

Planning Department,
Carlow County Council,
County Buildings,
Athy Road,
Carlow, R93 E7R7.

20th January 2017

Dear Sir / Madam,

Re: SUBMISSION ON THE PROPOSED ADDITION OF THE LIME KILN TOWER AT THE FORMER IRISH SUGAR FACTORY, ATHY ROAD, CARLOW, TO THE RECORD OF PROTECTED STRUCTURES IN THE CARLOW COUNTY DEVELOPMENT PLAN 2015-2021

1.0 INTRODUCTION

- 1.1 On behalf of our client, Greencore Developments Designated Activity Company, No. 2 Northwood Avenue, Northwood Business Park, Santry, Dublin 9, and with the knowledge of the Trustees of Greencore Group Pension Scheme, who hold a legal charge over the property, we hereby make a submission in response to the letter received from Carlow County Council, dated 22nd of November 2016. This letter gave notice to our client, under Section 55 of the Planning and Development Act 2000 (as amended), of the proposed addition of the Lime Kiln Tower at the former Sugar Factory premises, Athy Road, Carlow to the Record of Protected Structures in the Carlow County Development Plan 2015-2021.
- 1.2 While the letter from Carlow County Council (dated 22nd of November 2016) also comprises an extraction of minutes from the Council Meeting held on Monday 14th November 2016, during which a vote on the proposal to add the Lime Kiln at the subject site to the list of Protected Structures under Section 54 and Section 55 of the Planning and Development Act 2000 (as amended) took place, we note that an earlier vote also took place on 10th October 2016.
- 1.3 According to the 14th November Council Meeting minutes, the motion on the proposed addition of the Lime Kiln *'was proposed from the floor, under Urgent Business provisions of the Standing Orders and referenced Standing 22... The vote resulted in eight in favour, four opposed and six absent. Standing Order Number 20, relating to Urgent Business, has a requirement that no less than 10 members vote in favour.'* Due to concerns raised by E. Brophy (Meetings Administrator) surrounding *'doubt as to the procedure which was followed at the October meeting'*, the matter was reconsidered by the Council and an additional vote took place at the 14th November 2016 Council Meeting.
- 1.4 Previously, the Lime Kiln / Cooling Tower at the former Sugar Factory site was listed as a protected structure under RPS No CW77 in the Joint Spatial

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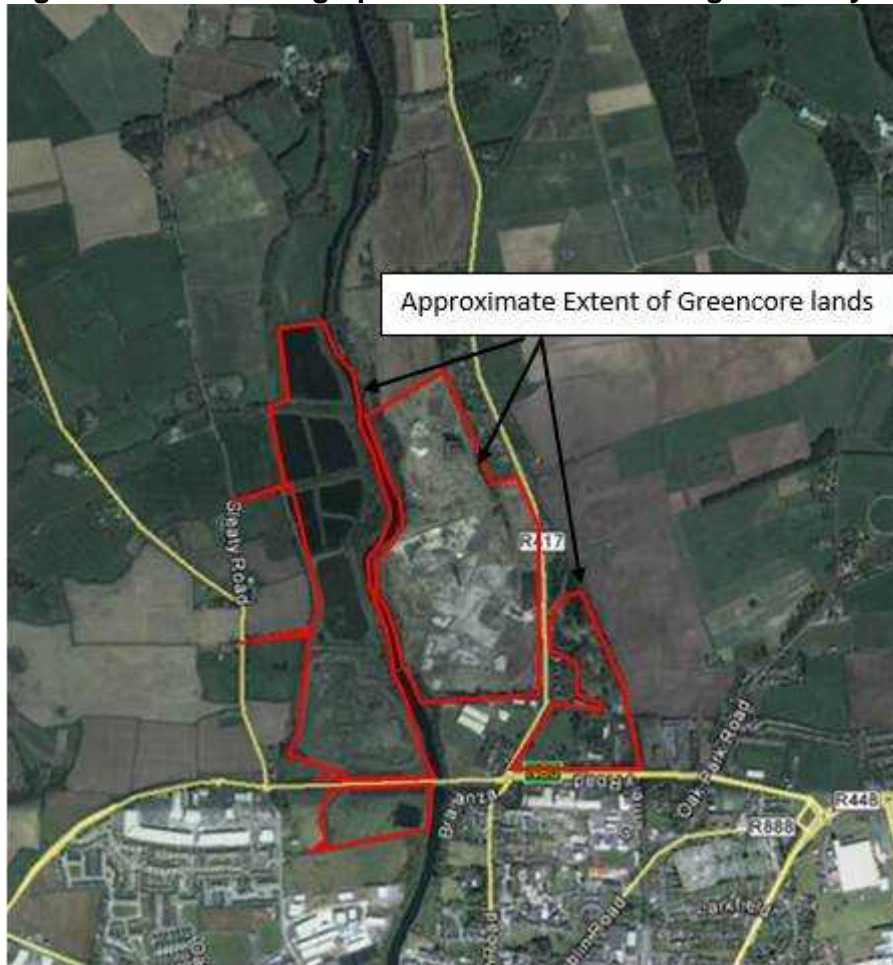
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Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018. However, during the review of the 2015-2021 Development Plan, the Council engaged the services of Carrig Building Fabric Consultants who concluded that the Lime Kiln Tower (RPS No. CW77), and indeed the Former Dock (RPS No. CW79) also located on the subject site, were not appropriate structures for inclusion on the RPS and were recommended for deletion.

