit of '*maintenance works*' as set out in 4(1)(h) of the Planning and Development Act 2000 as amended.

The chalet that currently exists on site is of a habitable standard with new windows, doors, and new external walls. There is no evidence that the existing structure has retained any of the original fabric of the original structure. The nature and scale of the works carried out are not consistent with the purposes of maintenance and do not come within the scope of section 4(1)h and it is in this regard RCC considers it a replacement structure.

Furthermore, in the applicant's submission it has been clarified that the works to the chalet were carried out off site. It is considered by RCC that any works carried out to a structure in order to 'maintain or improve' a structure as stipulated in 4(1) h) of the Planning and Development Act 2000 as amended should be of such a nature that they are carried out on site and do not extend to the removal of the structure. The structure on site which is now of a habitable standard, differs significantly from the original structure, it is materially different to the character of the original structure and quite evidently is a replacement structure.

In this regard RCC considers the existing chalet constitutes 'a replacement structure' which is not exempt and would require planning permission.

b) **The maintenance and renewal of the existing level access for parking and servicing of the chalet:** The applicant is claiming that they did not raise the site, they merely stripped back the vegetation and added a new top layer of stone which they compressed. They are further claiming that this is '*renewal of a surface treatment to an existing level access to the property*'. However, it is evident from aerial photography taken in 2000, 2005 and between 2011-2013 that the site was very overgrown and there was no hard core visible on site (site is circled in red). After comparing these aerial pictures with the current situation on site it can be determined with confidence that hard core has been imported to the site and this constitutes works.

While there is an exemption for the provision of hard surface under **Class 6 of Part 1 of Schedule 2**, the sites location within Lough Ree SAC and adjacent to Lough Ree SPA has a significant bearing on this. Given the possible impact such works may have on the qualifying criteria of Lough Ree SAC and SPA an Appropriate Assessment screening was carried out. The conclusion of this screening (report attached) was that significant impacts could not be ruled out on Lough Ree SAC and SPA and hence Article 9 (1) of the Planning and Development Regulations applies:

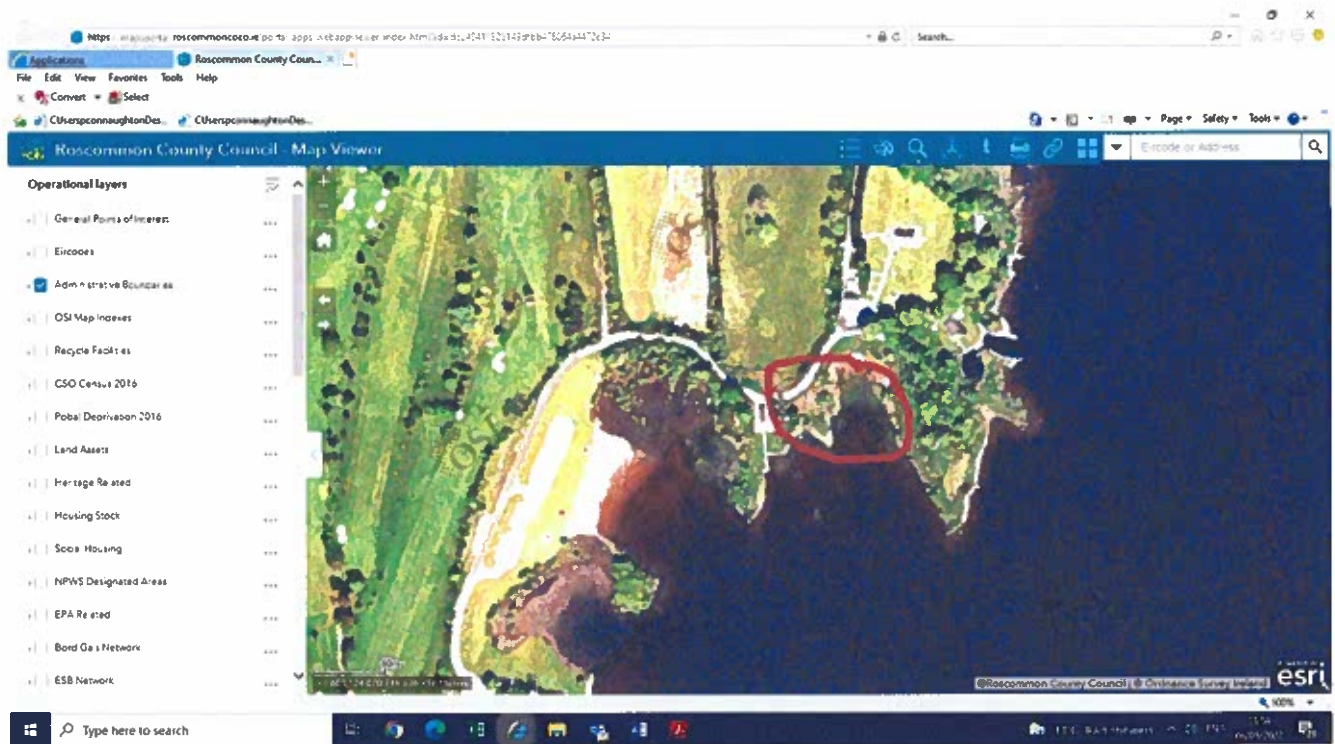
Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

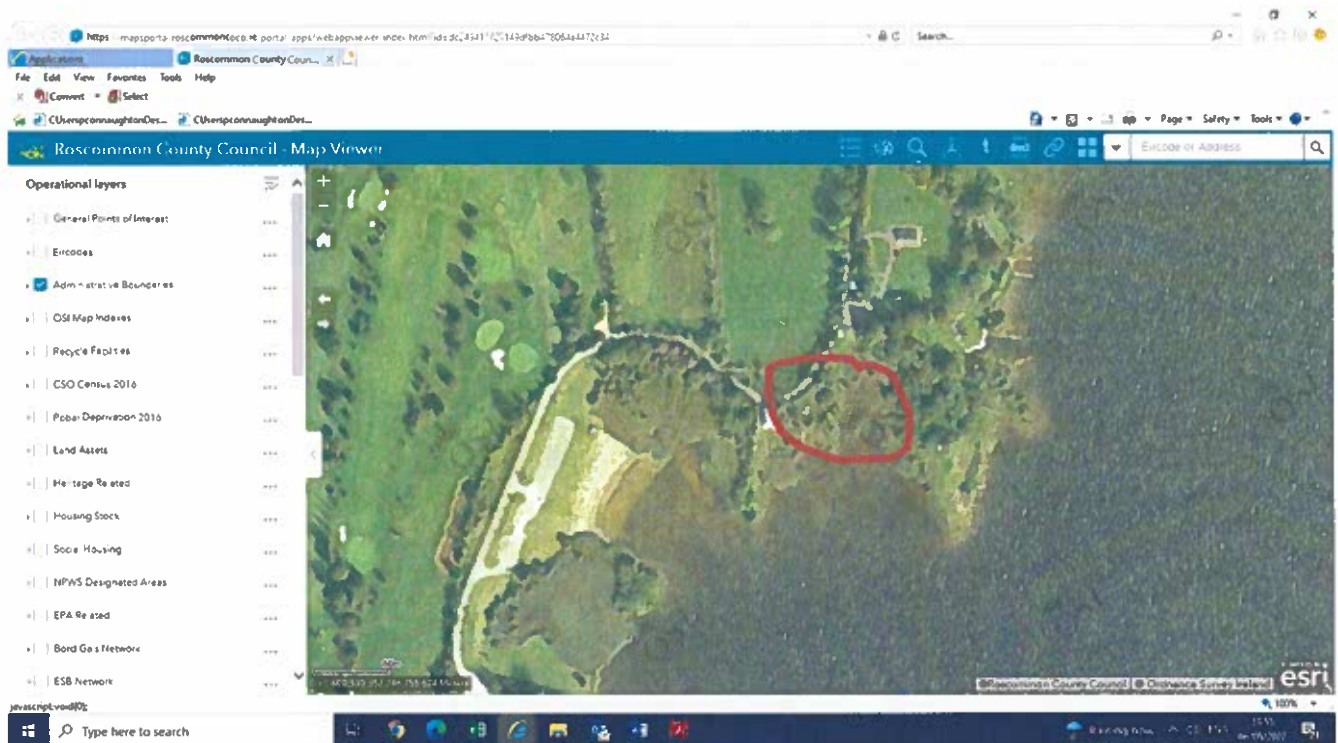
viiiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

With Regard to Article 9 (1)(a) of the Planning and Development Regulations, it is reasonable to conclude that on the basis of the information available, which I consider adequate in order to issue a screening determination, that arising from the development which is subject of this Section 5 DED either individually or in combination with other plans or projects significant impacts on Lough Ree SAC and SPA cannot be ruled out and that a stage 2 Appropriate Assessment must be carried out.

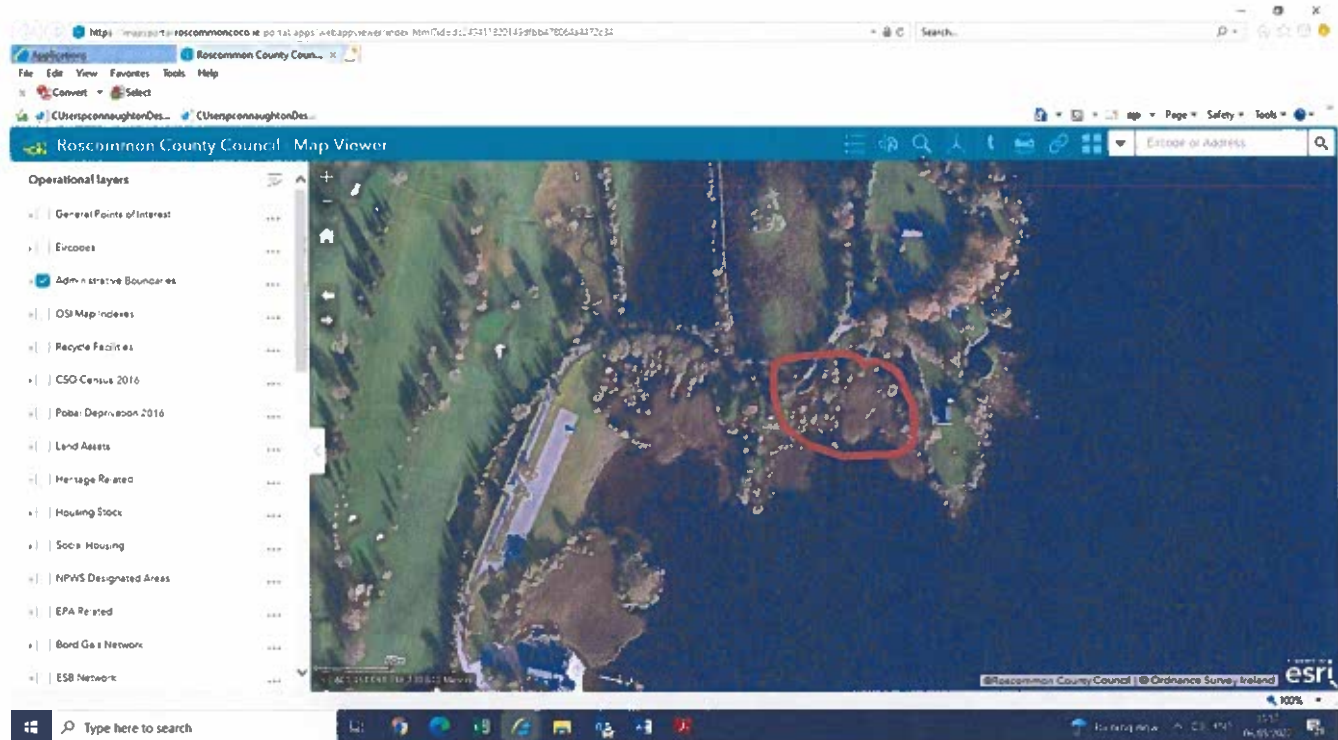
Orthos images taken of the site in 2000



Orthos images taken of the site in 2005



Orthos images taken of the site between 2011-2013



- c) **The clearing of scrub:** Having considered the definition of both “works” and “development” outlined above, I would deem that the ‘clearing of scrub’ does not constitute works and is therefore is not development.
- d) **The formation of new boundary treatment not exceeding 1.2 m in height and a new gate not exceeding 2 m.**

The front boundary of the site consists of a wire mesh fence and timber panelling which the applicant claims replaced a concrete pole and wire fence and contends is exempt under class 9 and 11 of the P&D Regulations.

Class 9 and 11 refer to ‘the construction, erection of lowering, repair or replacement other than within the curtilage of a house’ while class 5 refers to the ‘construction, erection or alteration, within or bounding the curtilage of a house’.

