

DÁIL ÉIREANN

AN COISTE UM ACHAINÍOCHA ÓN BPOBAL

COMMITTEE ON PUBLIC PETITIONS

Déardaoin, 9 Nollaig 2021

Thursday, 9 December 2021

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Pat Buckley,	Jerry Buttimer,
Cormac Devlin,	Gerard P. Craughwell,
Richard O'Donoghue.	Eugene Murphy,
	Fintan Warfield.

I láthair / In attendance: Deputy Sorca Clarke.

Teachta / Deputy Martin Browne sa Chathaoir / in the Chair.

Business of Committee

Chairman: I welcome everyone to today's meeting, which is taking place on Microsoft Teams. We have received apologies from Senator Craughwell. I welcome Deputy Clarke from Longford Westmeath.

The Ceann Comhairle and Cathaoirleach have appealed to all in the parliamentary community to continue to follow public health advice, wear a mask and maintain social distancing. The Ceann Comhairle has asked that only the committee Chairs and required service staff should be present in committee rooms. All members should therefore attend committee meetings remotely from their offices within the Leinster House campus unless they are required to attend in person for voting in committee. Witnesses should not be requested to attend the committee room and should be facilitated in giving evidence remotely from within the precincts or from outside Leinster House subject to being advised that privilege may not apply to evidence given from outside the precincts. This will help to mitigate the risk of Covid-19, including the Delta and Omicron variants, spreading among the parliamentary community. Masks, preferably of a medical grade, should always be worn during the meeting, except when speaking. I ask for full co-operation in this.

I propose that we approve the minutes of the private and public meetings that took place on 24 and 25 November. The minutes were already agreed during our private session but we must agree them again now for procedural reasons. Are the minutes agreed? Agreed.

I remind members of the constitutional requirement that they must be physically present within the confines of the place in which Parliament has chosen to sit, namely, Leinster House, in order to participate in public meetings. I will not permit a member to participate where they are not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting.

Before we start, I wish to explain some limitations to parliamentary privilege and the practice of the Houses as regard references witnesses may make to other persons in their evidence. The evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected pursuant to both the Constitution and statute by absolute privilege. However, the witnesses are giving evidence remotely from a place outside of the parliamentary precincts and, as such, may not benefit from the same level of immunity from legal proceedings as a witness who is physically present does. Witnesses may think it appropriate to take legal advice on this matter.

The witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if any of their statements made are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that the witnesses comply with any such direction.

Consideration of Public Petitions on Unauthorised Developments

Chairman: The committee will consider two petitions on unauthorised developments on the River Shannon, namely, 9/21, in the name of Mr. Michael Barrett, and 23/21 in the name of Mr. Jamie Forde Kelly. Unfortunately, Mr. Forde Kelly cannot be with us. I am glad to extend a warm welcome to Mr. Barrett who is accompanied by Mr. Jack O’Sullivan, an experienced environmental scientist, and Mr. Conor Dowling-Linehan.

This committee considers petitions on matters of public concern or interest in relation to the Houses legislative powers or issues of public policy. As these petitions deal with local or regional matters, or matters that are more appropriate to a regulatory public body or body established for the purpose of redress, the committee is to be sure that the petitioners have used all available avenues of appeal or redress. However, it would not be necessary for petitioners to go into great detail about what happened.

Before we hear from our witnesses, I propose that we publish their opening statements and submissions on the committee website. Is that agreed? Agreed. I suggest that our witnesses should make their opening statement for approximately ten minutes. We will then have questions and comments from members. Each member will have five minutes. Members may speak more than once.

I invite Mr. Barrett to make his opening statement. He will be followed by Mr. Jack O’Sullivan.

Mr. Michael Barrett: My name is Michael Barrett and I am the face of the petition today. The petition relates to the unfairness of unauthorised development on the River Shannon and its lakes and the potential damage it can do to the environment. My presentation seeks to explain all the documents and photographs that I have submitted to the committee. What I want the committee to investigate is how some could people be allowed to develop over a period of years, some in recent times, without any planning permission on property owned and governed by Waterways Ireland in a special protection area, SPA, and a special area of conservation, SAC. It has done so without contributing anything to the owners of the property, who at the end of the day are the citizens of Ireland. Everybody owns part of that property because it is State property. Furthermore, how could these people have received grant aid while they were the subject of an enforcement order and investigation by Waterways Ireland? In its application form for the grant aid, it clearly states that it is for expansion of existing activities. Waterways Ireland, therefore, received State money to expand an unauthorized development and business.

I am delighted to be before this committee and fully confident I will get a fair hearing. I hope that any injustices that have occurred will be made good. I will hand members over to Mr. O’Sullivan in a moment. He is an environmental consultant and scientist with many years of experience dealing with issues like this. Before I hand him over to members I want to go through some photographs that will give them an idea of the areas and developments we are talking about. Do members see the photo in the background?

Chairman: Yes.

Mr. Michael Barrett: This area is what we call the Portaneena marina. The red line is the Waterways Ireland jurisdiction line. We had that measured by a cartographer who had worked in Ordnance Survey Ireland all his life and was highly qualified. He drew this up for us and we submitted it to both Westmeath County Council and Waterways Ireland and to date nobody

has come back and contradicted it so we have to assume it is accurate and correct. Members also have his original statements. This marina has been built over many years but the southern end was built in 2006, 2007 and 2008. It came to our attention in 2012 that it was an unauthorised development and we brought it to the attention of Waterways Ireland, Westmeath County Council and the then Department of Communications Energy and Natural Resources. This part of the marina was well within the seven-year rule at this time so both Waterways Ireland and Westmeath County Council could have done something about it. Westmeath County Council took four and a half years before it brought an enforcement order against it. It went before the District Court judge who ruled it inadmissible on technical grounds because of the wording of the summons, not on the rights or wrongs of the development or the fact that the marina was legal or illegal. The county council has not come back to do anything about the enforcement of this area of the marina, which it could have done within the seven-year rule.

The rest of the marina has been built over a long period but it has clearly been built on Waterways Ireland property as anything outside of the jurisdiction line is Waterways Ireland property. Waterways Ireland has done nothing whatsoever about the marina even though it admits it is on its property. Why is Waterways Ireland not doing anything? Why is it not protecting the property of the people of Ireland? Why is it allowing an unauthorised marina to have been developed and run, generating a large amount of money, without doing anything about it? I would like to put another question to members of the committee, Waterways Ireland and Westmeath County Council. Planning legislation was used to take an enforcement order. Environmental legislation, which is very strong and does not have any statutory limitations, has not been used. Why? It is still an SAC and an SPA to this day under Irish and European law. Why has environmental law not been used to take prosecutions and to do something about it?