- 1.5 Having regard to the above and the strategic location of the former Irish Sugar Factory lands within the northern environs of Carlow town and Graiguecullen we hereby make a submission on behalf of our client that the Lime Kiln should not be listed as a protected structure. We also question the validity of the proposal to add the Lime Kiln to the list of protected structures.
- 1.6 This submission is accompanied by a Report from John Cronin & Associates, Conservation and Heritage Consultants, which clearly demonstrates the structure is not worthy of protection having regard to the Guidelines, and a legal opinion from Mr. Eamonn Galligan, Senior Counsel, presented on behalf of our client with regards to procedural matters relating to the Council votes (October and November 2016), and the impact the listing would have on the potential future development of the site. We also include a summary of the justification provided by Carrig Building Fabric Consultants for the deletion of this structure from the list as adopted in the current Development Plan.

2.0 GREENCORE LANDS AT CARLOW AND GRAIGUECULLEN

- 2.1 The former Irish Sugar factory lands comprise of approximately 91 hectares (248 acres) on the east and west banks of the River Barrow. Approximately 42 hectares are located in County Carlow with the balance located in County Laois. The 42 hectares located within Carlow are considered to be a strategic reserve of brownfield lands located within the northern environs of the county town.
- 2.2 The lands are located to the north of Carlow town centre. They are located to the north of the N80 northern relief road (northern by-pass of Carlow) and are bounded to the east by the Dublin/Carlow/Waterford railway line. The River Barrow bisects the lands. The lands are further divided in a north south direction by the Athy Road (R417). The previous structures on the site have been demolished for the most part and the remediation process is nearing completion.

Figure 1: Aerial Photograph of the Former Irish Sugar Factory Lands

Source: Google Earth

- 2.3 The Carlow Irish Sugar Factory has undergone a Closure, Restoration and Residuals Management Plan since its closure in 2005 and the on-going remediation and monitoring at the site is almost fully complete. The result of this process is that the lands will be suitable for redevelopment in the short term. Indeed, a school has been delivered on the lands to the south of the houses on the west of the Athy Road (see Figure 1). Greencore would be happy to provide further information to the Planning Authority on the remediation process if necessary.
- 2.4 We refer the Planning Authority to the John Cronin & Associates report included in Appendix 1 for a detailed rationale for why the Lime Kiln is not worthy of inclusion on the Record of Protected Structures. For information purposes, we include two recent photos of the structure from this report below.

Figure 2 & 3: Photos of the Lime Kiln Tower



3.0 RECENT HISTORY OF PROTECTED STRUCTURE STATUS OF LIME KILN AND FORMER DOCK

- 3.1 As the Planning Authority will be aware, a pre-draft submission was lodged by this office to Carlow County Council (dated 24th October 2013) requesting the Lime Kiln and Former Dock to be deleted from the Record of Protected Structures. The justification for the omission of the Lime Kiln from the Record of Protected Structures list is contained below and at Section 4 of this report. This justification continues to apply to this submission and the Council's current proposal, together with procedural matters which will be discussed within Section 5.0.
- 3.2 As part of the review of the Carlow County Development Plan 2009-2015, the Council engaged the services of Carrig Building Fabric Consultants to carry out a review of the record of protected structures, two of which related to lands in the ownership of our client (Greencore Developments Ltd), namely CW77 'a Lime Kiln', and CW79 'a former Dock'.
- 3.3 The 'Carlow County Council RPS Review' was subsequently published in April 2014 which concluded that both structures on the subject site (RPS Ref CW77, Lime Kiln and RPS Ref CW79 Former Dock) were recommended for deletion and as a result, were not included on the Record of Protected Structures List in the adopted Carlow County Development Plan 2015-2021.
- 3.4 An extract from the 'Carlow County Council RPS Review' (2014) in relation to the structures at the Former Sugar Factory site is provided below. This outlines the justification for the deletion of the protected structure listing.

"RPS Ref: CW77 – Lime Kiln, former Irish Sugar Factory

Description: Freestanding lime kiln, built 1988, on site of earlier lime kilns. Steel twelve-stage tower kiln on concrete base standing 61m in height with external access stairs having platforms at each stage. Discharge equipment is still present in the base of the kiln.

*Appraisal/Statement of Significance: The Irish Sugar Manufacturing Company was established at Carlow in 1926 as the first factory of its type within Ireland, with the factory being taken over by the newly established Comhlucht Siuicre Eireann in 1933. In 2006 the factory closed. The lime kiln, weighbridge building and former harbour are the sole surviving features of the factory, with the limekiln holding a commanding location within the complex and is a towering presence in the immediate locality. While the limekiln is a lasting testament of the sugar factory, which was a significant component of the social history of Carlow town, **it is not representative of the origins of the facility, dating to a much later period. It has also lost its context with the demolition of the remainder of the factory.** (Emphasis Added)*

RPS Ref CW79 – Former Dock, Irish Sugar Factory

Description: Former dock, built c. 1950, to serve the former Irish Sugar Factory. Comprising concrete walls, splayed to form entrance from river with iron bridge over the entrance. Inner part of the harbour has been filled in.

Appraisal/Statement of Significance: The Irish Sugar Manufacturing Company was established at Carlow in 1926 with the factory being taken over by the newly established Comhlucht Siuicre Eireann in 1933. In 2006 the factory

closed. The former dock, lime kiln and weighbridge are the only surviving features of the factory. The dock, though a notable feature within the social history of Carlow town as a reminder of the once important Sugar Factory, is of little significance above the local context.”