The Planning and Development Act makes no distinction between a house used on an intermittent basis for the purpose of holidays or as a permanent home. Notwithstanding whether the development is considered under class 5 or 9 and 11 the same ‘conditions and limitations apply’ and in this regard the height of the front boundary cannot exceed 1.2 m. Notwithstanding assertions in the documentation submitted with the section 5 declaration request that the boundary treatment does not exceed 1.2m, in reality as constructed the height of the front boundary on site varies from 1.5m to 2 ms and therefore exceeds the conditions and limitations of all the aforementioned classes and therefore is not exempt from planning permission.

e) The reconnection and maintenance of water supply, waste water connections and electrical services: The applicant is claiming that the aforementioned services have remained in situ since the chalet was first occupied. The applicant has given no information in relation to the reconnection to services. This is particularly relevant with respect to the treatment and disposal of waste water on site as in the absence of this information significant impacts on European Sites cannot be ruled out. Having regard to Article 9 (1)(a) of the Planning and Development Regulations, it is reasonable to conclude that on the basis of the information available, that arising from the development which is subject of this Section 5 DED either individually or in combination with other plans or projects significant impacts on Lough Ree SAC and SPA cannot be ruled out and that a stage 2 Appropriate Assessment must be carried out

Final assessment and recommendation:

Having regard to the above, I am satisfied that the general question raised in this referral can be determined as follows:

a) The works carried out to the chalet on site are to such a scale and magnitude that the existing chalet bears no resemblance to the original structure on site. It is this material deviation in character and the fact the original structure was removed off site that RCC considers the onsite chalet a ‘replacement chalet’ and therefore does not fall within the remit of ‘maintenance’ referred to in section 4(1)(h) of the Planning and Development Act

b) With respect to the importation of material to create a hardstanding area, this constitutes works and the likelihood of significant impacts on European Sites as a result of these works cannot be ruled out and Stage 2 Appropriate Assessment is required,

Therefore, in accordance with Section 4(4) of the Planning and Development Act, 2000, as amended, the said works cannot avail of any exemptions that might otherwise be available under the Act, or under the Planning and Development Regulations, 2001, as amended.

c) Having considered the definition of both “works” and “development” outlined above, I would deem that the ‘clearing of scrub’ does not constitute works and is therefore is not development.

d) The front boundary on site varies from 1.5m to 2 ms and therefore exceeds the conditions and limitations of classes 10 & 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and therefore is not exempt from planning permission

e) The applicant has given no information in relation to the reconnection to services. This is particularly relevant with respect to the treatment and disposal of waste water on site as in the absence of this information RCC cannot determine if development took place and if so is it exempt development. Furthermore, in the absence of this information and the fact the site is located in Lough Ree SAC and adjacent to Lough Ree SPA significant impacts on European Sites cannot be ruled out.

5.0 Recommendation

WHEREAS a question has arisen as to whether ‘the maintenance and improvement of existing holiday chalet’ is development, and is not exempted development’.

I have considered this question, and I have had regard particularly to –

- (a) Sections 2, 3, 4 and 5 of the Planning and Development Acts 2000 (as amended)
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- (c) Class 5, 9 and 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (d) Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (e) Article 6 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended.
- (f) The planning history of the site.
- (g) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended)

AND WHEREAS I have concluded that

- a) The works are development
- b) ‘the maintenance and improvement of existing holiday chalet’ is not exempted development
- c) The likelihood of significant impacts on European Sites as a result of these works cannot be ruled out and Stage 2 Appropriate Assessment is required.

and I recommend that a declaration to that effect should be issued to the applicant.

Signed: _____

Paula Cornaughon

South Roscommon Area Planner.

Date: _____

9/5/22

**APPROPRIATE ASSESSMENT
SCREENING REPORT**

For

DED 515 at Chalet 3, Barrymore Townland, Hodson Bay, Athlone, Co. Roscommon.



**Comhairle Contae
Ros Comáin**
Roscommon
County Council

Screening for Appropriate Assessment: 2262

Table 1: Project Details

Development Consent Type	Declaration under Section 5 of the Planning and Development Act 2000 as amended.
Development Location	Barrymore Townland, Hodson Bay, Kiltoom, Athlone, Co. Roscommon
File Reference Number	DED 515
Description of the Project	<p>A question has arisen as to whether</p> <ul style="list-style-type: none">(a) The carrying out of works for the improvement/refurbishment of the existing chalet(b) The maintenance and renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle(c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping(d) The formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2metres(e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services <p>is or is not development or is or is not exempted development.</p>

Table 2: Identification of Natura 2000 Sites (SACs and SPAs) which may be impacted by the proposed development

Please answer the following questions in order to determine whether there are any Natura 2000 sites which could potentially be impacted by the proposed development.

Special Areas of Conservation (SAC)

Impacts on habitats

1.	Impacts on Freshwater Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats, or in the catchment of same?</p> <p>Sites to consider Lough Ree SAC (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation (#3150)</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p>

	<p><u>Ballynamona Bog And Corkip Lough SAC</u> (Site Code: 002339) Distance from Site: 6.69 km Designated features: Turloughs (#3180)</p> <p><u>Lough Funshinagh SAC</u> (Site Code: 000611) Distance from Site: 7.08 km Designated features: Turloughs (#3180)</p> <p><u>Castlesampson Esker SAC</u> (Site Code: 001625) Distance from Site: 8.14 km Designated features: Turloughs (#3180)</p> <p><u>Lough Croan Turlough SAC</u> (Site Code: 000610) Distance from Site: 11.55 km Designated features: Turloughs (#3180)</p>	<p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p>
2.	Impacts on Bog Mires and Fens Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Bog Mires and Fens habitats, or within 1km of same?</p> <p>Sites to consider <u>Lough Ree SAC</u> (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Degraded raised bogs still capable of natural regeneration (#7120), Alkaline fens (#7230)</p> <p><u>Ballynamona Bog And Corkip Lough SAC</u> (Site Code: 002339) Distance from Site: 6.69 km Designated features: Depressions on peat substrates of the Rhynchosporion (#7150), Active raised bogs (#7110), Degraded raised bogs still capable of natural regeneration (#7120)</p> <p><u>Crosswood Bog SAC</u> (Site Code: 002337) Distance from Site: 8.88 km Designated features: Active raised bogs</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p>

	<p>(#7110), Degraded raised bogs still capable of natural regeneration (#7120)</p> <p>Carn Park Bog SAC (Site Code: 002336) Distance from Site: 10.35 km Designated features: Degraded raised bogs still capable of natural regeneration (#7120), Active raised bogs (#7110)</p>	<p>No significant impacts on this Natura site are likely</p>
3.	Impacts on Forests Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Forests habitats, or within 1km of same?</p> <p>Sites to consider Lough Ree SAC (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Old sessile oak woods with Ilex and Blechnum in the British Isles (#91A0), Bog woodland (#91D0)</p> <p>River Shannon Callows SAC (Site Code: 000216) Distance from Site: 5.98 km Designated features: Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) (#91E0)</p> <p>Ballynamona Bog And Corkip Lough SAC (Site Code: 002339) Distance from Site: 6.69 km Designated features: Bog woodland (#91D0)</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p>
4.	Impacts on Grasslands Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Grasslands habitats, or within 1km</p>	<p>Yes</p>

	<p>of same?</p> <p>Sites to consider Lough Ree SAC (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) (#6210)</p> <p>River Shannon Callows SAC (Site Code: 000216) Distance from Site: 5.98 km Designated features: Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) (#6410), Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) (#6510)</p> <p>Castlesampson Esker SAC (Site Code: 001625) Distance from Site: 8.14 km Designated features: Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) (#6210)</p> <p>Killeglan Grassland SAC (Site Code: 002214) Distance from Site: 14.39 km Designated features: Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) (#6210)</p>	<p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely.</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p>
5.	Impacts on Heath and Scrub Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Heath and Scrub habitats, or within 1km of same?</p> <p>Sites to consider None</p>	NA

6.	Impacts on Rocky Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Rocky habitats, or within 1km of same?</p> <p>Sites to consider <u>Lough Ree SAC</u> (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Limestone pavements (#8240)</p> <p><u>River Shannon Callows SAC</u> (Site Code: 000216) Distance from Site: 5.98 km Designated features: Limestone pavements (#8240)</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely</p>
7.	Impacts on Dunes Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Dunes habitats, or within 1km of same?</p> <p>Sites to consider None</p>	<p>NA</p>
8.	Impacts on Coastal Habitats	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Coastal habitats, or within 1km of same?</p> <p>Sites to consider None</p>	<p>N/A</p>

Impacts on Species

1.	Impacts on Amphibians	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Amphibians, or in the catchment of same?</p> <p>Sites to consider None</p>	N/A
2.	Impacts on Anthropods	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Anthropods or within 1km of same?</p> <p>Sites to consider None</p>	N/A
3.	Impacts on Fish	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Fish, or within 1km of same?</p> <p>Sites to consider None</p>	N/A
4.	Impacts on Mammals	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Area of Conservation whose qualifying interests include Mammals, or within 1km of same?</p> <p>Sites to consider <u>Lough Ree SAC</u> (Site Code: 000440) Distance from Site: Intersects Designated Site Boundary Designated features: Lutra lutra (Otter) (#1355)</p> <p><u>River Shannon Callows SAC</u> (Site Code: 000216)</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location within the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely</p>

	Distance from Site: 5.98 km Designated features: Lutra lutra (Otter) (#1355)	
5.	Impacts on Mollucs	Likely Effects (direct, indirect or cumulative)
	Is the development within a Special Area of Conservation whose qualifying interests include Mollucs, or within 1km of same? Sites to consider None	NA
6.	Impacts on Non-vascular Plants	Likely Effects (direct, indirect or cumulative)
	Is the development within a Special Area of Conservation whose qualifying interests include Non-vascular plants, or within 1km of same? Sites to consider None	N/A
7.	Impacts on Reptiles	Likely Effects (direct, indirect or cumulative)
	Is the development within a Special Area of Conservation whose qualifying interests include Reptiles, or within 1km of same? Sites to consider None	N/A
8.	Impacts on Vascular Plants	Likely Effects (direct, indirect or cumulative)
	Is the development within a Special Area of Conservation whose qualifying interests include Vascular Plants, or within 1km of same? Sites to consider None	N/A

Special Protection Areas (SPA):

1.	Impacts on Birds	Likely Effects (direct, indirect or cumulative)
	<p>Is the development within a Special Protection Area, or within 1km of same?</p> <p>Sites to consider</p> <p><u>Lough Ree SPA</u> (Site Code: 004064) Distance from Site: Intersects Designated Site Boundary Designated features: Little Grebe (<i>Tachybaptus ruficollis</i>) (#A004), Whooper Swan (<i>Cygnus cygnus</i>) (#A038), Wigeon (<i>Anas penelope</i>) (#A050), Teal (<i>Anas crecca</i>) (#A052), Mallard (<i>Anas platyrhynchos</i>) (#A053), Shoveler (<i>Anas clypeata</i>) (#A056), Tufted Duck (<i>Aythya fuligula</i>) (#A061), Common Scoter (<i>Melanitta nigra</i>) (#A065), Goldeneye (<i>Bucephala clangula</i>) (#A067), Coot (<i>Fulica atra</i>) (#A125), Golden Plover (<i>Pluvialis apricaria</i>) (#A140), Lapwing (<i>Vanellus vanellus</i>) (#A142), Common Tern (<i>Sterna hirundo</i>) (#A193), Wetland and Waterbirds (#A999)</p> <p><u>Middle Shannon Callows SPA</u> (Site Code: 004096) Distance from Site: 5.98 km Designated features: Whooper Swan (<i>Cygnus cygnus</i>) (#A038), Wigeon (<i>Anas penelope</i>) (#A050), Corncrake (<i>Crex crex</i>) (#A122), Golden Plover (<i>Pluvialis apricaria</i>) (#A140), Lapwing (<i>Vanellus vanellus</i>) (#A142), Black-tailed Godwit (<i>Limosa limosa</i>) (#A156), Black-headed Gull (<i>Chroicocephalus ridibundus</i>) (#A179), Wetland and Waterbirds (#A999)</p> <p><u>Lough Croan Turlough SPA</u> (Site Code: 004139) Distance from Site: 11.65 km Designated features: Shoveler</p>	<p>Yes</p> <p>It is considered there could be potentially direct and indirect impacts on this site as a result of the developments location adjacent to the designated area. In the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.</p> <p>No significant impacts on this Natura site are likely</p> <p>No significant impacts on this Natura site are likely</p>

	(Anas clypeata) (#A056), Golden Plover (Pluvialis apricaria) (#A140), Greenland White-fronted Goose (Anser albifrons flavirostris) (#A395), Wetland and Waterbirds (#A999)	
--	--	--

All designated sites within a 15km radius of the subject site have been considered in this screening for Appropriate Assessment.

Conclusion Table 2: If the answer to all of these questions is no, significant impacts can be ruled out for Natura 2000 sites. No further assessment is required; proceed to the Habitats Directive Conclusion Statement.

Screening for Appropriate Assessment - Conclusion Statement

Development Type: Declaration under Section 5 of the Planning and Development Act 2000 as amended.
Development Location: Barrymore Townland, Hodson Bay, Kiltoom, Athlone, Co. Roscommon
Natura 2000 sites within impact zone: SPA:004064, SPA:004096, SPA:004139, SAC:000216, SAC:000440, SAC:000610, SAC:000611, SAC:001625, SAC:002214, SAC:002336, SAC:002337, SAC:002339
Planning File Reference Number: DED 515
<p>Description of the Project:</p> <ul style="list-style-type: none"> (a) The carrying out of works "for the improvement/refurbishment of the existing chalet" (b) The maintenance and renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle (c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping (d) The formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2metres (e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services <p>Describe how the project or plan (alone or in combination) could affect Natura 2000 sites(s): Potential direct and indirect impacts have been identified – due to the sites location within Lough Ree SAC and adjacent to Lough Ree SPA.</p>
<p>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not:</p> <p>In the absence of information in relation to the treatment and disposal of waste water, surface water collection and disposal and the type & amount of material imported to the site, significant impacts cannot be ruled out and therefore a Stage 2 AA is required.</p>

Conclusion of Screening Assessment:

Following an assessment of the development and any potential relationships with European Sites, it is concluded that either alone or in combination with other plans or projects, significant impacts on Lough Ree SAC and SPA cannot be ruled out.