I want to introduce a series of Ordnance Survey Ireland photographs to members, which give a timeline for the marina. The first photograph is from a long way back; Mr. O'Sullivan will remember that time but some of the rest of us will not. This photo from 1973 shows where the marina is built today. This was a full ten years after planning legislation was introduced in this country. Some ten years after planning legislation was introduced there was a small dock here and nothing going out into the lake. It was completely clear and the lake bed and reed banks had no development whatsoever. The next photograph is an Ordnance Survey Ireland photograph that was taken in 2005. If members observe the southern side of the marina nothing was present and that is the area that has since been developed. I will now introduce a photograph from 2007 to members. Members can see the quayside wall on the southern side of the marina, which is about 120 ft. Thousands of tonnes of rock, armour rock and various other materials had been introduced by 2007. The next photograph is from 2009.

Chairman: It is unusual to show photographs at a committee meeting but we have an idea from the pictures Mr. Barrett has shown us already of what his concerns are. I am conscious of the time that is being taken up showing pictures.

Mr. Michael Barrett: I am nearly finished. Ordnance Survey Ireland photographs will clearly show that in 2007 and 2008 there was no marina whatsoever here. We brought it to attention in 2012, well within the seven years required. The first Ordnance Survey Ireland photograph shows that ten years after planning permission was introduced in this country, nothing was there, and there is a full-blown development there today. I will now hand members over to Mr. O'Sullivan, environmental consultant, who will discuss the environmental issues.

Mr. Jack O'Sullivan: I thank the committee for the opportunity to make this brief statement on behalf of Mr. Barrett. I am an environmental scientist and I have been practising in-

dependently since 1977. Mr. Barrett referred to how long I have been around and that is it. I was a science policy analyst with the National Science Council before that. Much of my work in those years was on the interface between planning and environment. I have undertaken environmental impact statements and evaluated them and done screening reports, and I have always stressed to my clients the need for strict compliance with planning and environmental legislation. Mr. Barrett has given members a very good account and I will follow on with a brief blow-by-blow account of the environmental and legal issues.

The fact that the marina was unauthorised was confirmed to us, both by Waterways Ireland and Westmeath County Council. On behalf of Mr. Barrett we initially sought to find out if it was authorised or not and Westmeath County Council said it had no planning permission. That development, as shown by Mr. Barrett, has taken place within and adjacent to the Lough Ree SAC and the Lough Ree SPA for wildlife, both of which are important conservation sites of European community interest. An environmental impact assessment report, EIAR, and a screening report for appropriate assessment should have been completed for that development but they were not. No EIAR was completed and a screening report for appropriate assessment was prepared by the developer much later in 2014.

It would have been possible for the marina owner and operator to apply to An Bord Pleanála for leave to make an application for what was then termed “substitute consent”, which was akin to retention permission. This could have been done provided that the application was accompanied by a remedial environmental impact statement, or a remedial Natura impact statement, or both. Unfortunately, the marina owner did not do so. He made an application to Westmeath County Council for retention of the marina. Since that backward-looking, substitute consent can only be considered by An Bord Pleanála, the council had no option but to declare that the planning application was invalid.

At that time, Waterways Ireland also stated that the encroachment of the marina into navigable water under its control could not be regularised by issuing a lease until the planning issue had been resolved. Waterways Ireland stated that it could not issue a lease unless the planners were happy with the marina, but the planners were not happy. Even if Westmeath County Council had the legal authority to consider a planning application - it did not, as that authority was given to An Bord Pleanála - the applicant could not legally have sought planning permission because the development of the marina was on land that he did not own and was not under his control. The only agency that could have given permission for the applicant to seek planning permission was Waterways Ireland, which owned the site.

To make matters even more complicated, the Supreme Court delivered a judgment in July 2020 that had the effect of removing the legislation under which An Bord Pleanála was empowered to grant substitute consent for a development that had already taken place. That consent was only allowed for in exceptional circumstances. A judge in another case said that these circumstances were not exceptional. The same legislation, which was an amendment to the Planning Act, was struck down for the additional reason that it failed to make provision for public participation at the leave application stage for substitute consent. The court found that this provision, which allowed the applicant to go to An Bord Pleanála directly without any public consultation, was inconsistent with the right to public participation in environmental decision making enshrined in or conferred by the EIA directive and the Aarhus Convention.

The fact that the applicant did not initially attempt to seek planning permission from Westmeath County Council or to obtain a lease from Waterways Ireland has had a series of consequences that are now difficult to resolve satisfactorily in compliance with the current legislation

and the relevant EU directives. The marina in question, if it were to be a proposed new development on a greenfield site, would require planning permission, the production of an EIA report, a Natura impact statement because it will affect an SPA and an SAC, and a lease from Waterways Ireland. However, as Mr. Barrett has shown, the marina has been in existence for a number of years, it has expanded in size and none of the planning and environmental requirements have been met, nor is there any legislation allowing the marina to become authorised and Waterways Ireland cannot consider granting a lease until the planning issues have been resolved.

Two options for addressing this problem might be considered by the committee, if it wishes to do so. Both options are difficult and neither is perfect in any way. First, the unauthorised marina may be left *in situ*, but this gives a clear message to the public that undertaking development without seeking the necessary consents may, in the long run, be a successful strategy. This solution weakens planning legislation and brings planning and development control into disrepute. Second, the unauthorised marina, or those sections of it constructed since 2007, should be removed with as little ecological disturbance as possible. While this might be legally correct, the financial consequences for the marina operator would be severe and the removal of some of the marina would be likely to cause some ecological disturbance with only minor ecological benefits. Considering these options and others that have not occurred to me is something that the committee may wish to discuss after taking what evidence it wishes to hear from Waterways Ireland, Westmeath County Council, the National Parks and Wildlife Service, the Department and other witnesses.

Chairman: I thank Mr. O’Sullivan. What the witnesses have told us is interesting and I imagine that members have many questions. They might indicate via the “raise hand” button but I will kick things off. I have read back over some of these statements and previous petitions. Was this matter brought to Westmeath County Council’s attention while the marina was being built between 2006 and 2009 or before 2012? Did Mr. Barrett bring it to the attention of the authorities then?

Mr. Michael Barrett: No, I brought it to the authorities’ attention in 2012. It only came to my attention that it was an unauthorised development as a result of an accident at the marina. I was asked to go out, recover a damaged boat and do the repair work by the insurers. It became apparent then that it was an unauthorised development with no planning permission. I brought the matter to the attention of Westmeath County Council in 2012. The council issued its first warning letter on 3 May 2012 and its first enforcement notice in January 2013.

Chairman: From what Mr. Barrett heard back, are the relevant State authorities unable to resolve this matter? If so, did they give a reason for that?

Mr. Michael Barrett: They gave me no reason. I brought it to their attention in 2012, which was well within the seven-year Statute of Limitations on unauthorised developments. It took them a further four and a half years to bring the case to court, which was in 2016. That case was dismissed on technical grounds relating to the wording of the summons. They described the southern end of the marina as a slip but it is clearly moorings and a quayside. The judge told the authorities that they could reapply but that the summons was not correct on technical grounds.