- 3.5 The Carlow County Development 2015-2021 was adopted at a Carlow County Council meeting on 6th July 2015 where it was agreed that both of the above named structures would be removed from the Record of Protected Structures as contained within Appendix 8 of the Development Plan.
- 3.6 As outlined briefly at the beginning of this report, we understand that following a meeting of Carlow County Council on 14th November, a resolution was passed to add the Lime Kiln/Cooling Tower, at the above site, to the list of Protected Structures within the Carlow County Development Plan (2015-2021) under Section 54 and Section 55 of the Planning and Development Act 2000 (as amended).

4.0 SUBMISSION ON PROPOSED ADDITION OF THE LIME KILN TOWER TO THE RECORD OF PROTECTED STRUCTURE

- 4.1 Appendix 8 of the Carlow County Development Plan states that ‘*a protected structure is a structure that a local authority considers to be of special interest from an architectural, historical, archaeological, artistic, cultural, scientific, social or technical point of view*’.
- 4.2 The Lime Kiln is not included in the National Inventory of Architectural Heritage as undertaken for County Carlow. It is respectfully requested that the addition of the Lime Kiln structure to the Record of Protected Structures list is entirely inappropriate for the reasons set out within Section 5.0 of this report, which is discussed in greater detail in the Legal Opinion prepared by Mr Eamon Galligan SC, included in Appendix 2. We therefore request the Planning Authority to carefully consider this proposal and to not proceed with the inclusion of the Lime Kiln/Cooling Tower on the record of protected structures.
- 4.3 Given the findings and indeed the recommendations of the Carrig Building Fabric Consultants RPS Survey undertaken for Carlow County Council and also the Heritage Appraisal prepared by John Cronin & Associates included at Appendix 1 of this report, it is clear that the Lime Kiln/Cooling Tower does not meet any of the necessary criteria in the P&D Act or Guidelines to warrant protected structure status.
- 4.4 The Lime Kiln (a “cooling tower” is an incorrect title) is a steel cylindrical structure with a diameter of 5.6m, standing to a height of 61m. It is set on a base of reinforced concrete and was erected in **1988** and was the third Lime Kiln on the site since the factory was built in 1926. The Lime Kiln has an external circular (maintenance) access stairs and a series of platforms. For safety & security reasons the lower part of this has been removed.
- 4.5 It is submitted, in line with Section 4 of the Heritage Appraisal prepared by Cronin & Associates that, based on the fact that the Lime Kiln was constructed in 1988, that the structure is of no historic value or significance. There is also nothing to suggest that it is of special architectural, archaeological, artistic, cultural, scientific, social or technical interest to merit the inclusion of the structure as a protected structure under Section 54 of the Planning and Development Act 2000 (as amended). In addition, we would question the Council’s assertion that the Lime Kiln *‘is a most impressive*

structure’, as it is our opinion that it is of poor aesthetic quality and is a blight on the landscape and based on the redevelopment proposals for the subject site will become an even greater eyesore when surrounded by new development areas.

4.6 The RPS description of the Lime Kiln states that *“there may be similar structures in Mallow & Tuam but this was the first sugar factory in Ireland and led the way in the technology of sugar beet refining”*. While the Carlow site is the oldest sugar factory in Ireland the Lime Kiln only dates from 1988. There were similar structures in Tuam, Thurles and Mallow, and none of these were seen to be of any particular special interest and never warranted consideration for inclusion in the Record of Protected Structures for these counties and were not included within the NIAH surveys for these counties.

4.7 Significantly, the Lime Kiln is not included in the NIAH survey of County Carlow. The NIAH is an authoritative record of structures that merit or may merit inclusion in the RPS.

4.8 The retention of the Lime Kiln will restrict the future uses of the land around the structure, as well as presenting a health and safety hazard. The tower was not designed to be an independent structure without heat and as a result will become unstable overtime as it is not in use and has greater weight at a higher level than at the base of the structure. There is no longer any industrial use on the adjoining lands.

4.9 The Heritage Appraisal Report includes the following conclusion:

“The lime kiln was constructed in 1988 and is of no historic value. We consider that there is nothing to suggest that it is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest to merit the inclusion of the structure as a protected structure under Section 54 of the Planning and Development Act 2000 (as amended).

It is our opinion that it is of poor aesthetic quality (reflecting its utilitarian nature and its function). In the absence of the former factory, it is an eyesore. From discussion with some former factory workers and a cursory review of local press coverage, there is little affection for the structure locally. The structure is not noted or recorded in any treatise or review of County Carlow’s architectural heritage. Furthermore, the structure was not included on the National Inventory of Architectural Heritage (NIAH).”

4.10 Having regard to the above we request that the Lime Kiln tower not be included in the Record of Protected Structures.

5.0 SUMMARY OF CONCERNS REGARDING CARLOW COUNTY COUNCIL’S PROCEDURES AND LEGAL ISSUES ARISING

5.1 We enclose the Legal Opinion prepared by Mr Eamon Galligan SC at Appendix 2 of this report.

5.2 As was outlined at the beginning of this submission, a proposal to commence the statutory procedure for the addition of the Lime Kiln at the subject site to the Record of Protected Structures in Carlow County Development Plan 2015-2021 was brought before Carlow County Council members on the 14th of November 2016.