Documentation reviewed for making this statement:

Roscommon County Development Plan 2014 – 2020,
Documentation submitted with the planning application
National parks and wildlife website.


Completed by: Paula Connaughton**Date: 06/05/2022**

Signed: 

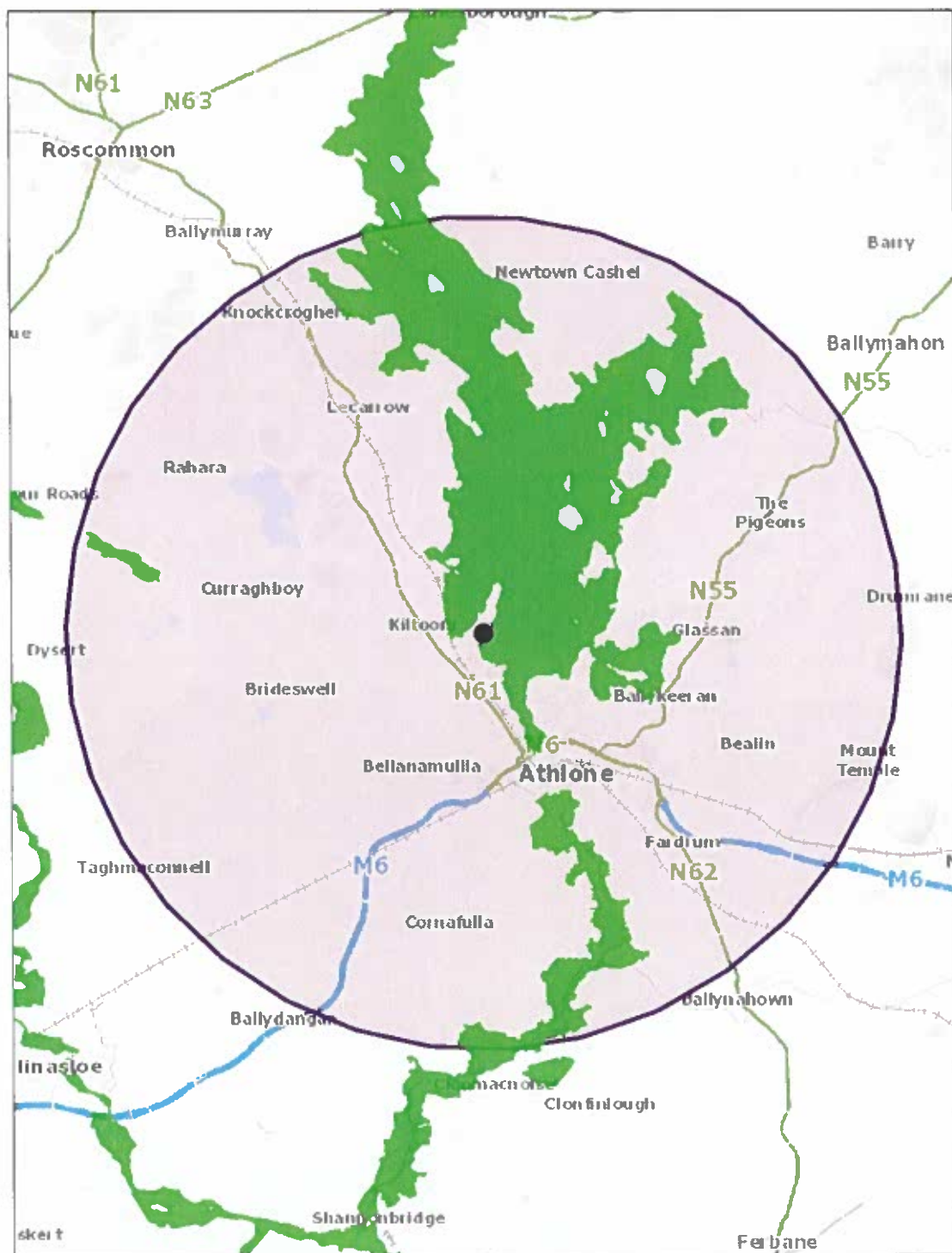
Date: 6th May 2022

Signed: 
Mary Grier
Senior Planner

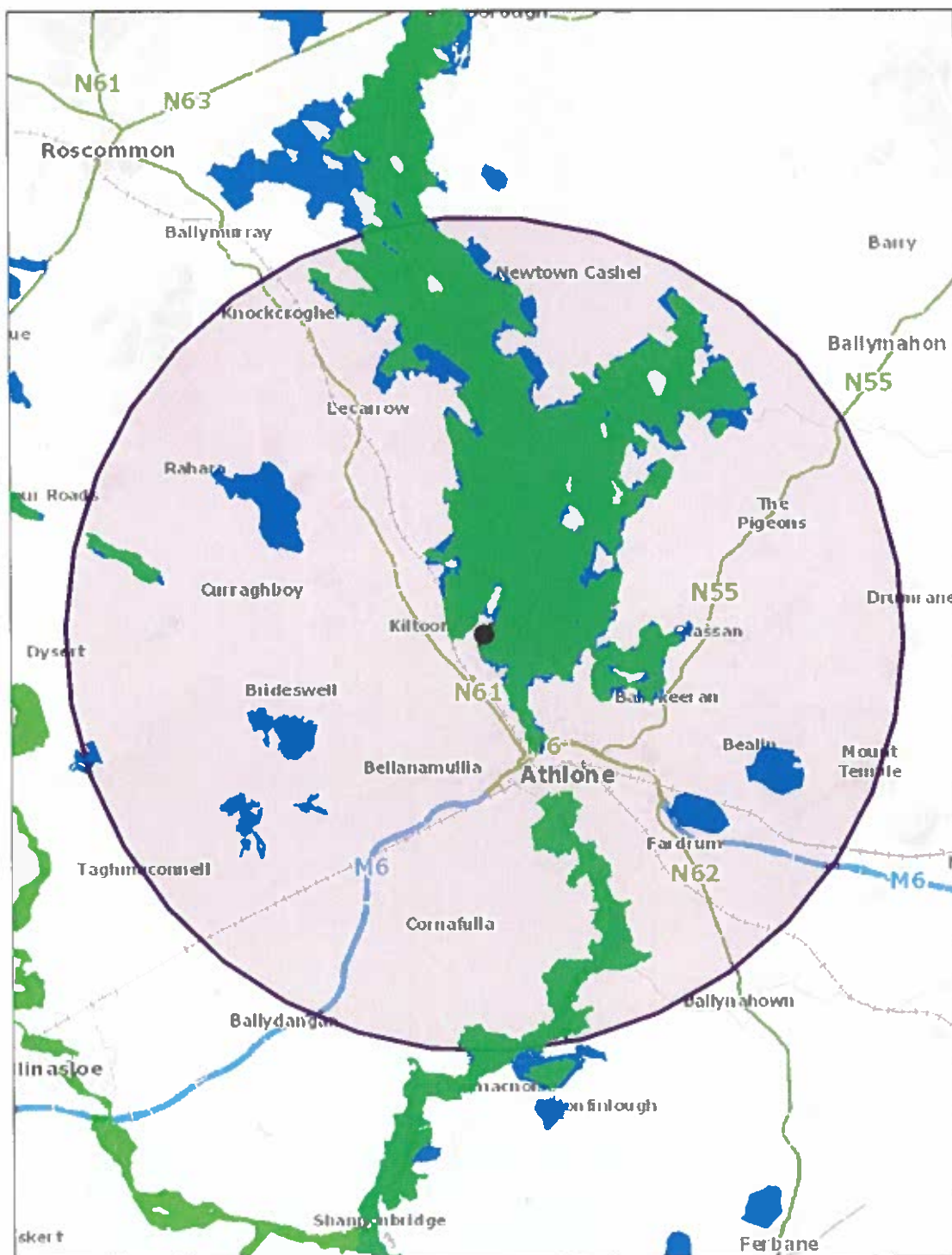
Date: 9th May 2022


D. J.

16th May 2022



SPA (green) within 15km of DED 515



SAC & SPA within 15km of DED 515

Roscommon County Council
Aras an Chontae
Roscommon
09086 37100

13/04/2022 15:20:28

Receipt No. : L01/0/216398

EDVINAS CINGA & GIEDRE CINGE
c/o THE PLANNING PARTNERSHIP
THE BANK BUILDING
52 OLIVER PLUNKETT STREET
MULLINGAR
CO WESTMEATH

PLANNING APPLICATION FEES 80.00
GOODS 80.00
VAT Exempt/Non-vatable
DED515

Total : 80.00 EUR

Tendered :
Cheque 80.00
000053

Change : 0.00

Issued By : Jackie Keegan
From : Central Cash Office



Comhairle Contae
Ros Comáin
Roscommon
County Council



Roscommon County Council

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

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

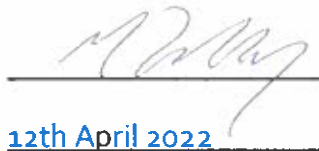
Name:	Edvinas Cinga & Giedre Cinge
Address:	[REDACTED]
Name & Address of Agent:	The Planning Partnership The Bank Building 52 Oliver Plunkett Street Mullingar Co. Westmeath
Nature of Proposed Works	Maintenance and improvement of existing holiday chalet Section 4 (1.) (h.) of the Planning & Development 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

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:

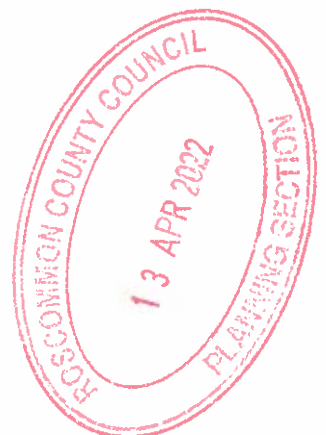


Date:

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



Planning Pack Map

Bearaidh Mhór
Barry More

Athlone
Golf Club

8.22

4.20

0.97

0.52

0.46

0.43

0.68

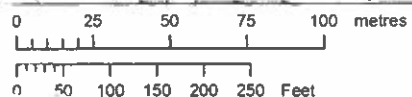
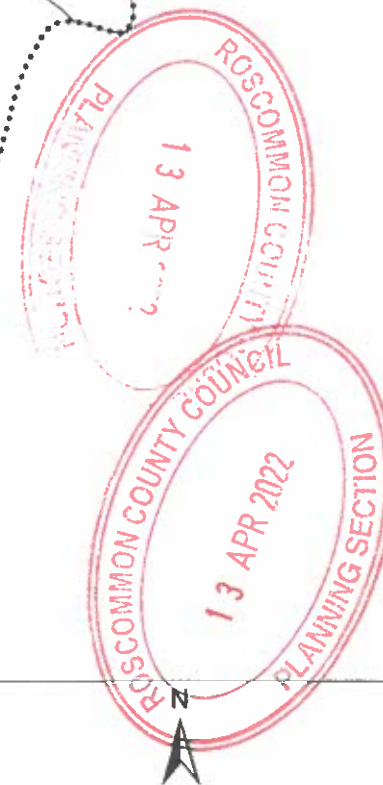
2.41

