

**AP1/1/2017**

**MICHAEL GILLESPIE LLB NP  
SOLICITOR**

**SITE REF: T12/410A&T12/410B**

**APPEAL**





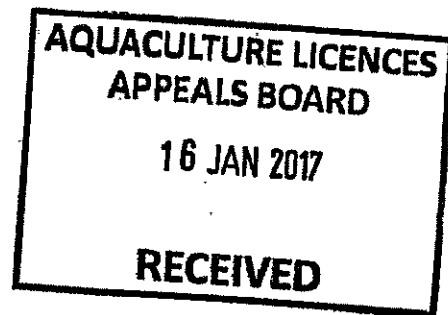
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12 January 2017



The Aquaculture Licenses Appeals Board,  
Kilminchy Court,  
Dublin Road,  
Port Laoise,  
Co Laois. R32 DTW5

Our Ref: AQ/APP/1

**RE: APPEAL AGAINST AQUACULTURE LICENSES GRANTED TO THIERRY  
GILLARDEAU AND DESMOND MOORE  
SITE REFERENCE NUMBERS: T12/410A & T12/410B  
MY CLIENT: THE CARRICKFIN TRUST COMPANY LIMITED BY  
GUARANTEE AND OTHERS**

Dear Sirs,

I enclose herewith Notice of Appeal and a cheque for €228.55 in respect of the Appeal fee and Oral Hearing fee payable. Please acknowledge receipt and let me have confirmation of the procedure which the Board would wish to adopt in relation to this appeal, having regard to the fact that there are a number of other appeals for the same form of development, all on the Braade Strand Area of the Gweedore Bay and Island special area of conservation. It is submitted that an oral hearing would be appropriate in this case.

Yours faithfully,

MICHAEL GILLESPIE

**NOTICE OF APPEAL UNDER SECTION 40(1) OF  
FISHERIES (AMENDMENT) ACT 1997 (NO. 23)**

**Name and address of appellant:** The Carrickfin Trust Limited by Guarantee, Carrickfin Road, Braade, Kincasslagh, County Donegal, Rose & Charles Boyle, Braade, Kincasslagh, County Donegal, Rose & Joanna Burke, Braade, Kincasslagh, Bernadette Boyle, Braade, Kincasslagh, Kathleen McFadden, Braade, Kincasslagh, John Gillespie, Braade, Kincasslagh, Eileen & Hugo Duffy, Braade, Kincasslagh and Geraldine Boyle, Braade, Kincasslagh, Maeve & John Joe Carson, Braade, Kincasslagh, Pat Sharkey, Braade, Kincasslagh, Anthony Sharkey, Braade, Kincasslagh, Anna Gallagher, Braade, Kincasslagh, Mary T. O'Donnell, Braade, Kincasslagh, Dom Sharkey, Calhame, Annagry and John McFadden, Calhame, Annagry, County Donegal.

**Telephone:**                      **Fax:**  
**Mobile Tel:** (      )      **E-mail address:**

**Subject matter of the appeal:**

Determination by the Minister for Agriculture, Food and Marine to grant Aquaculture and Foreshore Licenses for the cultivation of pacific oysters using bags and trestles on two sites at Braade Strand, Gweedore Bay, County Donegal

**Site Reference Number:-**

T12/410A (12.6 Hectares), T12/410B (4.8025 hectares)

**Appellant's particular interest  
in the outcome of the appeal:**

The Carrickfin Trust Limited is a Company Limited by Guarantee which has charitable status and the Company was set up in the year 2000 by local environmentalists and property owners to protect and enhance the local environment and to seek to preserve and improve the local Gweedore Bay and Islands special area of conservation and the company owns approximately 100 acres of land along the western shoreline of the Braade/Carrickfin peninsula, which is maintained as conservation land. All of the other Appellants named above are owner occupiers of dwelling houses and land in Braade with lands immediately adjoining the foreshore at Braade Strand or in very close proximity thereto.

**Outline the grounds of appeal (and, if necessary,  
on additional page(s) give full grounds of the  
appeal and the reasons, considerations and  
arguments on which they are based):-**

1. The Minister exercised his discretion to grant the said licenses in an arbitrary and autocratic manner without proper enquiry into the impacts of the proposed aquaculture in the local area, having regard to the massive scale of not only this

proposed application but also the cumulative effect of the several other licenses granted by the Minister on the same general area of foreshore in December 2016.

2. The Minister erred in making an order on 22<sup>nd</sup> August 2016, dispensing with the need for an environmental impact statement in relation to this application and 45 similar applications in County Donegal at the same time. In this regard the minister acted arbitrarily and failed to comply with the requirements of the habitats directive and the established obligations on Ireland as an EU state in relation to the conservation and improvement of European sites such as the Gweedore Bay and Islands special area of conservation, within which Braade Strand is situated. The Minister knew, or ought to have known, that this development on its own or the cumulative effect of this development, taken in conjunction with other adjoining developments for which licenses were granted, would have a serious negative impact on the conservation value of the special area of conservation. The Minister could not discharge his obligations on behalf of the Irish Government to determine that the development, either on its own or cumulatively, would not have an adverse negative effect on the SAC without a professional Environmental Impact Assessment, with the necessary input from independent ecologists, biologists and/or environmental scientists, planners and economists and/or other appropriate professional.
  