- 5.3 The minutes of the meeting state that during discussions relating to the cost of preparing another expert report for the proposal, it was acknowledged that *'reports already exist for the previous listing and delisting of the structure'*. It is noted within the minutes that the Chief Executive advised that, *'subject to confirmation, the first report to add the building to the Record of Protected Structures in the Carlow County Development Plan 2009-2015, may have been based on the recommendation of the elected members at that particular time'*.
- 5.4 The 14th November 2016 Council meeting minutes also state that *'a specialist report was commissioned in 2014 on the Limekiln. The recommendation from the said report was to delete the Limekiln from the Record of Protected Structures and a copy of same is available to the Members.'*

Statutory Criteria of Section 54 of the Planning and Development Act (2000)

- 5.5 The statutory provisions of Section 54 of the Planning and Development Act (2000) are implemented where *'additions to and deletions from the record of protected structures'* are concerned. This provides for the following:

'54 – (1) A planning authority may add to or delete from its record of protected structures a structure, a specified part of a structure or a specified feature of the attendant grounds of a structure, where –

(a) The authority considers that –

- (i) In the case of an addition, the addition is necessary or desirable in order to protect a structure, or part of a structure, of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, whether or not a recommendation has been made under Section 53, or*
- (ii) In the case of a deletion, the protection of the structure or part is no longer warranted,*

And

(b) The addition or deletion is made when making a development plan under Part II or in accordance with section 55.

(2) The making of an addition to, or a deletion from, a record of protected structures shall be reserved function.'

- 5.6 We understand that the first report in respect to the inclusion of the Lime Kiln on the RPS in the Joint Spatial Plan was provided by Mr William Garnemann of 'Genius Loci'. The report indicated that the recommendation for the inclusion of the structure in the RPS was based on:

- Its importance as a tourist attraction
- Its potential use as the focal point for a 'scientific exploration park'
- Its educational value

The above considerations are irrelevant and do not accord with the Architectural Heritage Guidelines or the criteria set out in Section 54 of the Planning and Development Act 2000 (as amended).

Impact of protected structure listing on the landowner

- 5.7 The subject lands at the former Sugar Factory site offer strategic potential for development, however, the addition of the Lime Kiln structure would result in significant implications for the land owner. An owner/occupier of a protected structure is obliged, under Section 58(1) of the Planning and Development Act 2000, as amended, to ensure that the structure, or any element of it which contributes to its special interest, is not endangered. The owner/occupier of the protected structure may also be obliged to carry out certain works on foot of a notice served by the planning authority, under Section 59(1) of the Planning and Development Act (2000), to prevent the protected structure from becoming or continuing to be endangered. In addition, certain categories of exempted development are also removed from structures which are protected.
- 5.8 In relation to the subject site, the listing of the Lime Kiln on the Record of Protected Structures would have significant implications for the landowner. Not alone would the above obligations apply in terms of the ensuring the structure does not become endangered, which would come at a financial cost, but the potential for development at the site would also be adversely affected as any proposal would be required to be designed around the structure. This would impact upon the viability of future proposals at the site.
- 5.9 Therefore, careful consideration needs to be given to any proposal to add a structure to the list and it is especially important that any such proposal is appropriate to the context of the criteria in the Guidelines for Architectural Heritage 2013 and under the provisions of Section 54 of the Planning and Development Act 2000 (as amended).
- 5.10 The Legal Opinion of Mr Eamon Galligan SC concludes that:

“The Elected Members have a duty to act in a quasi-judicial manner. This duty must be taken quite seriously in the context of the very serious consequences for property owners of designation as a protected structure, as outlined earlier in this opinion. The Court would be concerned to protect the constitutional property rights of the landowner or occupier concerned and to ensure that proper procedures are followed in the context of any decision which seeks to limit those rights.

*There does not appear to have been any material change in the background planning circumstances demonstrated since the decision taken in 2015 to delete the Limekiln tower from the RPS such as would justify the Council in departing from its previous decision. That decision was made on the basis of written advice from specialist consultants engaged by the Council. Certainly, no such circumstances were mentioned at the Council meetings in October and November 2016. In these circumstances, **I am of the opinion that any decision of the Council to add the Limekiln/cooling tower to the RPS under the Carlow County Development Plan (2015-2021) would be irrational and, therefore, ultra vires. Consistency is an important requirement of good decision making.***

There was a similar situation (in which Agents were involved) a number of years ago concerning proceedings brought in the Commercial Court by a developer against Dublin City Council. The Councillors decided to list certain buildings beside the Tara Towers on the Merrion Road in Booterstown, Co Dublin, in the teeth of conversation advice from the Council to the contrary. The developer’s proceedings included a claim for misfeasance of public office

against the Council. Following the granting of leave to apply to the Court by way of judicial review, the Council agreed to de-list the structures and consented to Orders in the proceedings. Similar issues would appear to arise in the present case.” (Emphasis Added)

6.0 CONCLUSION

- 6.1 As set out above, this submission requests Carlow County Council to not proceed with the inclusion of the Lime Kiln on the Record of Protected Structures. There is no advice available to the Council contrary to the 2014 expert report prepared by Carrig Building Fabric Consultants which recommended the Lime Kiln be removed from the list of protected structures (and which was accepted by the County Council during the adoption of the County Development Plan). There has been no material change in the background planning circumstances to demonstrate that since the decision taken in 2015 to delete the Lime Kiln tower from the RPS to justify departing from the Council's previous decision and as noted, it does not meet any of the relevant criteria in its guidelines.
- 6.2 This submission is accompanied by a Heritage Appraisal Report, prepared by John Cronin & Associates, Conservation and Heritage Consultants, and a Legal Opinion prepared by Eamon Galligan, SC, both of which recommend that the Lime Kiln should not be added to the Record of Protected Structures.
- 6.3 This submission respectfully requests that the Lime Kiln tower at the subject site should not be added to the list of Protected Structures within the Carlow County Development Plan (2015-2021) under Section 54 and 55 of the Planning and Development Act 2000 (as amended).