0.23

Lough Ree
Loch Rí

Hodson's Bay
Bá Hodson

Recreational
Complex



OUTPUT SCALE: 1:2,500

CAPTURE RESOLUTION:
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CENTRE COORDINATES:
ITM 601054.746808

PUBLISHED: 16/03/2020
ORDER NO.: 50113319_1

MAP SERIES: 1:2,500
MAP SHEETS: 2965-A

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Site Location Map

CENTRE COORDINATES:
ITM 601054,746808

PUBLISHED: 16/03/2020
ORDER NO.: 50113319_1

MAP SERIES: 6 inch Raster
MAP SHEETS: RN049
6 inch Raster WH022

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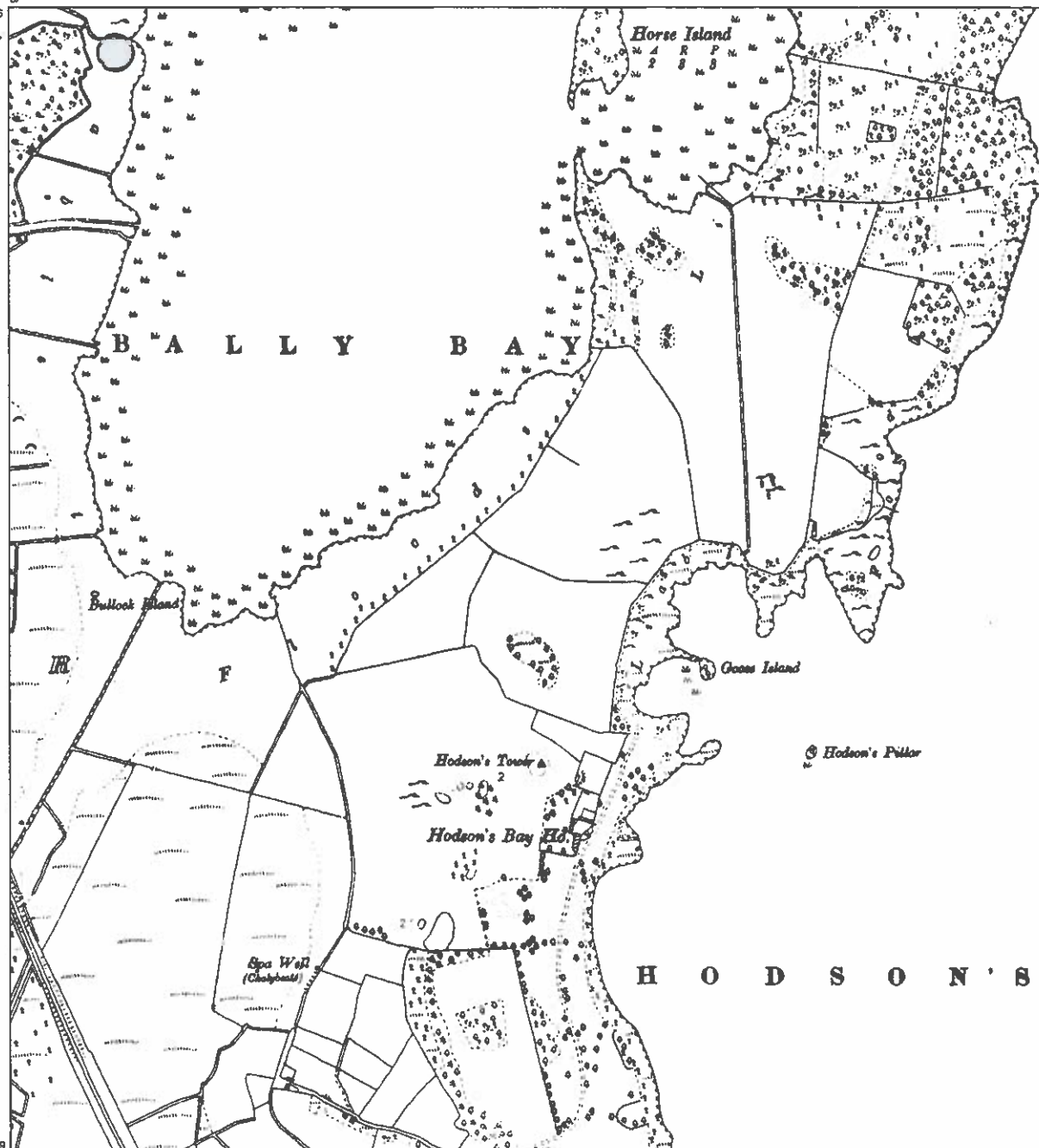
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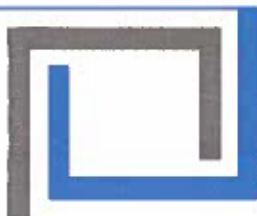


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Ordnance Survey Ireland



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



-: SECTION 5 DECLARATION :-

12th 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*, [REDACTED] 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.¹
- 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 PDA².*
 - 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 23rd 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*

¹ See section 4(1)h of the PDA

² 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".³

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.*

³ 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 area⁴

- 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.

⁴ [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:

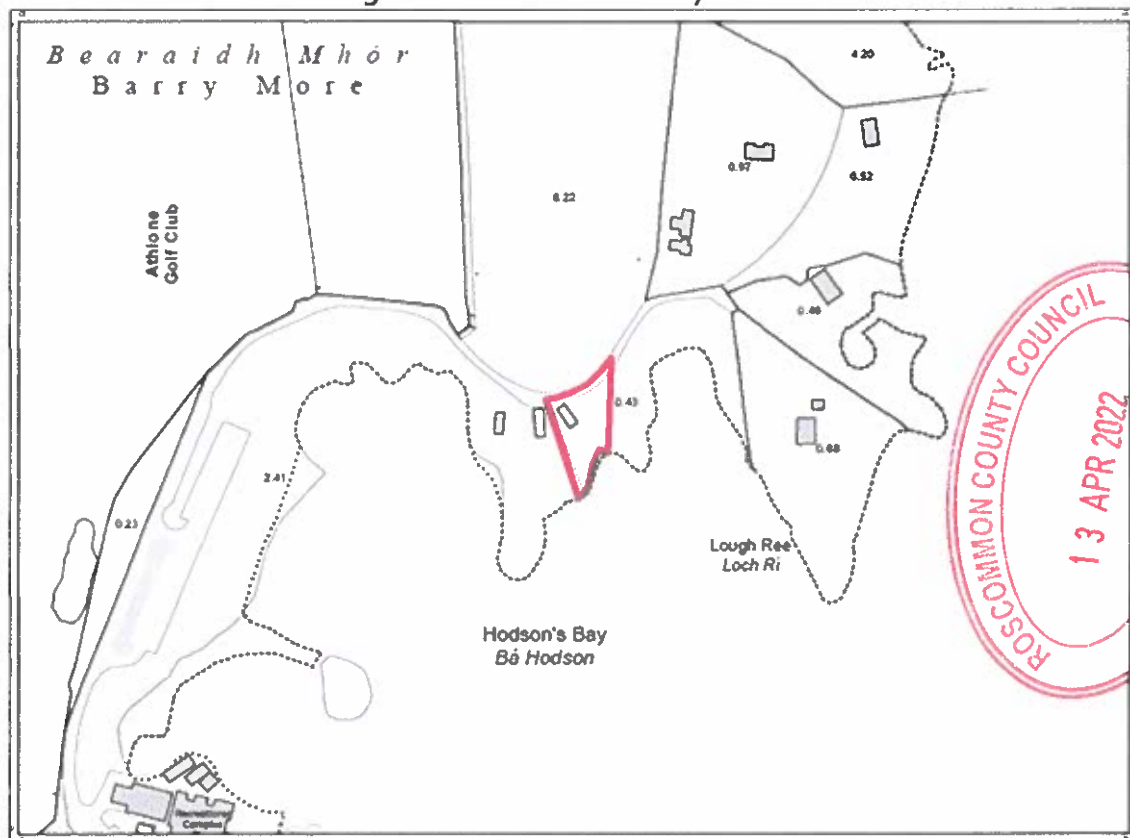
Whether the carrying out of works for the improvement / refurbishment of the existing chalet is or is not development and, if deemed development, is or is not exempted development under the PDA;

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 or 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)⁵

- 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)⁶

- 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'.

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

⁶ [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 804⁷ 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

⁷ 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

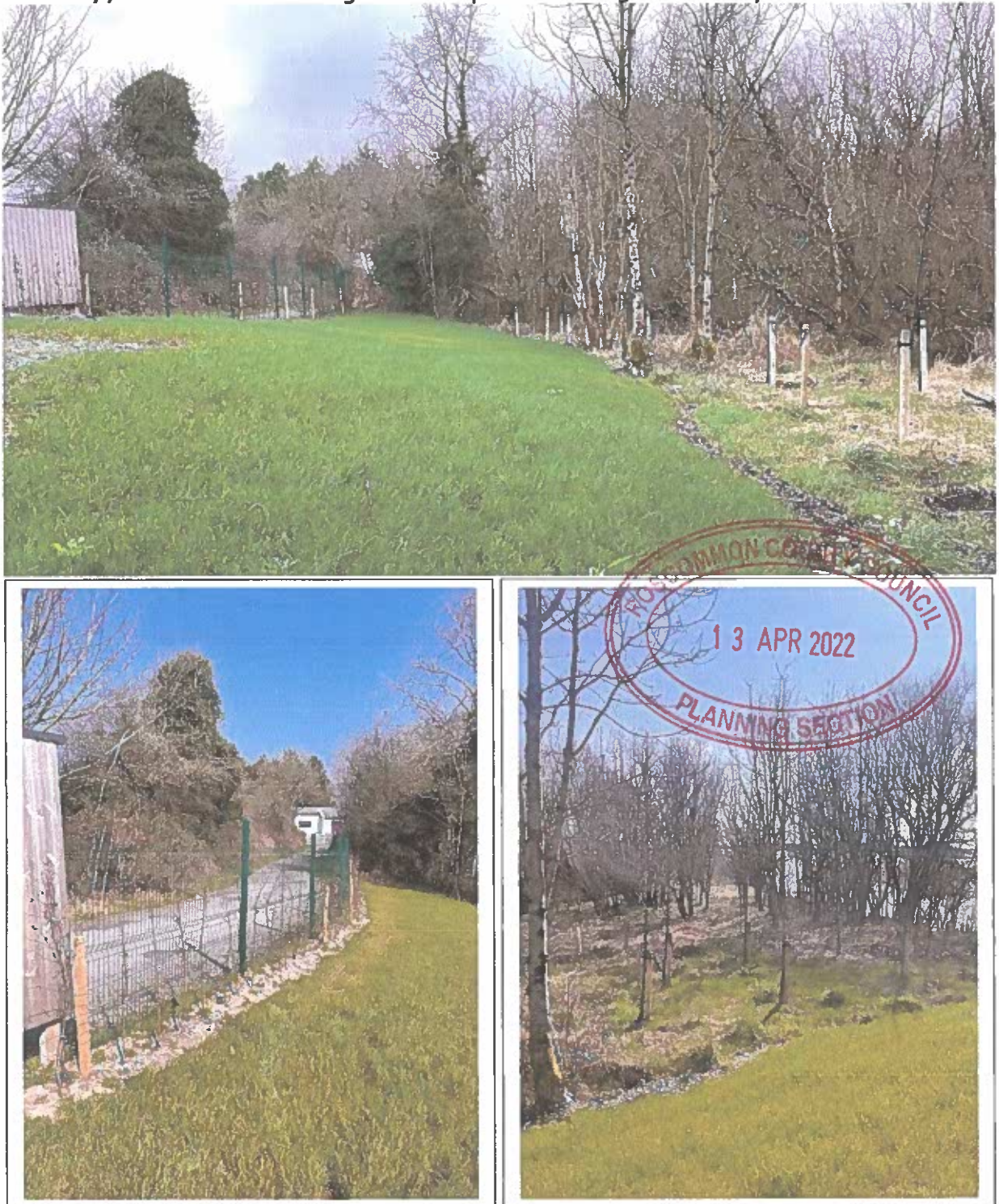
- 6.3.1. Under this heading the Applicant seeks a determination on the following question:

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

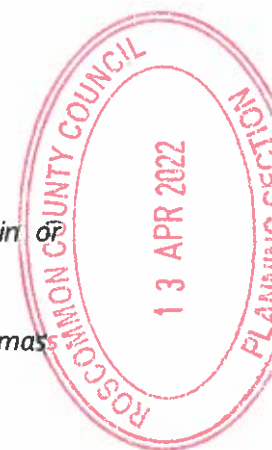
CLASS 11

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 MAINTENANCE 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