In 2014, during that process, the Portaneena marina made a request to the council as a result of an enforcement order for an extension of one month to allow it to remove the unauthorised structures. The family that owned the marina confirmed that the unauthorised structures and jetties would be removed by the end of November of that year should permission be granted. I am showing the relevant document now. Westmeath County Council granted one month’s

extension. Eight or nine years later, the development is still there and nothing has been done about it. Despite entering into a written agreement with the council to remove what the family themselves described as unauthorised jetties, nothing has happened and the council has made no effort to make anything happen.

Chairman: Mr. Barrett stated that Portaneena Company Limited got LEADER funding while subject to the enforcement order. Will he explain that? For what reason did it get LEADER funding?

Mr. Michael Barrett: It got LEADER funding in 2013. The first warning letter was in 2012 and the first enforcement letter was in January 2013. On 26 July 2013, it got LEADER funding. I am showing its application for LEADER funding. Question No. 2 on the application asked what the funding was for, the reply to which was the expansion of existing activities. This means that, while the company was the subject of an enforcement order and being investigated by Waterways Ireland for developing on the latter's land, it got State funding to run an unauthorised development and expand its unauthorised activities.

Chairman: People listening in on this public meeting will be asking whether Mr. Barrett is anti-development on the River Shannon and its lakes. For what reason has he brought this petition?

Mr. Michael Barrett: Quite the opposite. I have a development and a business that I run on the lake. I am pro-development. We have some beautiful developments in Lough Ree and all over the Shannon. Any development done in an environmentally friendly fashion and with planning permission is beneficial to the local area and its people and businesses, including the pubs, restaurants and shops. I brought this petition because people cannot develop willy-nilly with complete disregard for planning permission. They also cannot develop on property they do not own. We have a situation where a development is generating large amounts of money. It is not in compliance with environmental or planning law. It is built on property owned by Waterways Ireland. That is to say, it is built on property owned by the members, me and by everybody else. That is what I am against. I am totally in favour of authorised development. I would like to see authorised development. I would like to see the two premises that I have mentioned getting planning permission, developing in an environmentally friendly way, and being beneficial to the local community.

Chairman: I will ask one more question and then let in other members. What is Mr. Barrett's preference regarding the outcome of all of this? Is it to have the unauthorised development demolished, removed or legalised? Mr. Barrett probably addressed that in his previous answer.

Mr. Michael Barrett: Absolutely not demolished. Both of these developments will be very beneficial to the area. One is only being developed at the moment and could be retained. Should it be developed in an environmentally friendly fashion and with planning permission, it will bring hundreds of people to this area and will be beneficial in every way. All I want is for both the developments to be regularised. Planning permissions should be obtained. If they are built on property that those involved do not own or that is owned by the State, the State should either grant them a licence or work out some way to hand the property over to them. I do not want them to be demolished. I want them to go ahead, but I want it to be with planning permission.

Chairman: I will leave it at that. I have more questions, but I will come back in later.

Deputy Pat Buckley: I thank the witnesses. It is great to be here talking about this. God knows this is surely not a one-off situation, although I hope it is. A substantial amount of information was provided to the committee about this. There were nearly 200 pages of evidence. Going back to what Mr. Barrett was saying regarding 2012 and the enforcement notice in 2013, Westmeath County Council clearly states in its affidavit that there was no planning permission for the marina and that the marina was an unauthorised development. A case brought to court in 2016, as Mr. Barrett said, was dismissed on a technicality. I find that strange because it was already called an unauthorised development and a marina, but I am not the judge on this. Is there still an enforcement notice against that development? It was still within the seven-year period. Did the council or anybody bring a case under the planning law or under any environmental legislation? That is my first question. Can the witnesses expand on that? It is stated that planning permission was never granted and yet this development could proceed. I have had incidents where little sheds for motorbikes were taken down because those involved did not apply for permission for the solid base necessary for a metal shed. Will Mr. Barrett elaborate on that? I will have a second question later, if possible.

Mr. Michael Barrett: The case was dismissed by the judge on the grounds of a technicality about the wording of the summons. He did not nullify the enforcement order. As far as I am concerned, the enforcement order is still in place today. Since the case, as far as I can see, having looked up all public records, Westmeath County Council has done nothing about this. Waterways Ireland has done nothing about it. Neither of the two statutory bodies has considered prosecuting under environmental law, which is not subject to a statute of limitations and which is fairly strong. As the committee can see, the whole marina is built in a special protection area and special area of conservation, so I would have thought that environmental law should come into force and that there would be prosecutions under that law.

Deputy Pat Buckley: I thank Mr. Barrett. I will try to be brief with my second question. Mr. Barrett referred to the Portaneena Marina belonging to Waterways Ireland. Waterways Ireland is paid money by the State, so those are public funds, if I am correct. There is nothing wrong with the marina or its location. It is beneficial in every way to society once, as Mr. Barrett says, everything is done right. The marina was developed on property belonging to Waterways Ireland. Who had the responsibility? Was it the responsibility of the developer, Waterways Ireland, Westmeath County Council or all three to make sure that all of these planning regulations, special protection area considerations and environmental impact studies were adhered to? Should they have been responsible for those? Were they carried out or was it done on the quiet? I am being very blunt. Was it done on the quiet since it was tucked into a nice little area and nobody would cop on to it, so it would be fine? Who benefits in the long run or the short term?

Mr. Michael Barrett: Since those are mainly environmental and planning issues, I will let Mr. O'Sullivan come in on them.

Mr. Jack O'Sullivan: I will help to answer that. Like all of these things, there is never just one issue. There is always a whole series of issues. The first problem arose when the developer did not seek planning permission before he started constructing the marina. The county council did the correct thing in issuing a notification. The developer did not attempt to seek planning permission for retention, which he could have done at the time. To do so required, under the legislation at the time, going not to the county council but to An Bord Pleanála. He did not do that. He attempted to seek retention permission by making an application to the county council. Westmeath County Council quite correctly stated that it was not something it could deal

with. The applicant did not go to An Bord Pleanála under the terms of legislation that was in place. When that legislation was struck down by the High Court, there seems to be nowhere to go. The appalling thing is that there is no legislation permitting the developer to regularise the situation. Waterways Ireland clearly stated that it cannot regularise it by issuing a lease until the planning permission is okay. The whole thing seems to have got caught in a trap because people did not think through exactly what they should have done to comply under the law. It is not easy. I know these things are complex, but the rules are there. If you get someone to advise you on what to do, and then do that, this kind of situation should not happen. I hope that answers the question.

Deputy Pat Buckley: As we say in Cork, it is a box of frogs.

Mr. Conor Dowling-Linehan: For any development in a special protection area or special area of conservation, an appropriate assessment needs to be done for the construction, and an environmental impact study needs to be done as well as the planning permission and a lease from Waterways Ireland. As far as I know, none of those was completed in this development. There is an environmental aspect as well as it being Government property and there being a lack of planning permission from a local authority. There are a few areas which could set a bad precedent for environmental protection along the River Shannon. It is concerning to anyone who makes a living from the river.