Yours faithfully,



John Spain Associates

APPENDIX 1: HERITAGE APPRAISAL PREPARED BY JOHN CRONIN & ASSOCIATES

Lime Kiln, Former Irish Sugar Factory, Carlow
Heritage appraisal

Prepared by:

John Cronin & Associates
Unit 3A Westpoint Trade Centre
Ballincollig
Co. Cork

On behalf of:

Greencore Developments Designated Activity Company
c/o John Spain Associates
39 Fitzwilliam Place
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January 2017

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1. Introduction

John Cronin & Associates have been commissioned by Greencore Developments Designated Activity Company to appraise the heritage significance of a derelict late-twentieth-century lime kiln tower at the site of the former Irish Sugar Factory in Carlow. The structure is located in the townland of Strawhill, approximately 1.8 kilometres to the north of Carlow town centre.

In a letter dated 22nd of November 2016, Carlow County Council gave notice to Greencore Developments Ltd under Section 55 of the Planning and Development Act 2000 (as amended), of the proposed addition of the Limekiln Tower at the former Sugar Factory premises at Strawhall, Carlow, to the Record of Protected Structures in the Carlow County Development Plan 2015-2021.

This assessment is based on a site visit, desktop research, review of archival material held by Greencore, review of resources held by Carlow County Council's Central Library and the Irish Architectural Heritage and conversations with former employees of the Sugar Factory.

This report was prepared by Mr John Cronin; Mr Cronin is a heritage conservation consultant who has undertaken architectural heritage surveys for agencies such as the National Inventory of Architectural Heritage (NIAH), Dublin City Council, Kildare County Council, South Dublin County Council. He holds degrees in archaeology, town planning and building conservation.

2. Historical background

In 1924 the government of the Irish Free State identified the need for the establishment of an indigenous sugar production industry. Importation of the commodity was expensive and an indigenous industry would also provide greatly sought after jobs in a harsh economic climate. A previous sugar beet factory had operated in Ireland during the 19th century but this was a short-lived operation. The Royal Irish Beet Root Factory operated in Mountmellick, Co. Laois between 1851 and 1861.

In 1924, following a government announcement publicising the intention to construct the new Free State's first sugar production facility, Carlow businessman Mr. Edward Duggan, who was chair of Carlow's prospective beet factory organising committee, succeeding in winning investor and government approval to locate the new plant in Co. Carlow. As well as the organisation of the local community (it is recorded that a special Sunday was set aside in 1925 for a massive canvass at all the churches in the Barrow Valley to ensure the necessary financial guarantees were in place to bring the factory to the town) a number of factors ensured Carlow and the site at Strawhall on the Athy Road on the northern edge of the town was chosen as the factory location. These were namely the fact that the surrounding large agricultural hinterland provided excellent conditions for the growing of sugar beet and that the site was strategically situated adjacent to good rail and waterway connections which were necessary for the transportation of the finished product to the remainder of the country. A dedicated harbour was also constructed on the banks of the River Barrow adjacent to the factory.

Due to a lack of expertise within the local construction sector, the Irish government commissioned the Belgian company Lippens to oversee the construction of the factory; as a result many local workers were trained and up-skilled by the technicians and engineers of this company. On 5th January 1926 the sod was turned on the development by the Bishop of Kildare and Leighlin, Bishop Foley. Construction was completed at an impressive pace and in mid October 1926 the first beet was processed in the factory of the newly established 'Irish Sugar Manufacturing Company'. In January 1927, at the conclusion of the first processing campaign, the company had produced 13,400 tonnes of refined sugar from 86,000 tonnes of beet.

Although the Carlow sugar factory was operating successfully, the State was still heavily dependent on imported sugar to meet the national demand. As a result, in 1933 the State established its own sugar company, Comhlucht Siúicre Éireann, and proceeded to build a further three sugar production plants at Mallow, Co. Cork, Thurles, Co. Tipperary and Tuam, Co. Galway. By 1945 Ireland was largely self sufficient in terms of sugar production with a number of the plants diversifying into areas such as soil testing, food production, lime production and machinery manufacturing. During this time period, in the hinterland surrounding the Carlow factory alone, there were over 10,500 beet growers which provided an important economic boost to the local economy.

The harvesting, transporting and processing of the beet in the autumn of each year was colloquially known as 'the beet campaign'. It was a major event in the vicinity of the sugar factory. At its height, when over 1,000 people were employed in the Carlow industry, even the traffic system of the town had to be rearranged in order to facilitate the volume of traffic to and from the factory. In the largest manufacturing 'campaign' in the history of the Irish Sugar Company in 1943, over 700 employees of the Carlow factory worked in three shifts without pause for 18 weeks until all the product of 230,000 acres of beet growing was processed. Within the factory the 'sugar cook' was considered the most skilful job. The cook used vessels known as vacuum pans to bring the sugar

syrup to boil at very low temperatures. When the syrup was at the right density the cook would add a small amount of seed which would start the crystal formation process.

The Carlow Sugar Factory operated under the control of the Irish Sugar Company until its privatisation under the Sugar Act in 1991, a new private company, Greencore, emerged from this process to take control of the Irish sugar industry. In 2005 Greencore announced that the Carlow Sugar Factory was to be closed and on the 11th March 2006 production at the factory ceased. With the majority of the factory's structures having been demolished in the intervening period, all that now remains is the 61 metre high steel lime kiln structure that was constructed in 1988 (two preceding towers also stood at this location), the former weighbridge building and the former harbour on the River Barrow.