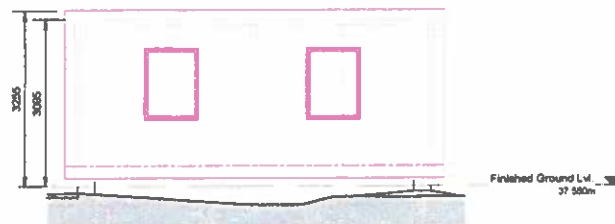
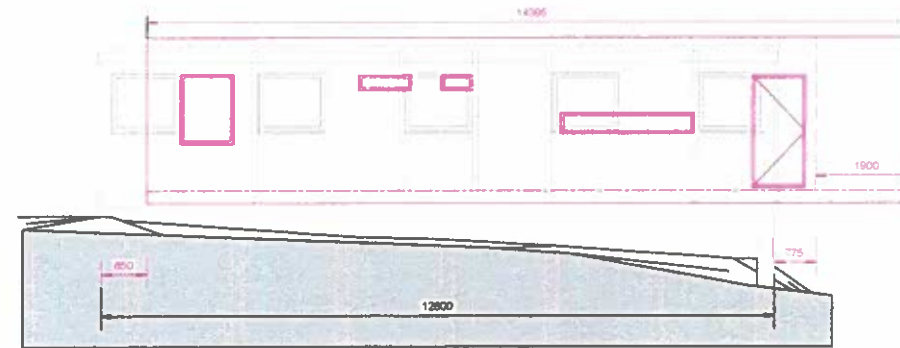
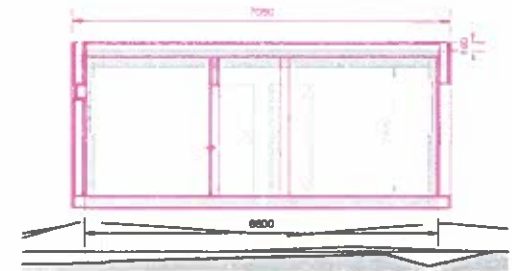
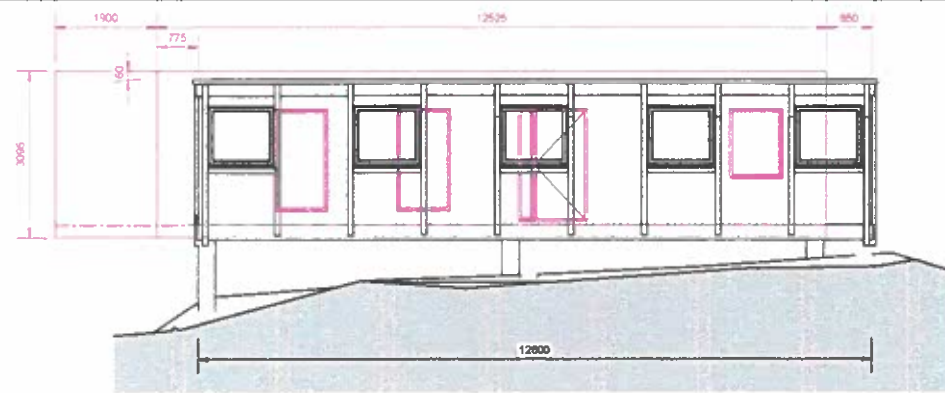
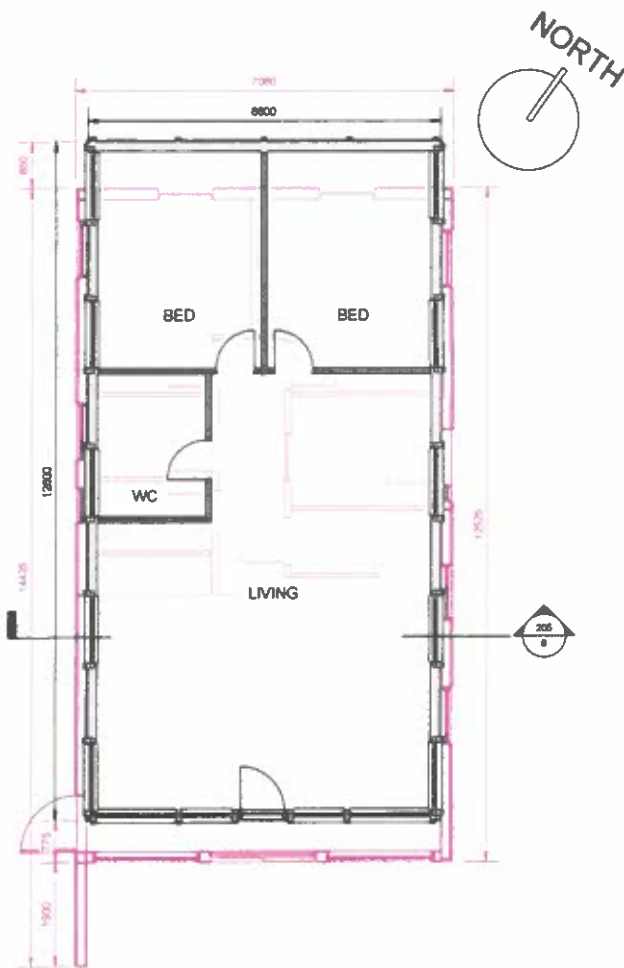
The Applicant seeks the Planning Authority's determination as to whether the subject works are considered *exempted development* under Section 4(1)(h) of the PDA and a determination as to whether the replacement boundary fence and gates are considered *exempted development* under Schedule 2, Part 1,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





Comments					
Drawn By	Date	Checked By	Date	Approved By	Date
NOTES: © MMA Architects Submitting Notes					
Scale: 1" = 100'		Purpose of Issue: For Information			
Stage: EXISTING		Created By / Date: LX / BA		Status: 62	
Prj. No.: 21.17		Draw. No.: 205		Rev:	
MMA ARCHITECTS 8 Centre Court, 3300 Bayview Ave., Toronto, Ont. M2H 3B8 Tel: (416) 461-1111 E: info@mmaarchitects.ca					
Project Details: CHALET at HOBSON BAY, ATLHORN, Co. ROSSCOMMON					
Client: EDWINA CHUA					
Drawing Title: Allground drawing					
Drawing Identifier: 21.17-MMA-A-205					

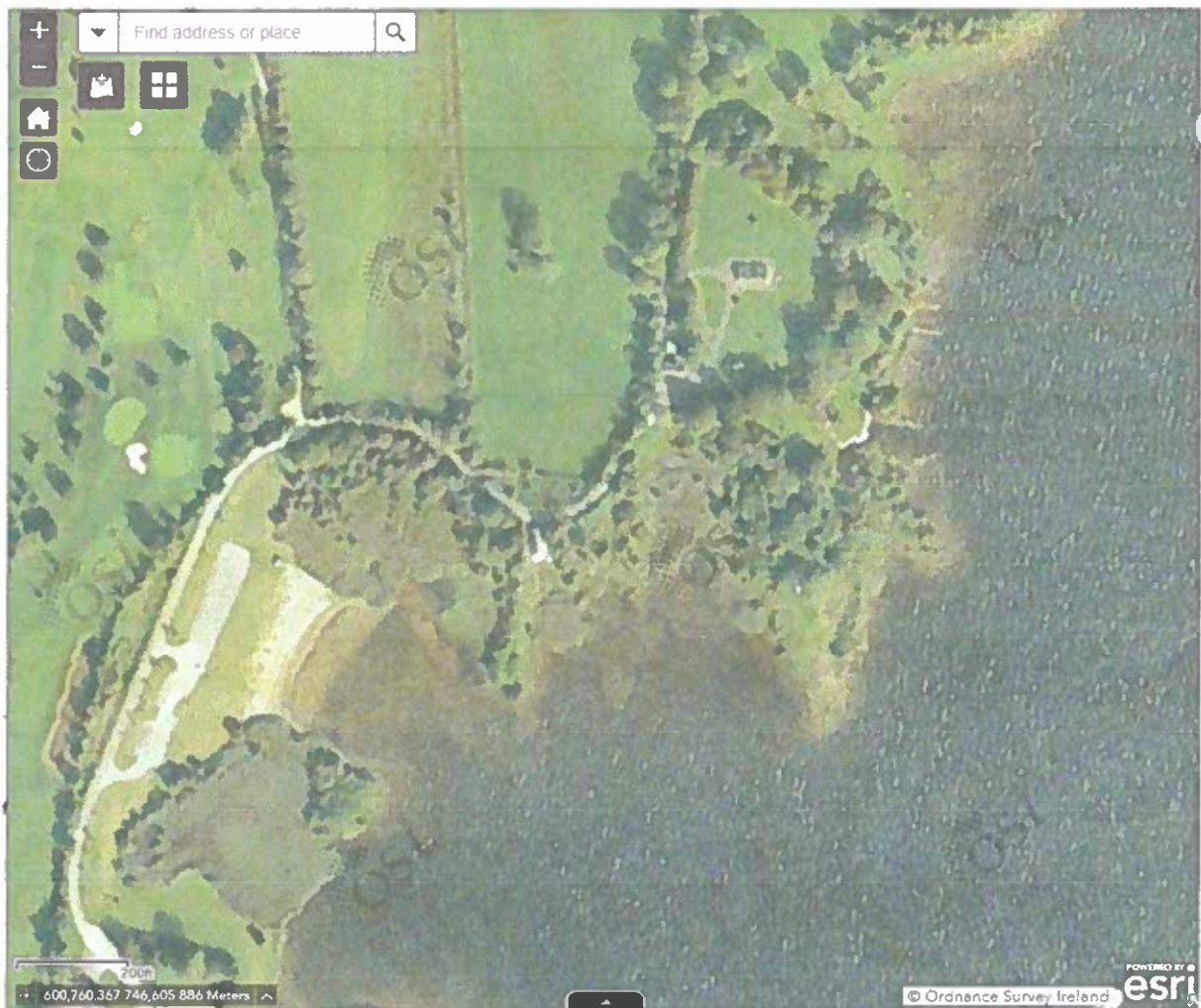
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2000



2005



2005-2012

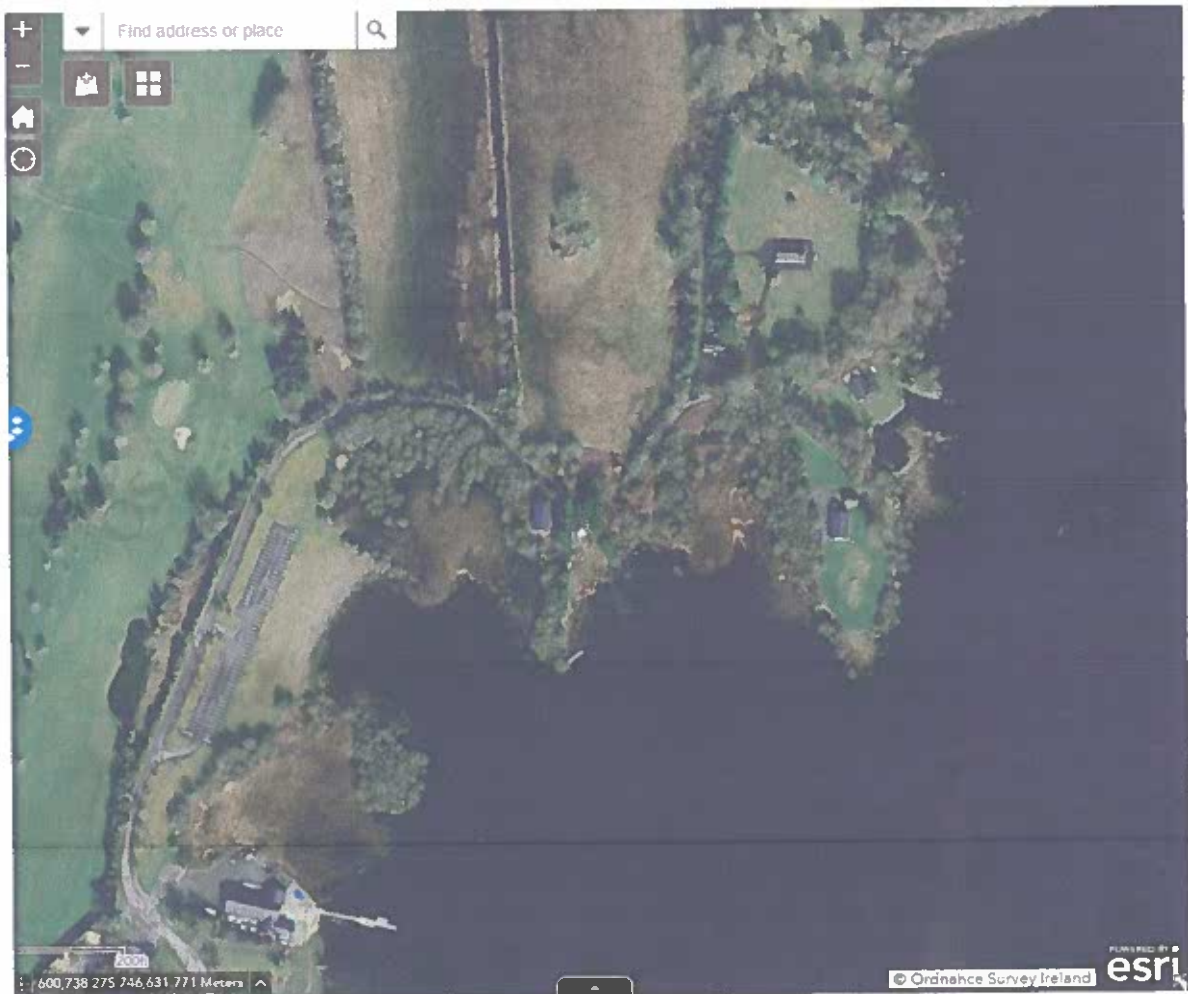


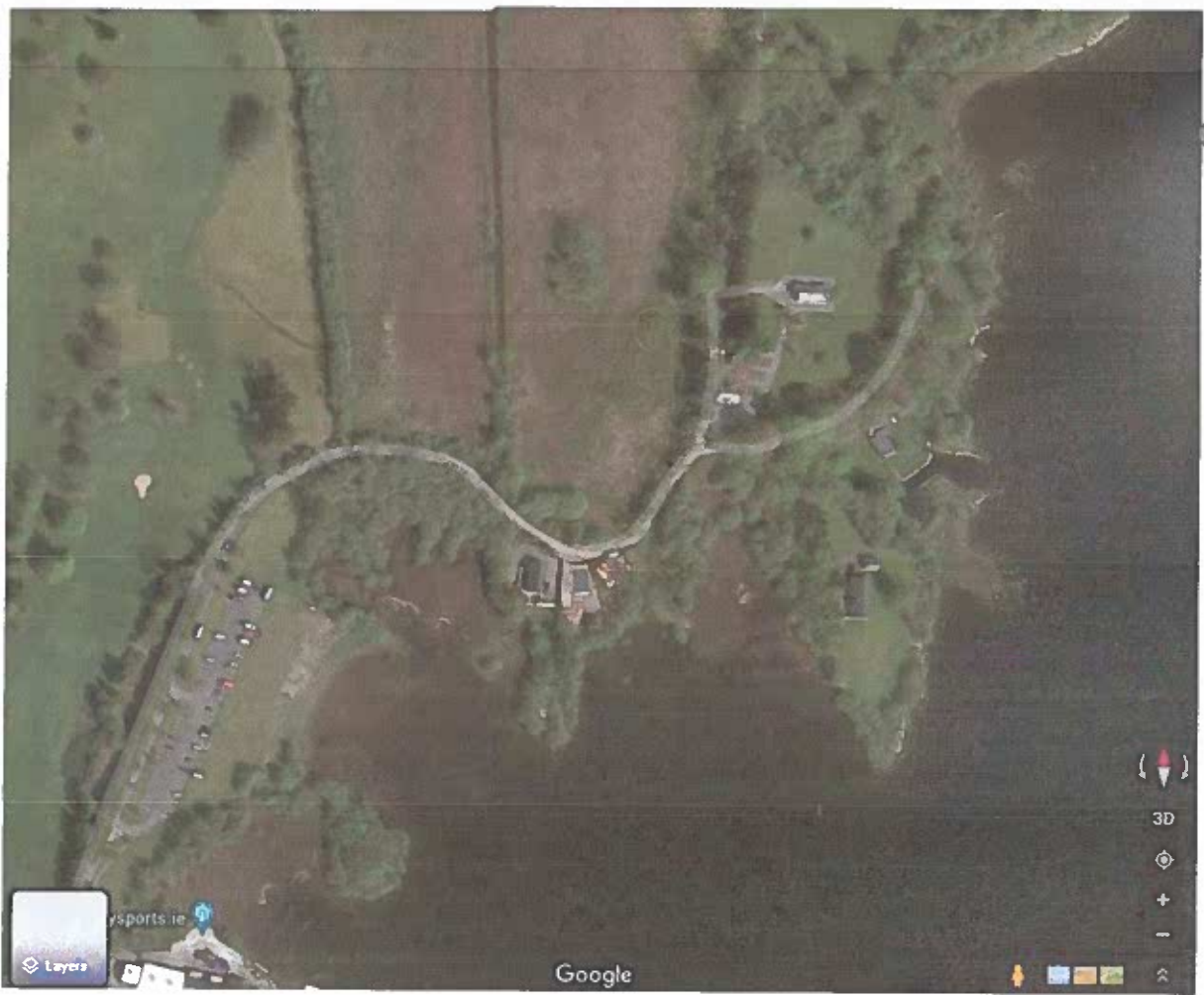
ROSEBURY COUNTY COUNCIL
13 APR 2022
PLANNING SECTION