3. The Minister dispensed with the need for an EIS and accordingly no proper assessment was carried out with the necessary factual and scientific information in relation to the development. The reasons given by the Minister for dispensing with the need for an EIS in his Order of 22<sup>nd</sup> August 2016 were based on the following incorrect assumptions and incorrect material facts –
  - a. An understatement of the nature and scale of the proposed development of two sites covering 17.4025 hectares and the magnitude and extent of the direct impacts arising therefrom. In this regard the Minister failed to take account of the magnitude and scale of the development in conjunction with adjoining proposed additional developments.
  - b. The Minister incorrectly stated that the surrounded area was not densely populated when it is particularly densely populated for a rural Gaeltacht region.
  - c. The Minister wrongly stated that the impact on visual amenity would be acceptable. In fact the impact on visual amenity of this development in conjunction with other adjoining developments will be unacceptable in an environment which is currently in a pristine condition in close proximity to a blue flag beach of exceptionally high scenic value.
  - d. The Minister failed to take account of the consequence of the immediate devaluation of lands and houses in the neighbourhood and loss of potential tourist revenue to the local economy. The Braade strand, on which the proposed developments would be located, is highly visible from adjoining roads and also persons travelling by air into the local International Airport which adjoins Braade strand would find the view of Braade Strand adversely

affected if the proposed developments go ahead. Donegal Airport was recently categorised as one of the ten most scenic airports in the world and a development of aquaculture on the industrial scale proposed would detract from the exceptional scenic value of the area.

4. No consideration appears to have been given to the lack of proper facilities for packaging or storing shellfish prior to transportation on an industrial scale and the minister improperly neglected to impose conditions regulating the following matters as provided for in the Fisheries (Amendment) Act, 1997.
  - a. The amount of feed inputs
  - b. Annual or seasonal limits on stock inputs, outputs and standing stock on site
  - c. Operational practices, including the fallowing of sites;
  - d. The reporting of incidences of disease and the presence of parasites;
  - e. The disposal of dead fish;
  - f. Measures for preventing escapes of fish, and arrangements for the reporting of escapes;
  - g. Monitoring and inspection of the aquaculture carried on pursuant to the licence;
  - h. The keeping of records by the licensee;
  - i. The protection of the environment (including the man-made environment of heritage value) and the control of discharges;
  - j. Appropriate environmental, water quality and biological monitoring.

The reasons and considerations for the Minister's decision to grant the licenses in this case in December 2016 are further flawed in the following respects:-

- The Minister wrongly assumes that public access to recreational and other activities can be accommodated by this project and use of the beach area for amenity/walking is considered low. No proper consultation with the public has taken place in relation to this development and public consultation would have disclosed that the area is used substantially by walkers and that this project in conjunction with the proposed adjoining projects would seriously inconvenience walkers. Local people in the area of Braade Strand were unaware of these license applications due to the lack of any local site notices and little and no advertising of the proposed applications.
- There is no factual basis for the Minister's statement that the proposed aquaculture should have a positive effect on the economy of the local area. There is no evidence of any cost/benefit analysis having been carried out to weigh the perceived benefits of the aquaculture against the inevitable devaluation of adjoining properties and adverse impact on local tourism related income.
- The Minister's reasons and considerations for granting the licenses disclosed that very general assumptions have been made by the Minister that there would be no effects or no significant effects on the local environments and these assumptions cannot be relied upon without a full site-specific environmental impact assessment.

6. In view of the lack of public notice and the lack of public participation in the application process to date and the absence of an environment impact assessment, the Appeals Board should requisition an Environmental Impact Assessment and allow an oral hearing of this Appeal in conjunction with other adjoining appeals, having regard to the cumulative effect of the proposed aquaculture in the Gweedore Bay and Islands special area of conservation and an oral hearing should be allowed, which would allow proper public participation in the decision making process.

Fee enclosed €152.37 plus oral hearing fee of €76.18 – Total sum enclosed €228.55 (payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))(See Note 2)

Date: 13 January 2017

Signed 

Michael Gillespie  
Solicitor for the Appellants,  
Beachside, Braade, Kincasslagh, Co. Donegal

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**Note 1:** This notice should be completed under each heading and duly signed by the appellant and be accompanied by such documents, particulars or information relating to the appeal as the appellant considers necessary or appropriate and specifies in the Notice.

**Note 2:** The fees payable are as follows:

Appeal by licence applicant.....	€380.92
Appeal by any other individual or organisation	€152.37
Request for an Oral Hearing (fee payable in addition to appeal fee)	€76.18

In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.