3. Description of the structure

The lime kiln (it has been incorrectly referred to as a “cooling tower” by third parties) is a steel tower-like cylindrical structure with a diameter of 5.6m and standing to a height of 61m. It set on a base of reinforced concrete and was erected in 1988 and was the third lime kiln on the site since the factory was built in 1926. The lime kiln has an external circular (maintenance) access stairs and a series of access platforms (for safety and security reasons the lower part of the external stairs has been removed).

The structure can be categorised as a vertical shaft lime kiln. Such shaft kilns can use limestone from a minimum of 20mm diameter up to 175mm. The kiln operated on natural gas. This type of kiln tends to produce medium reactivity quicklime and produces carbon dioxide. The kiln was utilised to produce lime and carbon dioxide which were used within the factory to precipitate the impurities from a hot solution of sugar; the precipitation process assisted in the filtering away of impurities for the hot sugar solution¹. Limestone was conveyed to and fed into the top of the kiln by a series of buckets. The lime kiln at Carlow was built to designs and specifications by Eberhardt GmbH in Germany but was manufactured by Irish Sugar. Eberhardt GmbH are a long-established and leading designer and manufacturer of similar kilns for the sugar, soda and lime industry.



Plate 1: View toward the lime kiln tower from the south-east

¹ From Foy, Michael (1976) *The Sugar Industry in Ireland*. Dublin: The Irish Sugar Company Limited



Plate 2: View of the tower from the south



Plate 3: Reinforced concrete base to the lime kiln



Plate 4: Base of the kiln (within the tower base)

4. Assessment of significance

-) **Architectural:** The former lime kiln consists of a 61m high cylindrical steel tower set on a reinforced concrete base. The structure was associated with the industrial production of sugar and it produced lime and carbon dioxide that was used in the precipitation process. It is of no architectural heritage significance and it is not referenced or recorded in any noteworthy architectural heritage archive or publication.
-) **Historical:** The structure was built in 1988 and it is not of historical significance.
-) **Technical:** The construction of the lime kiln tower does not demonstrate any outstanding degree of innovation. The shaft kiln is a common form of lime kiln.
-) **Vernacular:** The building is not an example of vernacular design or construction.
-) **Group:** The structure was a component of a wider factory site of which little remains. It is not considered to be of group interest.
-) **Personal Association:** The building is not known to have an influencing association with a major figure or personality.
-) **Unique/rarity:** Similar shaft kilns are currently in use within the concrete production industry in Ireland (at Dundalk for instance). Similar lime kilns were present at the other Irish Sugar factories at Mallow, Thurles and Tuam and none of these were seen to be of any particular interest and never warranted consideration for inclusion in the Record of Protected Structures for these counties or were not included within the NIAH surveys for these counties. There are at least four similar structures in current operation at sugar beet processing plants in the United Kingdom; similar lime kilns are present at other sugar beet processing plants across Europe and the United States. They are a ubiquitous feature of modern sugar beet processing and industrial lime production.
-) **Detail/Design:** The design is purely utilitarian and reflects the production process. It is of no especial detail/design significance.
-) **Archaeological:** The site is not of archaeological significance.
-) **Materials:** The structure was fabricated in sections by Irish Sugar Company at the engineering works at Tuam and was assembled and welded together on site. Certain components were supplied by Eberhardt GmbH in Germany.
-) **Streetscape/Setting:** The lime kiln is a dominant structure on the northern periphery of the town. It is not an aesthetically pleasing structure.
-) **Statement of Significance:** The lime kiln is a reminder of the former factory processed but the structure itself is only associated with the final phase of the factory's operation (having been erected in 1988). The lime kiln has lost its context and functionality with the demolition of the remainder of the factory site.

5. Conclusions

The lime kiln was constructed in 1988 and is of no historic value. We consider that there is nothing to suggest that it is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest to merit the inclusion of the structure as a protected structure under Section 54 of the Planning and Development Act 2000 (as amended).

It is our opinion that it is of poor aesthetic quality (reflecting its utilitarian nature and its function). In the absence of the former factory, it is an eyesore. From discussion with some former factory workers and a cursory review of local press coverage, there is little affection for the structure locally. The structure is not noted or recorded in any treatise or review of County Carlow's architectural heritage. Furthermore, the structure was not included on the National Inventory of Architectural Heritage (NIAH).

The preservation of the structure presents significant constraints on the owner, namely:

-) Maintenance – The steel structure requires periodic painting maintenance and there is a significant ongoing cost associated with this;
-) Security/Safety - The tower is a security and safety risk and has been the focus for unauthorised visits by members of the general public, and
-) Public Access - The structure is not suitable in its present state for public access. The structure would have to be radically altered and re-configured to convert to a new use. Such a new use would require the removal of remaining industrial components.

In conclusion, we consider **the structure not to be of sufficient significance to warrant inclusion on Carlow County Council's Record of Protected Structures.**

APPENDIX 2: LEGAL OPINION PREPARED BY MR. EAMON GALLIGAN QC

OPINION

Re: Proposed addition of the Limekiln tower at the former sugar factory, Athy Road, Carlow, to the Record of Protected Structures

Querist: Greencore

Agents: John Spain Associates

Counsel: Eamon Galligan S.C.

1.0 SCOPE OF OPINION AND BACKGROUND FACTS

- 1.1 Agents have requested my opinion in relation to the proposed addition of the Lime Kiln tower to the Record of Protected Structures following meetings of the elected members of Carlow County Council on the 10th of October and the 14th of November 2016.
- 1.2 No record of documentation which was before the Elected Members is currently available, but it appears that the only report available to them was the report of Carrig Consultants of April 2014.
- 1.3 The Limekiln tower was included in the RPS in the Carlow County Development Plan 2009-2015. I have been furnished with a copy of the minutes for the relevant Council meetings in October and December 2007 at which this issue was considered. The December 2007 Minutes (p.2) record :

'Lime Kiln Cooling Tower:

Two submissions were received. Mr O'Connor outlined the issues and responses to these submissions. He referred to the professional assessment of Mr. William Garnerman which highlights the potential of the Cooling Tower as a viewing platform and as a centre for the recall of the industrial past of Carlow. The Tower would be given National significance rating.'