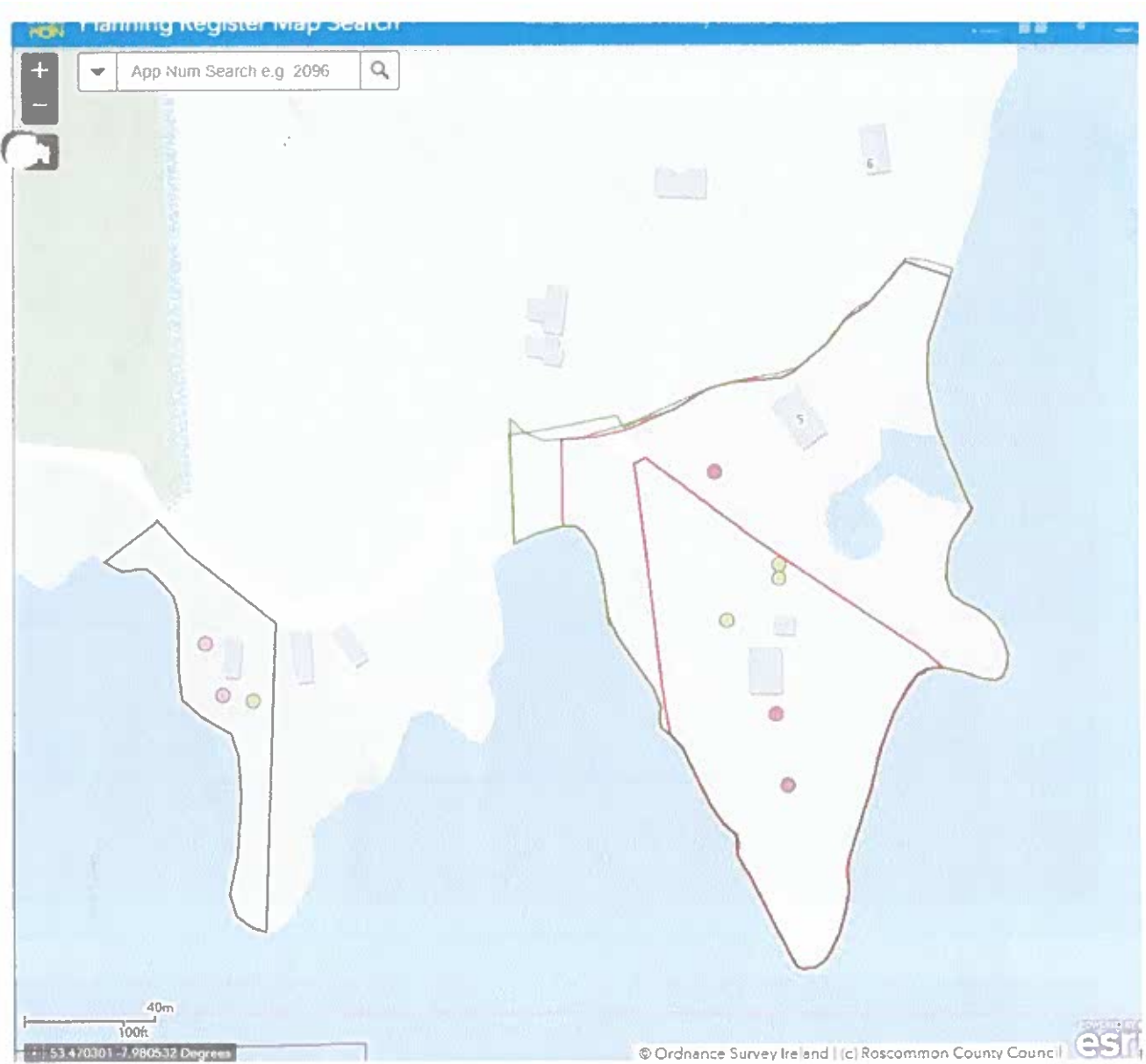
2014-2015



2013-2018









ROSO
13 APR 2022
PLANNING & ZONING
COUNCIL

ROSCOMMON COUNTY COUNCIL
13 APR 2022
PLANNING SECTION

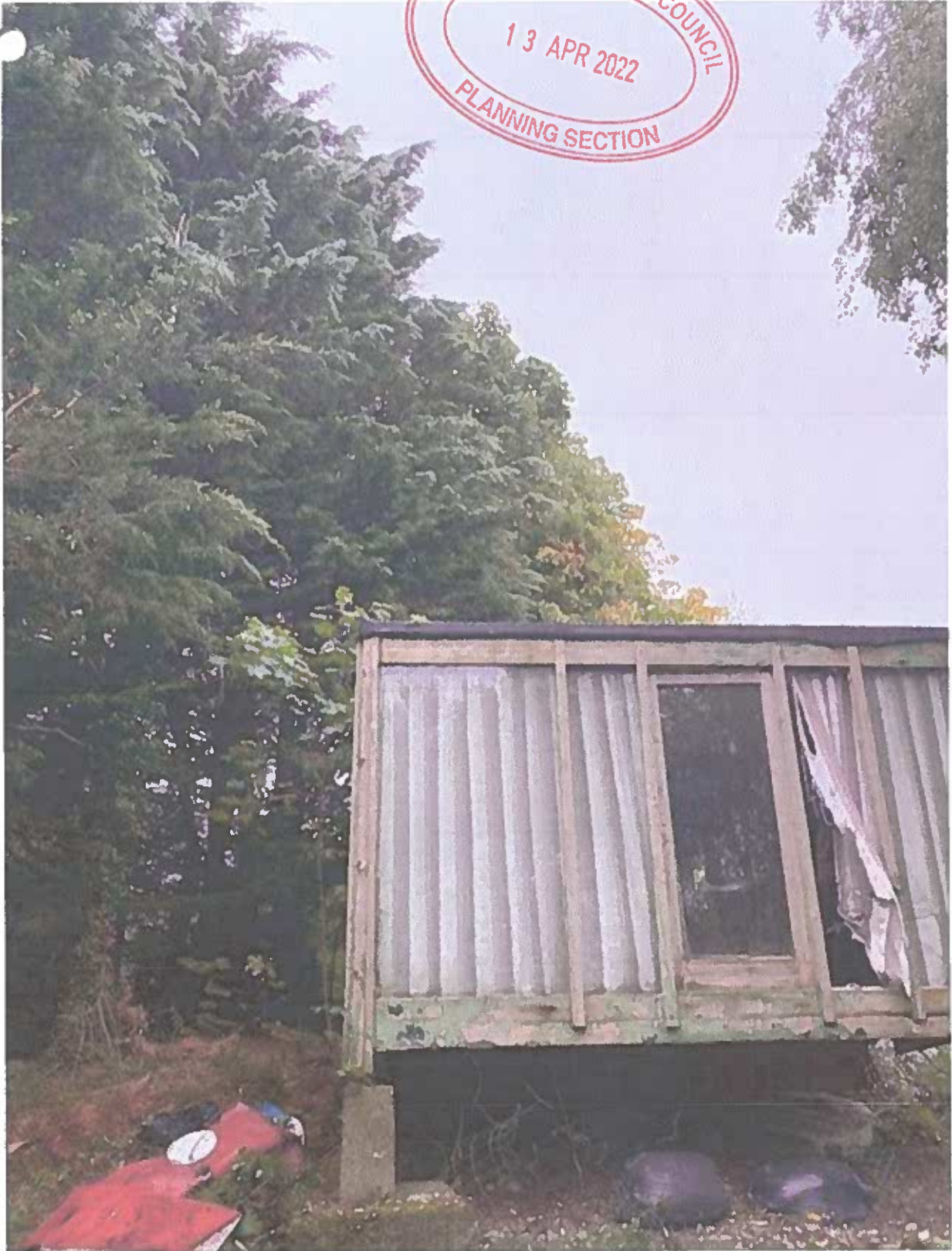




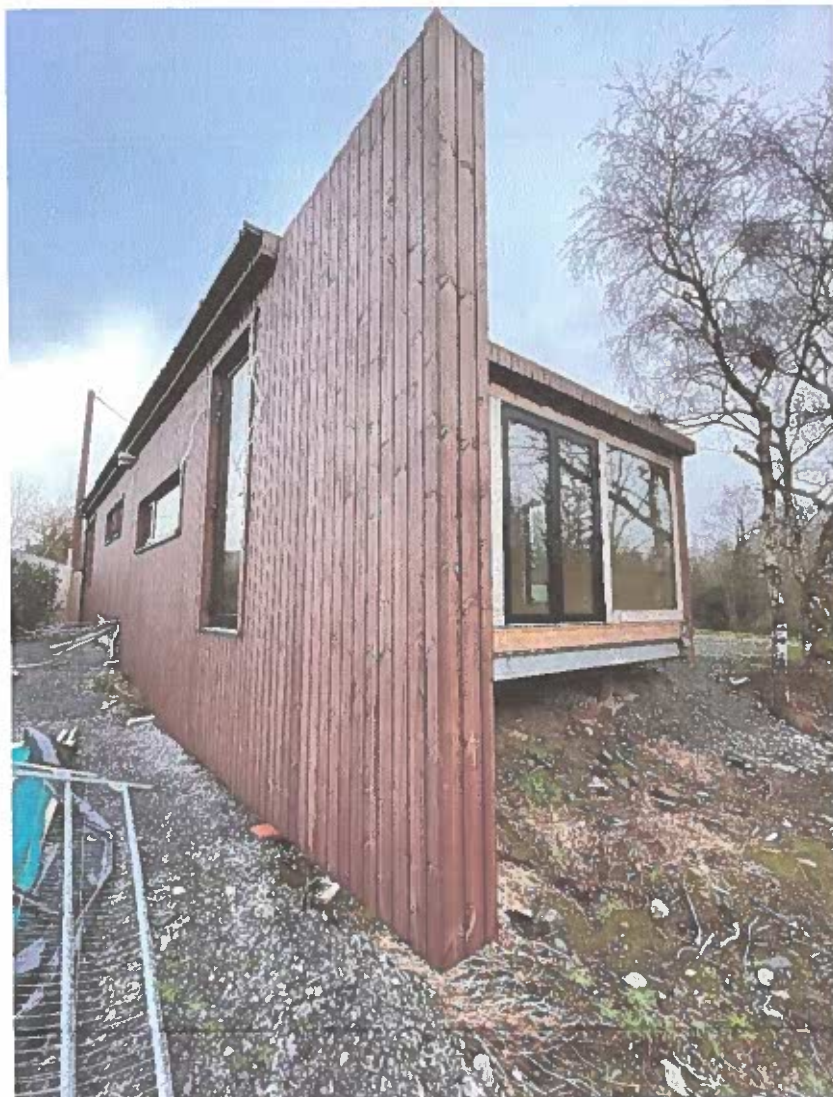
ROSCOMMON COUNTY COUNCIL
13 APR 2022
PLANNING SECTION













Appendix C

Court Summons & Enforcement Notice



VAT No IE3052134P
DN 7.2 003 Castlereagh

Dermot M. MacDermot B.C.L.
County Solicitor
Castlereagh
Co. Roscommon

Telephone: (091) 9620125
Telefax: (091) 9620338
Dublin Agency Office:
21/26 Upper Ormond Quay,
Dublin 7.

My reference
Y/RP665/RS

Your reference

Date
03 August 2021

Edvinas Cinga

RE: Roscommon County Council v You
Planning & Development Act 2000
Athlone District Court – 15 September 2021 at 10.30am

Dear Sir/Madam

Pursuant to statute and court rule and by way of service upon you, I enclose herewith under cover of registered post, copy Summons in connection with above.