Mr. Michael Barrett: This problem has arisen because a developer developed without any regard for planning issues. He went ahead willy-nilly without any regard for property rights or ownership of property. The property is owned by Waterways Ireland. That was completely disregarded. He built on property owned by Waterways Ireland, disregarding planning, and none of the authorities seems to be doing anything about it. That accident went before a District Court in Athlone. Two young people who had the accident prosecuted and the judge ruled that it was an unauthorised development. Waterways Ireland and Westmeath County Council both gave evidence stating that it was an unauthorised development. There has been another very serious accident since then, which is in the process of going to court, but who has the liability for these accidents? The one that is going to court at present-----

Chairman: If there is a case coming up, I ask Mr. Barrett to be careful that nothing or no one is identified.

Mr. Michael Barrett: Absolutely not. I am saying that this is part of an abrogation. People are on the lake on property owned by Waterways Ireland and developed without planning permission. Who has the liability? The taxpayer is already being punished because his or her property has been taken and legal funding, which is paid by the taxpayer, was granted to an unauthorised development. The taxpayer will be further punished if the development is not insured and Waterways Ireland or the people of Ireland are liable. The liability, and the question of who is responsible for accidents and even moorings, is a serious issue.

It is very important to state that good decent people who are boat owners are paying large amounts of money to be moored there. They are moored on property without planning permission that is owned by Waterways Ireland. If a member of the public has an accident involving one of those boats, who gets prosecuted? Who is liable? Those unsuspecting boat owners may be liable. I do not know, but it is a question that has to be answered.

Chairman: Yes. Before I bring in someone else, I have just gone through the 2019 petition, which Mr. Forde Kelly probably submitted. It states that this situation was brought to the at-

tention of Waterways Ireland, Westmeath County Council and the National Parks and Wildlife Service. It did not involve the Department of Housing, Local Government and Heritage at that stage but a different Department. For all the Departments that have been identified and all these large commercial developments that have been built within a short distance of each other, it seems that planning and the ownership of the property has just been ignored in all cases, as have all the Irish and European environmental laws. Will Mr. O'Sullivan or Mr. Barrett shed any light on that? Have all these bodies and laws been ignored, in their opinion?

Mr. Michael Barrett: In my opinion, everything has been ignored. Several developments, two of which I mentioned, have been built on property owned by Waterways Ireland without permission from that body. They have been built without any planning permission whatsoever or any regard for environmental laws. Basically, they have been built without any regard for anything. When it was brought to the attention of the local statutory bodies, in this case Westmeath County Council, Waterways Ireland and the Department of the Environment, they seemed to be very slow and very hesitant to do anything about it. In fact, to a certain extent, they seemed to encourage it.

Mr. Conor Dowling-Linehan: Another issue concerns the level to which this is regularised. Even on Ordnance Survey maps, boundaries have been adjusted to put the property within the company's property until that was revoked and changed back. It seems to be a common occurrence that these situations are regularised.

Senator Fintan Warfield: I am sorry to interrupt. Senator Murphy and I might have to go to the Seanad for a vote, which may take up to 15 or 20 minutes. I do not want to miss the remainder of the discussion. Could I come in now?

Chairman: Sorry, I did not realise the Senators were going. I will allow Senators Warfield and Murphy in.

Senator Fintan Warfield: That is why I started now, so we will have a little time. I hope Senator Murphy may be able to get in as well. I thank the witnesses for their work, for being very proactive citizens on this issue and for bringing it all the way to Leinster House. It is important that we hear from Waterways Ireland and Westmeath County Council. I know the solutions are not easy. There is no perfect solution to this. Leaving the development *in situ* creates a bit of a mockery of the planning process, but if we are worried about the environment we all know about the environmental impact of demolition and construction waste, which Mr. O'Sullivan mentioned. Fines and penalties are probably somewhere in between. Is there a precedent for that? Is any of the witnesses aware of a precedent for fines for these kinds of private developments that did not have permission, while leaving them *in situ*? We should hear from Waterways Ireland and Westmeath County Council. I thank our guests.

Mr. Jack O'Sullivan: The points raised by Senator Warfield are very good. If we take a more general broad view of why these kinds of things happen, there are possibly two causes that may be within the purview of this committee and more within that of the Government. First, after the fall of the Celtic tiger, let us put it like that, many of our local authorities were almost emasculated and lots of staff were cut. I have a certain degree of sympathy with our local authorities - not 100% but I understand what they are trying to do and their planners and other staff are overstretched all the time.

A second difficulty they face is that there is a culture in Ireland, and I am not saying this is true of any particular county but I have seen this happen in my county of Westmeath, not in rela-

tion to this case, but others, where a general view is held among people who might be members of the public or landowners that they have a right to develop and planners are standing in their way. That is not a nice culture to have. It eventually leads to corruption of the planning laws and so on.

Finally, I know of a number of situations, including in Westmeath, where the county council has felt unable, for whatever reason, to act or move against a developer who has flagrantly transgressed the planning laws. I find that very unfortunate. I spoke to a chief planner in Westmeath County Council quite a long time ago about one particular development, which I will not name, unless the Chairman wants me to.

Chairman: No, please do not.

Mr. Jack O’Sullivan: I will not. His answer to me very simply was, and I still remember his words, that he had a word with the council’s law agent about it and that agent said it could be a question of costs. To me, that was a coded message saying that the county council, as a planning authority, was reluctant or fearful of going against this very wealthy set of companies because it might lose. The companies had very deep pockets and very well-heeled barristers. The council was afraid to take a risk because if it did it would do so with public money. If it lost a case against that developer, it was sure that all hell would break loose and county councillors would attack the executive for taking such a risk. It is very hard to uphold the planning legislation in that kind of climate. That is why I have a certain degree of sympathy for county councils. This is really a matter for the Government to deal with as well.

Senator Fintan Warfield: I thank Mr. O’Sullivan. I will have to step away.

Chairman: Okay. Senator Murphy has gone to the Chamber as well.

Deputy Sorca Clarke: I thank our contributors. I also thank members of the committee for allowing me to ask questions. Their hospitality is most welcome. I am somewhat familiar with this situation, having been a member of Westmeath County Council for a term. I recall looking at some of the files pertaining to this, under the watchful eyes of one of the executives of Westmeath County Council. The sheer quantity of paperwork and records on file then was mind-boggling. I have a couple of observations. I am beyond concerned that we have this scale of development on State-owned land and it has been going on now for almost ten years. Mr. Barrett is correct that there needs to be development along our lakeshores but it needs to be appropriate and compliant with the regulations we have in place. The economic benefit for the area will be phenomenal if it is done properly through tourism and an increase in appropriate lakeshore activities. That said, not just in my constituency of Longford-Westmeath and certainly not just in this case, we are seeing an almost creeping of development along lakeshores. This has the potential for a scale of negative impact that we simply will not come back from on the ecology of the lakes and the reduction of access to the lakes for the general public.