- 1.4 Mr O'Connor, as referred to above, is Mr Seamus O'Connor who was the Director of Services at the material time. Mr. William Garnerman is the principal of 'Genius Loci Architectural Consultancy'. The 'professional assessment of Mr. William Garnerman' referred to within the December 2007 minutes is a reference to verbal advice only given by Mr. Garnerman at the time. A later report of Genius Loci Architectural Consultancy, issued one year later 1 December 2008, would appear to set out the basis for his earlier verbal advice was written at a later date. I do not consider that report relevant at this stage, as it was not before the Council in the context of the meetings of the elected members of Carlow County Council on the 10th of October and the 14th of November 2016, referred to above. However, I do note in passing that part of the conclusion as to its

importance was stated to be its value as a tourist attraction and an education facility, neither of which matters are relevant to the criteria for the addition of structures to the RPS. While these considerations may be relevant to planning considerations generally, they do not have any direct relationship with the statutory criteria under **Section 54** of the 2000 Act, which are discussed further below.

- 1.5 As part of the review of the Carlow County Development Plan 2009-2015, the Council engaged the services of Carrig Building Consultants to carry out a review of the protected structures, two of which related to lands in the ownership of Querist, namely CW77 ‘a Limekiln’, and CW79 ‘a former Dock’.
- 1.6 The ‘Carlow County Council RPS Review’ was subsequently published in April 2014. Both structures on the subject site (RPS Ref CW77, Limekiln and RPS Ref CW79, Former Dock) were recommended for deletion and as a consequence, were not included on the Record of Protected Structures List as part of the Carlow County Development Plan 2015-2021.
- 1.7 An extract from the ‘Carlow County Council RPS Review’ (2014) in relation to the structures at the Former Sugar Factory site is provided below. This outlines the justification for the deletion of the protected structure listing.

“RPS Ref: CW77 – Limekiln, former Irish Sugar Factory

Description: Freestanding lime kiln, built 1988, on site of earlier lime kilns. Steel twelve-stage tower kiln on concrete base standing 61m in height with external access stairs having platforms at each stage. Discharge equipment is still present in the base of the kiln.

Appraisal/Statement of Significance: The Irish Sugar Manufacturing Company was established at Carlow in 1926 as the first factory of its type within Ireland, with the factory being taken over by the newly established Comhlucht Siúicre Éireann in 1933. In 2006 the factory closed. The lime kiln, weighbridge building and former harbour are the sole surviving features of the factory, with the limekiln holding a commanding location within the complex and is a towering presence in the immediate locality. While the limekiln is a lasting testament of the

sugar factory, which was a significant component of the social history of Carlow town, it is not representative of the origins of the facility, dating to a much later period. It has also lost its context with the demolition of the remainder of the factory.

RPS Ref CW79 – Former Dock, Irish Sugar Factory

Description: Former dock, built c. 1950, to serve the former Irish Sugar Factory. Comprising concrete walls, splayed to form entrance from river with iron bridge over the entrance. Inner part of the harbour has been filled in.

Appraisal/Statement of Significance: The Irish Sugar Manufacturing Company was established at Carlow in 1926 with the factory being taken over by the newly established Comhlucht Súicre Éireann in 1933. In 2006 the factory closed. The former dock, lime kiln and weighbridge are the only surviving features of the factory. The dock, though a notable feature within the social history of Carlow town as a reminder of the once important Sugar Factory, is of little significance above the local context.”

- 1.8 The Carlow County Development 2015-2021 was adopted at a Carlow County Council meeting on 6th July 2015 where it was agreed that both of the above name structures would be removed from the Record of Protected Structures as contained within Appendix 8 of the Development Plan.
- 1.9 The 2014 report by Carrig Building Services recommended that the structure be removed from RPS, which was approved by the Councillors, and which they now seek to disregard. The minutes of the Council meeting on 16 November 2016 in relation to the proposal to commence the statutory consultation procedure in relation to the addition of the structure to the RPS record as follows:

“Members queried costs of preparing another expert report for the proposal, as reports already exist for the previous listing and delisting of the structure. The Chief Executive advised that, subject to confirmation, the first report to add the building to the Record of Protected Structures in the Carlow County Development Plan 2009 – 2015, may have been based on the recommendation of the elected members at that particular time. B. O’Brien advised that as part of the Review Process of Carlow County Development Plan 2009 and consequent to receipt of a

submission from the Planning Consultants for the property owner, a specialist report was commissioned in 2014 on the Limekiln. The recommendation from the said report was to delete the Limekiln from the Record of Protected Structures and a copy of same is available to the Members.”

1.10 At this November meeting, a resolution was passed to commence the statutory consultation procedure in relation to the addition of the Limekiln/cooling tower to the RPS under the Carlow County Development Plan (2015-2021) under Section 54 and Section 55 of the Planning and Development Act 2000 (as amended). The Notice served on Querist pursuant to Section 55 of the 2000 Act does not provide any reasons for the proposed addition, which amounts to a variation to the Development Plan. While the minutes of the November meeting are attached, there is no attempt made to provide a statement of reasons for the majority decision. This is a matter that will be addressed further below.