Yours sincerely

Dermot M MacDermot

Enclosure 1



AN CHÚIRT DÚICHE

THE DISTRICT COURT

DISTRICT COURT AREA OF ATHLONE

DISTRICT NO 9

SUMMONS
PLANNING AND DEVELOPMENT ACT 2000

Roscommon County Council
Aras an Choniac
Roscommon
County Roscommon

COMPLAINANT

Edvinas Cinga

DEFENDANT

Whereas a complaint has been made to me by the Complainant Roscommon County Council, the Planning Authority, that you the Defendant did on the 7th day of May 2021 at Barrymore, Kiltoom, in the County of Roscommon in the Court Area and District aforesaid fail, within the period specified in an Enforcement Notice dated the 23rd day of February 2021 and served upon you to comply with the requirements thereof, namely:

WITHIN 2 DAYS OF THE DATE OF THE ENFORCEMENT NOTICE

- Cease all works on site within 2 days of the date of the Enforcement Notice.
- Refrain from all works on site (with the exception of the works required in the steps below) and including works that would otherwise be deemed to constitute exempted development.

WITHIN 2 MONTHS OF THE ENFORCEMENT NOTICE

- Remove the raised stone platform erected on site together with all serving pipes lain on site and connecting to public services currently being erected on site (if any).
- Grade all the lands in order to facilitate the natural revegetation of the lands.

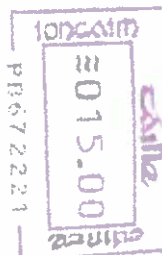
contrary to Section 154(8) Planning and Development Act 2000

THIS IS TO COMMAND YOU TO APPEAR as Defendant on the hearing of the said Complaint, at the District Court at Athlone in the said Court Area and District on Wednesday the 15th day of September 2021 at 10.30am in the forenoon to answer the said Complaint.

Dated the 28th day of July 2021.

Michelle Garty
Judge of the District Court

To / Edvinas Cinga





Comhairle Contae
Ros Comáin
Roscommon
County Council



REGISTERED POST

Edvinas Cinge & Giedre Cinga



Planning Ref. No.: [REDACTED]

Date: 23 February, 2021



**THE COUNTY COUNCIL OF THE COUNTY OF ROSCOMMON
PLANNING & DEVELOPMENT ACTS, 2000 (as amended)**

ENFORCEMENT NOTICE

Section 154 of the Planning and Development Act 2000

WHEREAS: Alleged unauthorised development on site without the benefit of planning permission and a necessary appropriate assessment and flood risk assessment at Barrymore Townland, Kiltoom, Athlone, Co. Roscommon.

Situated at: Barrymore Townland, Kiltoom, Athlone, Co. Roscommon

has been, and/or is being carried out.

TAKE NOTICE that Roscommon County Council being the planning authority for the area in which the above land is located, in exercise of the powers conferred on it by Section 154 of the Planning and Development Act 2000, having investigated the matter has decided to serve this Enforcement Notice on you,

Edvinas Cinge & Giedre Cinga, [REDACTED]

the owner and/or occupier or person in control of the aforesaid lands;

YOU ARE HEREBY REQUIRED, pursuant to Section 154, to cease all unauthorised development in relation to the alleged unauthorised development on site without the benefit of planning permission and a necessary appropriate assessment and flood risk assessment at Barrymore Townland, Kiltoom, Athlone, Co. Roscommon.



Comhairle Contae
Ros Comáin
Roscommon
County Council



Take notice that the Planning Authority hereby:

Requires you to undertake the following within 2 days of the date of the enforcement notice:

- Cease all works on site within 2 days of the date of the enforcement notice.
- Refrain from all works on site (with the exception of the works required in the steps below) and including works that would otherwise be deemed to constitute exempted development.

Requires you to undertake the following with 2 months of the enforcement notice:

- Remove the raised stone platform erected on site together with all serving pipes lain on site and connecting to public services currently being erected on site (if any).
- Grade all the lands in order to facilitate the natural revegetation of the lands.

AND TAKE NOTICE THAT, if within the period specified above, or within such extended period (being not more than six months) as Roscommon County Council may allow, the steps specified in this notice to be taken by you have not been taken, the Planning Authority may enter on the said land and take such steps and may recover any expenses reasonably incurred by them in that behalf.

AND FURTHER TAKE NOTICE that you are hereby required to refund to the Roscommon County Council the costs and expenses reasonably incurred by them in relation to the investigation, detection and issue of this Enforcement Notice concerned and any Warning Letter under Section 152, including costs incurred in respect of the remuneration and other expenses of Employees, Consultants and Advisers, and the Planning Authority may recover these costs and expenses incurred by it.

YOU ARE HEREBY WARNED THAT if you do not take the steps specified in this Notice within the specified period or within such extended period, (not being more than six months), as Roscommon County Council may allow, you may be guilty of an offence.

Dated: 22nd day of February 2021.

Signed:

Tracy Davis

Tracy Davis, Senior Executive Planner
Planning Department



Appendix D

Examples of holiday chalet developments in Ireland

Examples of holiday chalets developments in Ireland, Brittas Bay, Roundstone, etc. prefabricated buildings on stilts which ultimately do not need to apply for successive permissions when they are brought onto site as prefabricated to replace pre-existing structures which have aged and require maintenance via refurbishment



Brittas Bay, Co. Wicklow



Roundstone, Co. Galway 2009 image vs 2019 - note refurbished holiday chalets behind chalet in foreground – typical occurrence - and dimensional changes not affecting the character or external appearance of either the chalet or the surrounding chalets.