What strikes me very strongly is how our State bodies do not interact with each other and do not work in a collaborative way. This is a failure and in my opinion it is one that cannot be allowed to continue. With due respect, I suggest the committee takes on board Mr. O’Sullivan’s suggestion to bring before it the National Parks and Wildlife Service, Westmeath County Council, Waterways Ireland and the Department. What we have today is the potential to form the important recommendations needed to change the legislation. The legislation needs to change. A number of months ago, I asked a parliamentary question on whether the seven-year rule is paused when a local authority issues an enforcement notice regarding an unauthorised develop-

ment. In its opening sentence the reply from the Minister stated enforcement of unauthorised development is a matter for the relevant planning authority, which can take action if a development does not have the required permission. Nothing in the reply tells me there is a requirement on the local authority to take the appropriate action, only that it can do so, as if it were an option to do so. I do not believe there is an option. In Mr. O'Sullivan's professional experience, and he has given us quite a track record of his professional experience, how many of these developments does he believe are in existence? How prevalent is the sidestepping of regulations when it comes to lakeshore or waterfront development?

Mr. Jack O'Sullivan: To be honest, I do not know. Everywhere I have looked in almost every county where I have worked, and I have worked in a lot of counties on different plans, there always seems to have been a number of developments that have not gone through the system but have ended up - I will not say permitted but that they have continued without permission. The only situation I know of where an unauthorised development was permitted, and there is only one example, is in County Wicklow where a woman, I believe her name was Ms Fortune, built a small house in a fairly remote area not visible from the road. Wicklow County Council took a case against her to get the house demolished. There was a court hearing. Mr. Justice Hogan said there is a constitutional right to a house and that it was not doing any harm to anybody so he did not give Wicklow County Council the order it wanted. This caused consternation among planners because a judge effectively stated a constitutional right to a house was more important than abiding by the planning law. The judge had to come back and give another ruling that stated it only applied to that particular case and the judgment was not to be taken as a generality. This was a very rare case.

In most cases I am familiar with there is no excuse whatsoever as to why the law should not be enforced against developers who flout it and who do not seek planning permission. The only problem as I see it is the one I referred to earlier, whereby a planning authority is ill-prepared because it does not have the staff. Exactly as Deputy Clarke has said, the amount of paperwork is unbelievable. I have to wade through 300 or 400 page environmental impact assessment reports. Planners might have two or three of these on their desks. It is a tough job. I suggest one of the things that might be looked at nationally, and this might be within the purview of the committee, is whether we are staffing our local authorities with enough people. We have planners and engineers. Do we have environmental scientists on our planning authorities? I do not ask this because I am an environmental scientist. I ask because I believe they are needed. I know of only one planning authority, which is in Cork, that has a county architect. She spoke to me the other day and said she was agitating to get a landscape architect. There is a problem nationally and I believe it is more widespread than I know of personally. It would not surprise me if there were more examples of this type which are not generally hitting the headlines but only thanks to someone such as Mr. Barrett they have reached the stage of being heard before an Oireachtas committee.

Deputy Sorca Clarke: Will Mr. O'Sullivan express an opinion on this? Under section 157(4)(aa) of the relevant planning Act enforcement action may be taken against unauthorised quarrying and unauthorised peat extraction at any time. Is there merit in examining the widening of this to include our lakeshores and unauthorised development that could ultimately have a very profound negative impact on special areas of protection or special areas of conservation?

Mr. Jack O'Sullivan: I agree 100% with Deputy Clarke. There is scope for widening the legislation. Another problem to which I have not referred is that we are under scrutiny by the European Commission, and rightly so, and we do not have the greatest record among member

states. There are others worse than us and I have to admit this. With regard to proper management of special areas of protection for wildlife and special areas of conservation we could be doing better. If the committee were to bring before it the National Parks and Wildlife Service it might be very good. For my part I have much sympathy for people working in the service. This branch of our State service has been kicked from one Department to another since the 1960s and 1970s. It has never really been given the degree of support it needs. It is better than it was. I remember the 1970s and 1980s when it did not know where it was. It is much better now. It could still do with a lot of strengthening. I remember visiting a national park in Lithuania in 1995 when I worked for the Lithuanian Government. I asked how many people worked in that national park and I nearly took a step backwards when the director told me there were approximately 200 staff. I said that was more than we had in the whole of Ireland in the National Parks and Wildlife Service. We could be doing better at government level. I know there is a shortage of money but it is very important for us at this time to take care of our national parks from the point of view of biodiversity and climate. I hope this answers Deputy Clarke. If I have gone on too long I beg forgiveness.

Mr. Conor Dowling-Linehan: I want to make a point on the planning aspect and why planning laws are important. If anything, with the recent mica and pyrite scandals we have seen the need for tough legislation on how constructions are built. If a development is built without planning permission we do not know what run-off is going into the water or what environment is destroyed because essentially there are no regulations. Under the current situation, if people go through the process of getting appropriate assessments and environmental impact assessments there will be an extra three to four years without the business there would have been with the development. Therefore, they are losing a lot. If it is seen to be more beneficial not to bother with the planning enforcements, not follow any regulations and essentially get away with it, that would create a culture where this happens along the length of the river. The River Shannon has experienced pollution in many other areas before and it is under considerable threat. From an environmental standpoint allowing developers to build without planning permission with run-off or damage to the riverbed could have enormous effects on the Shannon and for everybody who lives adjacent to the Shannon.

So many different local authorities and statutory bodies have management over the Shannon that essentially we do not know how common this is along the length of the river. It is not about stopping people developing. It is not even about stopping this particular development. It is just about stopping future developments from flouting environmental laws and building without planning permission with unknown damage being done to the river as a result. It is also unfair on people who follow the regulations.

Chairman: Like Deputy Clarke, in my experience of being on a county council, the red tape regarding planning for small things in counties is unbelievable. It is unbelievable that in this case the planning seems to have been completely ignored.

I ask Mr. O’Sullivan to clarify something in his statement. Is he saying that the responsibility should be with the Department of Housing, Local Government and Heritage to legislate for this with the responsibility taken away from local authorities and other organisations? Would introducing legislation help in these situations?

Mr. Jack O’Sullivan: I would not really see the responsibility being taken away from local authorities. I believe the closer decisions are made to where they are going to be enforced or where they affect people the better. Even with the current Office of the Planning Regulator and with Irish Water, for example, local authorities have lost much of their power compared

with the powers that similar local authorities have in other EU member states. The Department should look carefully at the legislation. When that section of the planning Act which allowed a retrospective application to be made was shut down, it resulted in a gap in the legislation.

What is the appropriate way of dealing with a development like the one in question today which has taken place without planning permission? It cannot obtain retrospective permission because that legislation has gone. To leave it there sends a bad message to people. To remove it would do ecological damage. It has already damaged part of the shoreline. This is something that legislators need to look at. It would be no harm to query the Department on the adequacy of the legislation. Why did we pass legislation in the first place which was later shut down by the High Court? Did we not think through that legislation properly before we did so? These are questions the committee members might put to departmental officials.

Chairman: I believe this case has been going on since 2007. It is crazy that extensions have continued to take place without someone stopping it. Mr. O’Sullivan mentioned damage to the shoreline. Has damage been done to the lake as a result of the encroachment onto Waterways Ireland’s property?

Mr. Jack O’Sullivan: The shoreline is primarily affected. The lake, itself, would not be significantly damaged by the nature of the development. It is not the kind of development that would have a large wastewater discharge into the lake. Nevertheless, by allowing an increase in the number of boats in that area we need to ask how those boats’ toilets are being pumped out? What are the systems that maintain the water quality in that area? Increasing the number of boats gives rise to the possibility of oil pollution. The boats always seem to leak oil. Is all the toilet waste brought ashore? All these kinds of things should be dealt with at a point in time by means of environmental impact assessment and by appropriate assessment including a Natura impact statement if necessary before the thing got planning permission. That is where damage could take place. There has been definite damage to the shoreline, including loss of habitat, for example. Interfering with a special area of conservation is contrary to European law and brings Ireland into disrepute.

Senator Eugene Murphy: I apologise to the witnesses for having to rush off for a vote in the Seanad. I will not say much about this because apparently another case in that area is ongoing in the courts. I acknowledge the presentation by Mr. Barrett and the other witnesses. As I understand it, all he wants is for this to be regularised, put through the proper planning process and made safe. That is to his credit and that is how I understand it. We should ask representatives of Westmeath County Council and Waterways Ireland to appear before the committee. Has Mr. O’Sullivan or Mr. Barrett had recent contact with Westmeath County Council or Waterways Ireland? I will leave that for today because obviously we will have another day on this.

Mr. Michael Barrett: No, I have not had any contact with Waterways Ireland or with Westmeath County Council for a few years because nothing has been happening and there was no way I could make anything happen. The only way I could bring this to the fore was to bring it to this committee today to try to expose it and have it discussed that way. In recent years, I had plenty of contact with both bodies and with the Minister for Housing, Local Government and Heritage in the early stages and up to 2017 or 2018. However, in recent years no doors have been open to me to go there.

Chairman: Does Mr. O’Sullivan wish to add to that?

Mr. Jack O’Sullivan: I have nothing to add to that. I have not had any direct contact on

this case with Westmeath County Council or the National Parks and Wildlife Service. Early on I did. In 2012, I was in touch with the regional manager or regional director of the National Parks and Wildlife Service, but since then I have not. I have plenty of contact with Westmeath County Council on other issues. I am a member of the public participation network and the strategic policy committee here in County Westmeath, things I value greatly as enabling me to be stakeholder within the process, to see how the local authority operates and understand what it has to deal with.

Deputy Sorca Clarke: I wish to make a brief comment and ask Mr. Barrett a question. He spoke about bringing this issue to this committee. This reinforces the importance of the Committee on Public Petitions. Where members of the public run into repeated barriers or difficulties with State bodies, local authorities or whatever the case may be, there is an avenue for them to bring petitions before the committee.

Given the nature of this and given the protracted timeframe involved, has Mr. Barrett ever tried to calculate the financial cost to him or the cost in terms of time he has put in to get this issue to the Committee on Public Petitions today? I understand that it also came before the Committee on Public Petitions in the last Dáil.

Mr. Michael Barrett: I have certainly put a lot of my time into it over the past ten years since 2012. Regarding what it has cost me, as can be seen I have engaged environmental consultants and have been paying planners. It has cost me a lot of money. I could not tell the Deputy the exact sum. I think it would be in the region of €50,000 including costs for court cases, solicitors and so forth. I am spending money to see if something can be done about unauthorised development. The unauthorised part of this development is generating in the region of €500,000 a year, potentially. I have with me the rates and tariffs in question. As members can see, it is stated that for any boat that is 40 ft or more, €2,900 a year must be paid. Members can do the maths. There is turnover of approximately €500,000 there on State property.

In the early part of this, when I was dealing with Westmeath County Council, a councillor who has since lost his seat was very sympathetic to me and did not fully agree with the unauthorised development. Several planning meetings were held between Westmeath County Council and the developers of the marina. The councillor who was sympathetic to my plea relating to the unauthorised development was not invited to any of those meetings. However, another councillor was invited and attended several of the meetings. Indeed, I have produced documentation to the committee today showing that he was invited or, at least, attended the meetings. I presume he was representing the Portaneena company because I do not think he was representing the council. That councillor, luckily for him, went on to be elected as a Deputy and went on to be a Minister in the previous Government. However, he lost his seat in the most recent election and, shortly thereafter, had an article in a national newspaper-----

Chairman: I ask Mr. Barrett to be careful in speaking about individuals who may be identifiable.

Mr. Michael Barrett: Okay. Let us forget about that. There is a certain amount of passive support for this development. In other words, it is being approached with a nod and a wink. People say that it will be all right and we should let them develop away. They ask what harm it is doing to anybody. That should be looked into. Politicians and other public representatives should be very careful in the statements they make or even their use of a place such as that. Public representatives using a place like that gives it a certain amount of legality. It gives the impression that it is okay because they would not be using it otherwise. Basically, I am making

that point as a result of a particular person using it and going public about doing so. People have come back to me several times since then, asking me what I am doing. I have been asked that if it is all right for a Minister to use it, is it not all right for everybody else to use it?

Chairman: I wish to come back to what Mr. Barrett said about charging boat owners for docking their boats at the property. As far as we are concerned, that property is owned by the State and governed by Waterways Ireland. Has the State benefited in any way from that development through the years?

Mr. Michael Barrett: To the best of my knowledge, it has benefited in no way whatsoever. If anything, the State has lost money, between sending out various people from Waterways Ireland and Westmeath County Council to do various investigations into it and all that, and even going to court and having cases dismissed on technicalities and all that. It has cost the State money through the years. To the best of my knowledge, the State has not benefited by a single penny. Any money that has been generated has been generated for private enterprise.

Chairman: I thank Mr. Barrett. The committee needs to follow up on that if the company is generating revenue on State property.

Deputy Pat Buckley: I thank all the contributors to the meeting. I was well aware of this issue because I sat on the previous Committee on Public Petitions. It is not easy. I commend all those who gave evidence today. This issue is bigger than I had realised. There are many questions to be asked. The issue of State money being used but not recouped sounds very strange. As I stated in my previous contribution, this is bigger than a box of frogs. I am starting to get lost for words that this can go on and there is zero accountability or joined-up thinking and it has taken ten to 12 years of very hard work to get it before the Committee on Public Petitions. I wish our guests the best of luck. I hope the issue will be resolved. It is a lesson for everybody involved, including the State and us as ordinary people. I am not 100% sure where it will go from here but I commend our guests on their determination and patience on this issue.