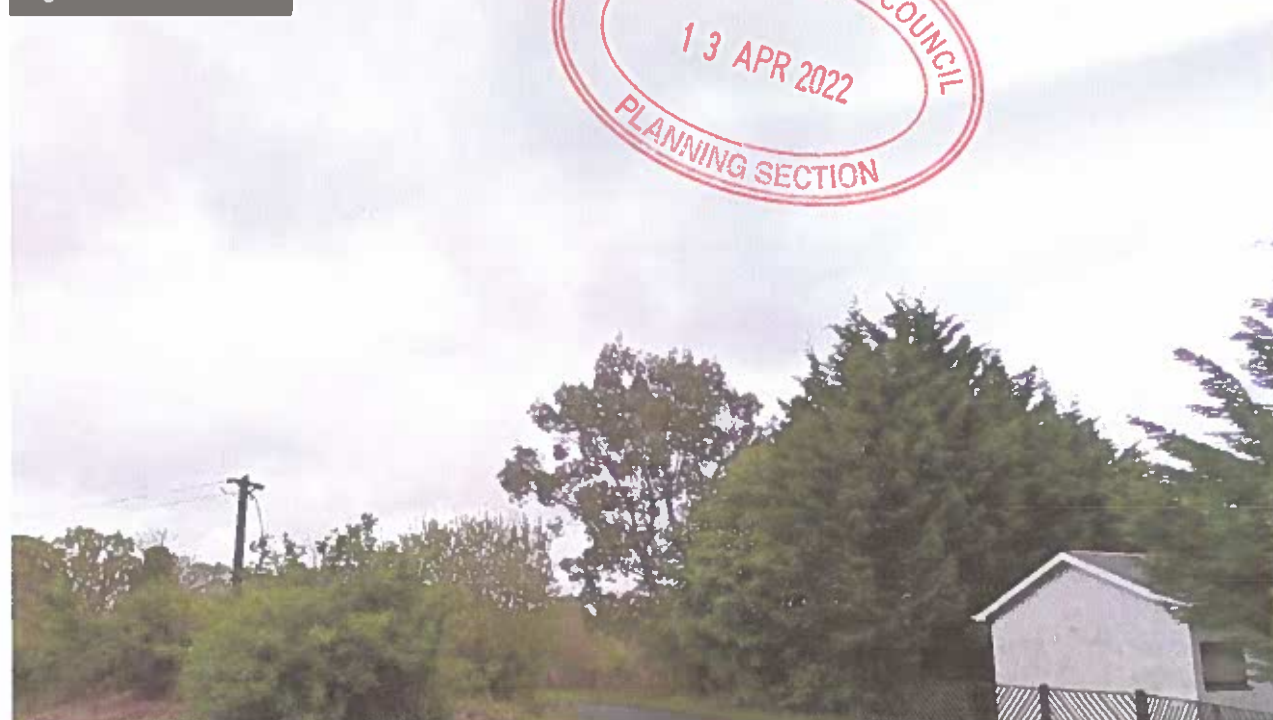
Appendix E

Photographic evidence of service connections existing

Evidence of Electrical, Wastewater and Water Supply Connections



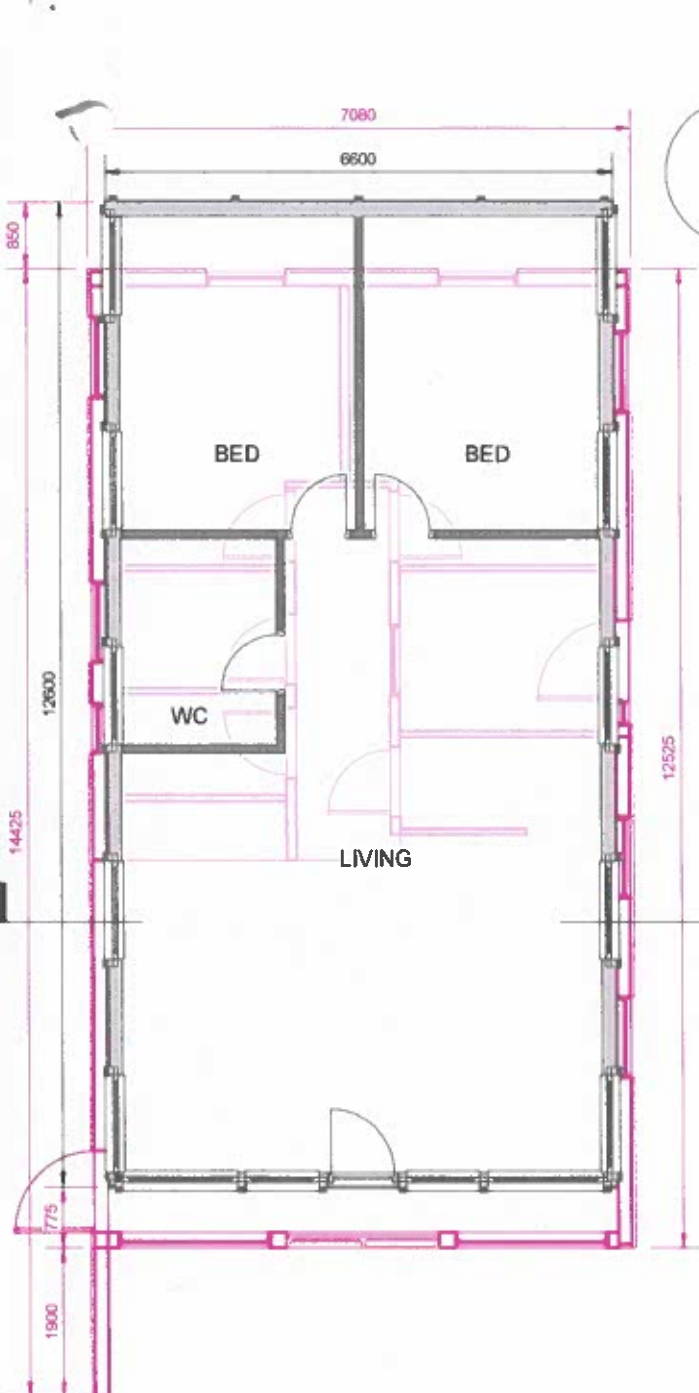
Street View - Apr 2009



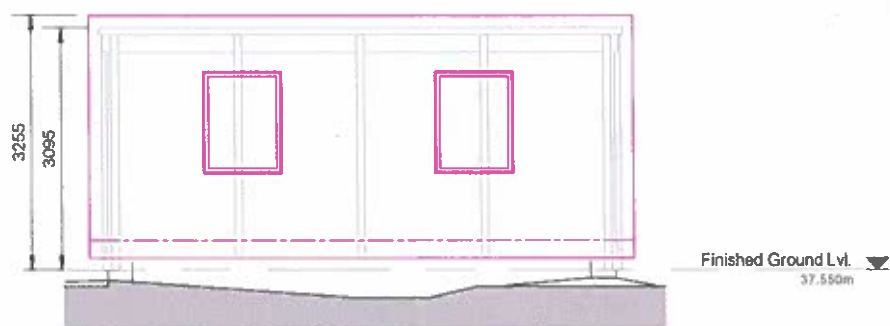


Approximate Position of Septic Tank (Concrete Lid) to north of Site

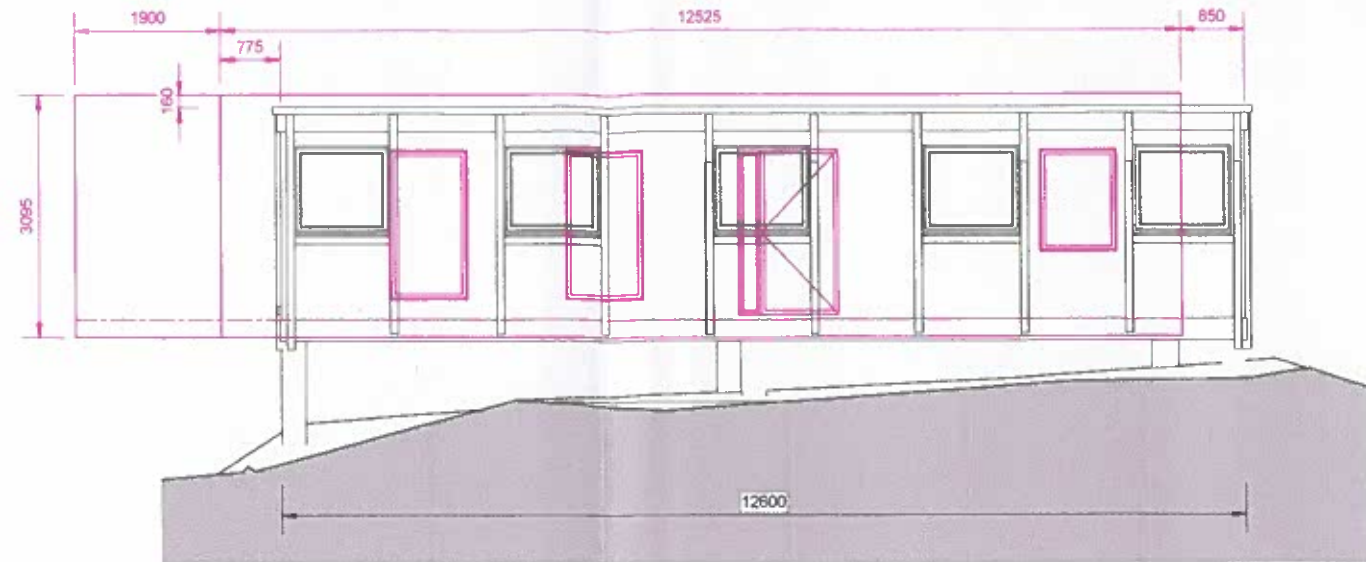




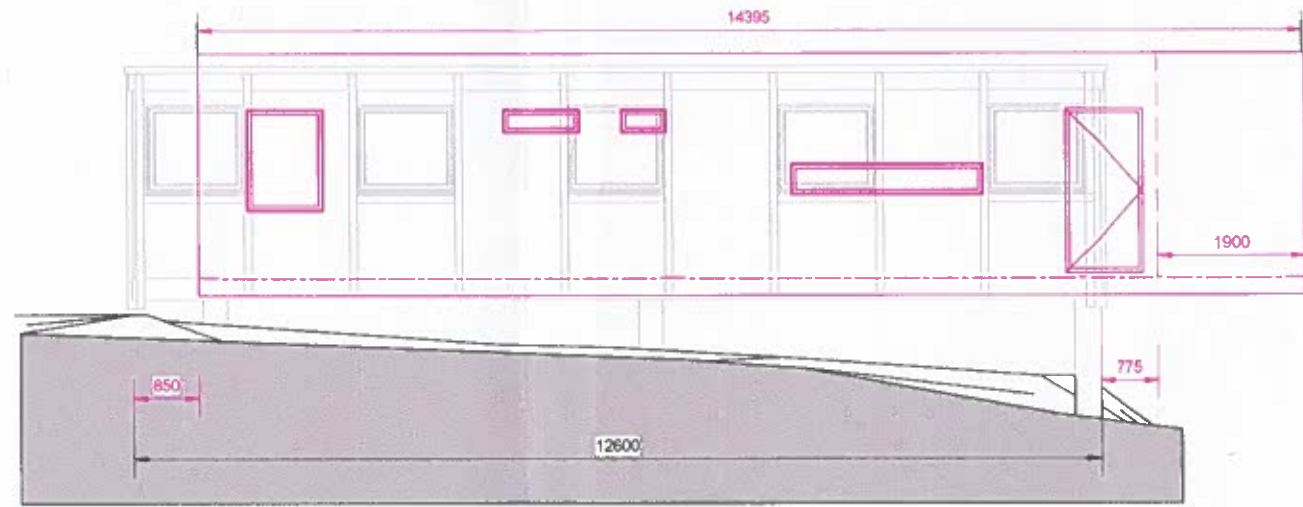
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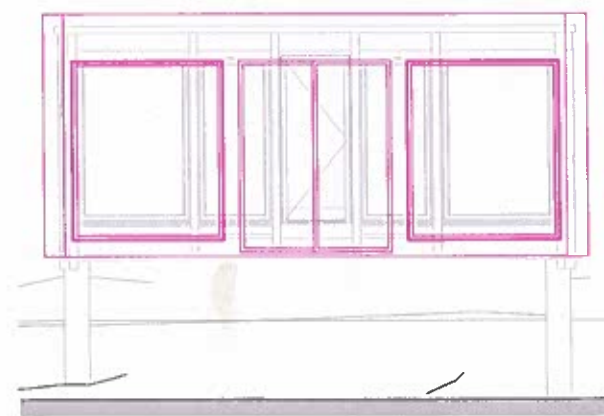
2 01 Overlay Front / Roadside Elevation
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5 04 Overlay Side (NE) Elevation
1 : 100



4 03 Overlay Side (SW) Elevation
1 : 100




3 02 Overlay Rear/Lakeside (SE) Elevation
1 : 100



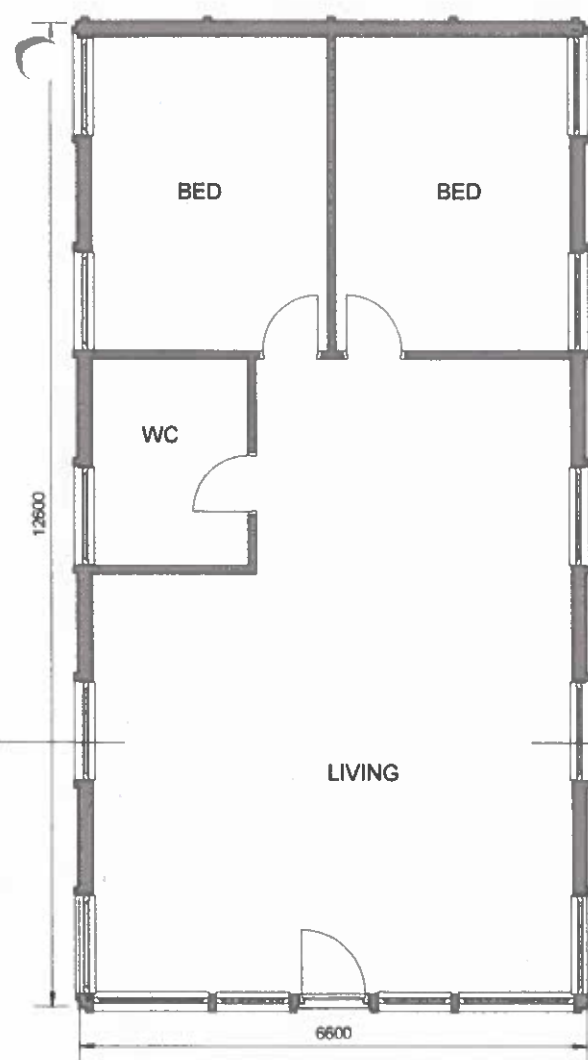
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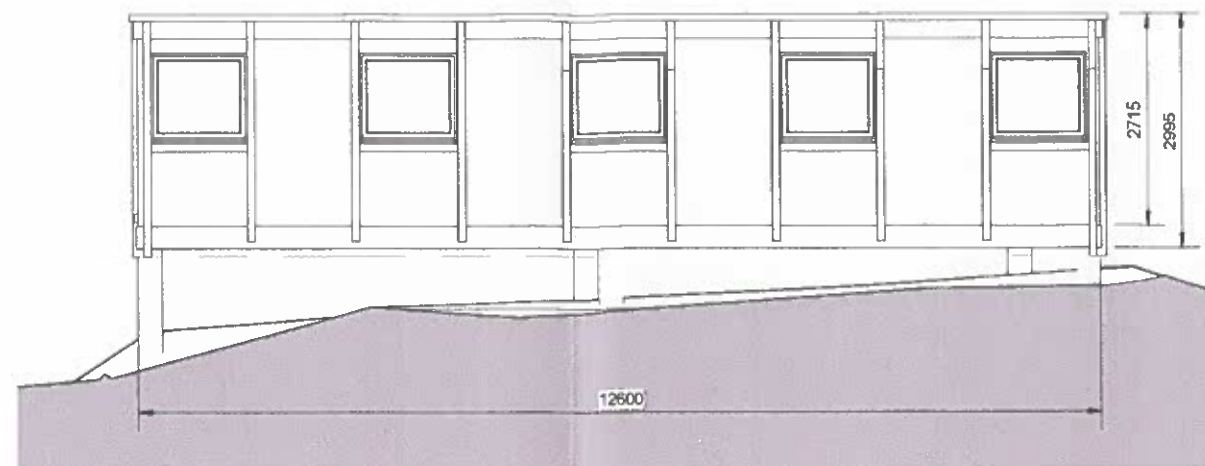
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Pro. No.:		Dwg. No.:			Rev:		
21.17		205					
MMA ARCHITECTS 8 Centre Court, Blyry Business Park, Athlone, Co. Westmeath. t: 09064 60006 e: info@mmaarchitects.ie							
Project Details:							
CHALET at HODSON BAY, ATHLONE, Co. ROSCOMMON							
Client:		EDVINAS CINGA					
Drawing Title:		Alignment drawing					
Drawing Identifier:		21.17-MMA-A-205					

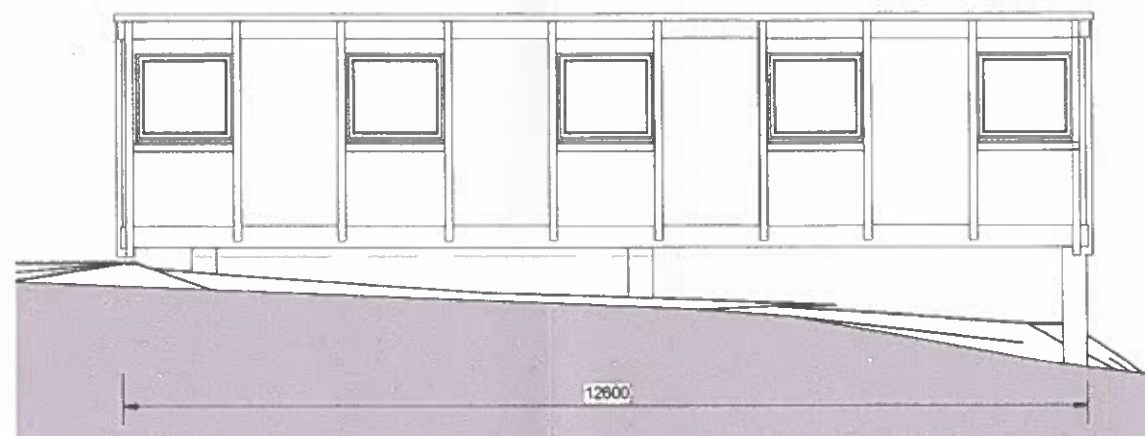




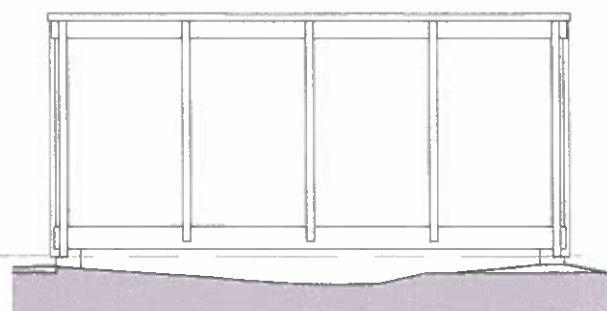
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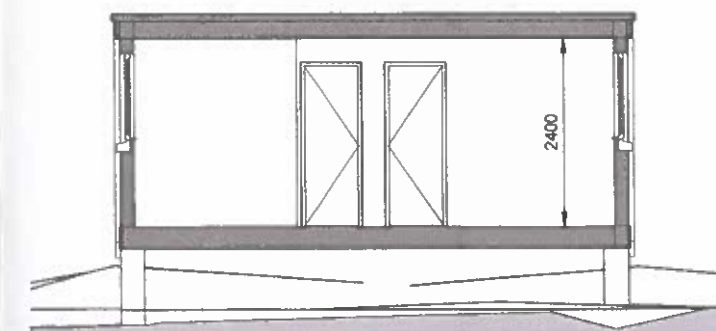
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1 01 Front / Roadside Elevation
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2 02 Rear/Lakeside (SE) Elevation
1 : 100



5 Section A-A
1 : 100



Rev	Comment:	Drawn By	Date	Checked By	Date	Approved By	Date
NOTE:							
© MMA Architects Existing Notes							
Scale:			Purpose of Issue:				
1 : 100			For Information				
Stage:			Created By / Date:			Status:	
EXISTING			LK/BA			S2	
Pro. No.:			Dwg. No.:			Rev:	
21.17			203				
<div>MMA ARCHITECTS 6 Centre Court, Byrry Business Park, Athlone, Co. Westmeath, t: 09064 60006 e: info@mmaarchitects.ie</div> <div>MMA ARCHITECTS</div>							
Project Details:							
CHALET at HODSON BAY, ATHLONE, Co. ROSCOMMON							
Client:							
EDVINAS CINGA							
Drawing Title:							
General Arrangement							
Drawing Identifier:							
21.17-MMA-A-203							