Chairman: I wish to be associated with those remarks because the volume of information our guests have submitted to the committee is unbelievable. As was stated, they seem to be doing it for the good of the region. I have questions for Mr. O'Sullivan and Mr. Barrett before we finish. Mr. O'Sullivan cited concerns previously expressed by Waterways Ireland at the unauthorised nature of some of the development in the vicinity. Those concerns date back to 2017 yet only this year the business in question has applied for planning retention and submitted an application for future development. In his experience of dealing with county councils, is this level of delay in pursuing an instance of unauthorised development, whether on ecological or other grounds, typical in cases of this nature?

Mr. Jack O'Sullivan: This delay is unusually long. There are several similar cases where there have been very long delays but, normally, those are cases that involve a degree of legal complexity as well as environmental problems. In this case, the county council is stuck in this situation. It can no longer grant planning permission retrospectively because that legislation was struck down, so the problem it faces relates to how it can deal with the issue. The committee may wish to bring in a witness from Westmeath County Council. This raises the question as to why the Department or the Minister, as a legislator, has not acted to change the legislation. I do not want the legislation to be changed to make it easy to get retrospective development or retrospective consent. That would not be right. The legislation that was in place was struck down because it was only supposed to be used in exceptional circumstances. It was struck down in a case relating to a quarry in respect of which there were no exceptional circumstances

at all yet An Bord Pleanála granted permission for the quarry using that legislation. We need to change the legislation quite seriously and look at it in a way that is more thoughtful in the sense that it conforms to the European requirements and does not drive a coach and horses through the appropriate assessment requirement of the habitats directive, the birds directive or the environmental impact assessment directive or, very importantly, the Aarhus Convention, which guarantees that every citizen has the right to public information and public participation in environmental decision-making and to environmental justice. Local authorities and An Bord Pleanála do not give enough information to members of the public and that is where things start to go wrong. When Sean and Mary citizen find out that certain decisions have been made but they do not know why and cannot get the information, a kind of unwillingness or fear or, at least, a lack of trust creeps in. Although we in Ireland generally trust our Government more than some people in other member states do, we are not as trusting as the Nordic states, for example, are of their governments. Having far more openness and transparency is another issue that needs to be examined. That would help this kind of thing to happen.

A member made a very important point that I notice quite often, which is that some of the State agencies do not work together. For example, An Bord Pleanála and the Environmental Protection Agency should work together. In name, they do so. They actually have a memorandum of understanding. However, if one looks at a planning application that involves both a licence from the EPA and planning permission from An Bord Pleanála and how those bodies talk to one another, one will see that they do not actually say anything to one another. I find that is not good. I would far prefer to see a much greater level of collaboration between them. While I am aware that this may not be part of our present discussion, I would love to see an oral hearing with two chairpersons — one from the EPA and one from An Bord Pleanála — rather than two separate oral hearings six months or a year apart. I would like to see a single oral hearing. That would save a lot of money for the developer in addition to those opposing the development. We made a recommendation in this regard in 2009 when several of us were asked by a Minister responsible for the environment to examine the EPA. The Department did not like it for various reasons, so it fell. Those are my few thoughts in response to the question.

Chairman: Without changing legislation, is it possible that these kinds of developments can continue in the way that has occurred? In Mr. O’Sullivan’s opinion, who should have the overall say? Should it be the Department or a county council? Where four or five bodies are involved in respect of these kinds of developments, it is too easy to pass the buck. No one takes responsibility and it just keeps going around in circles, with the result that one ends up at a committee like this five or six years down the road when all the developments are completed. If a State body or county council took overall responsibility, it could be dealt with much faster and there would be no great expense. Where there are four or five bodies that send responsibility around in a circle, we finish up discussing the matter at a committee like this four or five years down the road. While that is no harm considering what has gone on, who in Mr. O’Sullivan’s opinion should have the overall say regarding these developments?

Mr. Jack O’Sullivan: That is a very good question. I am just thinking on my feet. Clearly, it involves the Minister — that is the key point — but the Minister has appointed a Planning Regulator whose job is to guide local authorities regarding their planning functions. I do not see that happening very much, except in one case, which applies to several local authorities. I am referring to where county councils changed their development plans to have further restrictions regarding the location of wind turbines close to, or within a certain distance of, dwelling houses. Since this did not conform to Government policy, the Planning Regulator asked the local authorities to remove the policy. Therefore, the regulator is acting very much in a way that

makes sure county councils, as planning authorities, conform to what he believes is Government policy. I am not referring to doing the task that the Chairman suggested, which is a very necessary task. In a planning situation, the different agencies of the State can work together. That is a key issue that needs to be addressed. I thank the Chairman for the opportunity to respond.

Chairman: From Mr. Barrett's correspondence with the State agencies concerned, does he believe there is adequate communication among them to deal with unauthorised developments in their initial stages? As has been said throughout, the correspondence Mr. Barrett has sent in on the dealings with the various bodies has been considerable. What has communication been like? What have the responses from the various bodies been like?

Mr. Michael Barrett: As is evident from the documentation I have sent in, there was in the early stages a lot of consultation and communication between Waterways Ireland and Westmeath County Council. They seemed to have been passing information and so on. They also seemed to be passing the buck. Waterways Ireland was saying it was a problem for Westmeath County Council, and Westmeath County Council was saying it was a problem for Waterways Ireland. We all say Westmeath County Council is in a bit of a mess now because of the legislation and where it has landed itself. The matter was brought to the attention of Westmeath County Council in 2012. If it had taken appropriate enforcement action at that stage, it would have been well within the seven years and a result would most likely have been got. However, it took a full four and a half years before it got into court. I think that was intentional. I think it was kicked out so it would be outside the seven years, solving the problem for everybody. Waterways Ireland owns the property. I am told, on very good advice from senior counsel, that squatter's rights — that is how we know them as, but the legal term is "adverse possession of property" — apply to individuals after either seven or 12 years. In other words, if somebody takes over a property, he or she can claim squatter's rights after seven or 12 years, but it is 30 years in the case of a State body. Therefore, there is nothing at all to stop Waterways Ireland from trying to recover its property.

We are all forgetting environmental law. We have all agreed today that the property is in a very sensitive area. It is an area covered by two directives from Europe — the SAC and SPA directives — but nobody has considered prosecution under environmental law. That is not subject to a statute of limitations and is very strong. For those reasons, both Waterways Ireland and Westmeath County Council have been woefully inadequate in the sense that it has taken them so long to bring the prosecution. They brought the prosecution under planning law. In the case in Athlone, the District Court judge dismissed the case on technical grounds. I do not believe a competent body like a council, which employs engineers and has access to environmental consultants and all sorts of advisers, would bring a case worded as badly as it was. I find it very hard to believe a competent body would be that inadequate. I have my own ideas about it. I would say there is something rotten in the state of Denmark, and that needs to be investigated as well.

Deputy Pat Buckley: I cannot remember who asked a question about moneys being collected at jetties. Mr. O'Sullivan referred to his experience working all over the country with the EPA and planning authorities. Is it possible that there are other jetties around the country that do not have planning permission but which are charging money, be they in the possession of either private or public bodies?

Mr. Jack O'Sullivan: I am not aware of any marinas in that situation, but I am aware that quite a number of quarries have not got proper planning permission. To me, a quarry is utilising

a resource owned by the people of Ireland, that is, our soil and rock. Whatever Constitution we have — I like our Constitution — it should be stronger in connection with the fact that the soil and rock of Ireland are owned by the people of Ireland, held in trust for us, the people, by the State. If somebody can dig up rock and gather a lot of money by doing that, while not paying anything to the State and not having planning permission, it constitutes a very similar situation to the one in question.

Another quite similar situation, which comprises an important issue in the midlands, involves a number of companies — I will not name them for obvious reasons — that have been removing peat in huge quantities over many years without planning permission from the planning authority or a licence from the EPA. In so doing, they are polluting a river. I will not name the river because that would give too much away. In the case I am referring to, the EPA attempted to take a court case against one or more of the companies and failed to do so. Something went wrong. I do not know how because I was not part of the case. I sometimes wish the EPA would ask people outside it for assistance. We would happily give it to it. In the case in question, all I know is that the court case failed. That was a pity because the pollution continues.

We heard about the county council going after a particular developer. In the pleadings, motion or description of the development, some very simple mistakes were made and, as a result, the case fell. I know from writing these kinds of things that one has to be absolutely correct. If there is a word wrong, a barrister on the other side will jump in and the case might be lost over it. We call it a technicality but, very simply, it means a mistake.

Chairman: There is no one else indicating a desire to contribute. I thank Mr. Barrett and Mr. O’Sullivan for their input and invite them to make a final comment.

Mr. Michael Barrett: We have proved conclusively here today that a number of developments on Lough Ree are unauthorised and illegal and that the council has not been proactive in doing what it should. Furthermore, Waterways Ireland has done absolutely nothing to protect the property under its control. Waterways Ireland received this property under the terms of what is known as the Good Friday Agreement. Under that agreement, Waterways Ireland was set up as a North-South body and is responsible for any properties it inherited as a result. I do not believe it has done an audit of its properties. It does not know what it actually owns and has not made any effort to do so. Deputy Buckley asked if this could be happening all over the country and I can guarantee that it is. I hope that through the work of this committee Waterways Ireland will endeavour to recover property that has basically been stolen from it. I hope that Westmeath County Council and the Department of the Environment, Climate and Communications will do something about unauthorised development.

Mr. Jack O’Sullivan: Mr. Barrett has put the case perfectly and I agree 100% with what he just said. There is very little I can add except to say that this committee has the power and responsibility to look not only at the particular case which Mr. Barrett has put forward so eloquently and in such detail and at my own short paper, which provides some footnotes and other detail, but also at the context of the case. Why are these kinds of things happening *vis-à-vis* planning? It may be that the wider context is something that not many Oireachtas committees can look at but this committee has the power to do so. The committee could call witnesses from the NPWS, the Department and Westmeath County Council to see the wider picture and possibly make some recommendations that would close the loopholes and bring into the public arena a discussion on why these kinds of things are happening and how they can be, if not completely eliminated, at least decreased in number or prevented in the future to some extent. If the committee could do that, it would be a great service to the environment and to the people of Ireland.

Chairman: I wish to correct something that was said earlier about land being “stolen”. We cannot allow that unsubstantiated claim to stand. We will bring in witnesses from Waterways Ireland, the Department of the Environment, Climate and Communications and Westmeath County Council and these questions can be put to them. I thank the witnesses for their contributions today. The committee secretariat will be in touch with them as the investigation progresses further with the other relevant bodies. On behalf of the committee I thank them for coming here today. We will consider the matter further with the other relevant bodies and we hope that at some stage down the line, the witnesses will appear before us again in person rather than over Zoom. I urge them to stay safe, and hopefully we will talk to them again in the near future.

Chairman: As the witnesses have now left, we will discuss other committee business. We have three petitions to consider today. Petition No. 31/2021 argues that people with poor literacy skills are not supported adequately by Government bodies. The recommendation is that correspondence from the Department of Agriculture, Food and the Marine be sent to Mr. Deering, the petitioner, for comment. Do members have any views on this?

Deputy Pat Buckley: I agree with the recommendation.

Chairman: That is agreed. The next petition is No. 38/2021 calling for an increase in the upper age limit for joining the Army. The petitioner is Mr. David Lawrence. The recommendation is that the correspondence from the Department of Defence be forwarded to Mr. Lawrence for comment. If members do not have any views on this, I will take it that it is agreed.

The next petition is No. 42/2021. It is concerned with saving the services of the Owenacurra centre in Midleton, County Cork and the petitioner is Ms Joanne Curtis. The recommendation is that the correspondence from the HSE be forwarded to Ms Curtis for comment. Do members have any views on this? We discussed in private session the fact that this particular issue is being dealt with by the Oireachtas Joint Committee on Health at the moment. The recommendation was that we would allow that committee to investigate the matter and we would revisit it in the new year. Does Deputy Buckley wish to make a comment?

Deputy Pat Buckley: Yes. The centre is actually based in my area and I am very familiar with the case. I agree with the recommendation. A lot of work has already been done on this issue by the Joint Committee on Health and the Joint Sub-Committee on Mental Health and it will be discussed again by the former committee next Tuesday. If the outcome of that meeting is not satisfactory, I ask that we would revisit the issue in the new year.

Chairman: It was agreed yesterday that if there is not a satisfactory outcome from the next meeting of the Joint Committee on Health then this committee will revisit the issue at its meeting in January 2022.

Deputy Pat Buckley: That is agreed.

Chairman: That concludes our consideration of public petitions this afternoon. I would like to invite members of the public to submit petitions via our online portal. A petition may be addressed to the Houses of the Oireachtas on a matter of general public concern or interest or an issue of public policy.

The last item on our agenda is any other business. Does any member wish to make a comment?

Deputy Pat Buckley: Briefly, I wish to thank the Chairman, the witnesses and the secre-

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tariat. I wish to thank the case workers in particular because the volume of work is phenomenal and that should be acknowledged.

Chairman: I thank the Deputy for those remarks, with which I fully agree. The volume of work that goes on behind the scenes by the secretariat and the case managers is unbelievable. Well done to them all. I also thank everyone for their participation in meetings of this committee over the past 12 months. This is our last meeting before Christmas. I wish everyone a happy Christmas, including members, witnesses, the secretariat and all those working hard behind the scenes.

The joint committee adjourned at 3.09 p.m. until 1.30 p.m. on Wednesday, 19 January 2022.