1.11 For completeness, it is worth referring to the minutes of the earlier Council meeting in October 2016, which record as follows:

“8. Any other business with the consent of the Cathaoirleach. Councillor Paton raised the issue of Lime Kiln, former Irish Sugar Factory (former CW77), Strawhall, Athy Road, Carlow. Councillor Paton advised of concerns re possible plan to demolish this Lime Kiln and asked members to commence the process to add this structure to the Record of Protected Structures. Members discussed the matter especially the Historic, Architectural, Cultural, Social and Technical value of the Kiln. It was noted that this structure was built mainly by local Carlow people. A number of members did not see any merit in protecting this structure. Councillor Paton asked that Carlow County Council commence the process to add this structure to the Record of Protected Structures and to immediately serve notice on the owner advising on same. Councillor Doran proposed an amendment which was not proceeded with. Councillor Paton submitted a copy of his motion to the Cathaoirleach.”

1.12 It is against the foregoing background that my advices are sought.

2.0 RELEVANT STATUTORY PROVISIONS

2.1 Section 2(1) of the 2000 Act defines a “protected structure” as follows:

"protected structure" means -

(a) a structure, or

(b) a specified part of a structure,

which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;"

2.2 Section 54 of the 2000 Act provides as follows:

“54.-(1) A planning authority may add to or delete from its record of protected structures a structure, a specified part of a structure or a specified feature of the attendant grounds of a structure, where -

(a) the authority considers that -

(i) in the case of an addition, the addition is necessary or desirable in order to protect a structure, or part of a structure, of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, whether or not a recommendation has been made under section 53, or

(ii) in the case of a deletion, the protection of the structure or part is no longer warranted,

and

(b) the addition or deletion is made when making a development plan under Part II or in accordance with section 55.

(2) The making of an addition to, or a deletion from, a record of protected structures shall be a reserved function.”

2.3 Section 132(3) of the Local Government Act, 2001 provides as follows:

“132.(3) It is the duty of every Chief Executive to advise and assist the elected council of a local authority or a joint body for which he or she is manager -

(a) generally as regards the exercise or performance by the council or body of its reserved functions, and

(b) as regards any particular matter or thing in relation to such exercise or performance on or in respect of which the council or body requests the advice or assistance of the manager,

and that council or body shall have regard to that advice or assistance.”

2.4 The addition of a structure to the RPS has very serious consequences for property owners and in many cases places onerous obligations upon them. Each owner and occupier of the structure is obliged to ensure that the structure, or any element of it which contributes to its special interest, is not endangered.¹ Furthermore, the owner or occupier of the protected structure may be obliged to carry out certain works on foot of a notice served by the planning authority to prevent the protected structure from becoming or continuing to be endangered.² A person who fails to comply with a notice served under **Section 59(1)** is guilty of an offence.³ The designation of a protected structure also has the effect of removing the application of certain categories of exempted development and undoubtedly has an inhibiting effect on the development potential of the property in question. In all of these circumstances, the Court ought to be concerned to protect the constitutional property rights of the landowner or occupier concerned and to ensure that proper procedures are followed in the context of any decision which seeks to limit those rights.⁴

3.0 CONCLUSIONS

3.1 Having regard to the foregoing considerations, and subject to any qualifications expressed above, my principal conclusions are as follows:

¹ Planning and Development Act, 2000, Section 58(1).

² 2000 Act, Section 59(1).

³ 2000 Act, Section 63.

⁴ See **MacPharthalain .v. Commissioners of Public Works**, [1992] 1IR 111, HC; on appeal, [1994] 3 IR 353, S.C.

1. The Elected Members have a duty to act in a *quasi*-judicial manner. This duty must be taken quite seriously in the context of the very serious consequences for property owners of designation as a protected structure, as outlined earlier in this opinion. The Court would be concerned to protect the constitutional property rights of the landowner or occupier concerned and to ensure that proper procedures are followed in the context of any decision which seeks to limit those rights
2. There does not appear to have been any material change in the background planning circumstances demonstrated since the decision taken in 2015 to delete the Limekiln tower from the RPS such as would justify the Council in departing from its previous decision. That decision was made on the basis of written advice from specialist consultants engaged by the Council. Certainly, no such circumstances were mentioned at the Council meetings in October and November 2016. In these circumstances, I am of the opinion that any decision of the Council to add the Limekiln/cooling tower to the RPS under the Carlow County Development Plan (2015-2021) would be irrational and, therefore, *ultra vires*.⁵ Consistency is an important requirement of good decision making.⁶
3. There was a similar situation (in which Agents were involved) a number of years ago concerning proceedings brought in the Commercial Court by a developer against Dublin City Council. The Councillors decided to list certain buildings beside the Tara Towers on the Merrion Road in Booterstown, Co. Dublin, in the teeth of conservation advice from the Council to the contrary. The developer's proceedings included a claim for misfeasance of public office against the Council. Following the granting of leave to apply to the Court by way of judicial review, the Council agreed to de-list the structures and consented to Orders in the proceedings. Similar issues would appear to

⁵ See, by analogy, **Grealish v An Bord Pleanála**, [2007] 2 IR 536 where a decision of the Board to refuse permission for an advertisement structure was quashed in circumstances where no material change in circumstances could be demonstrated for departing from a decision to grant permission made a number of years earlier, albeit for a temporary period.

⁶ See, by analogy, **North Wiltshire DC v Secretary of State for the Environment** (1992) 65 P&CR 137, *per* Mann LJ.

arise in the present case. I will be happy to advise further, if necessary, following the consideration of the proposed addition by the Council.

Nothing further occurs at this time.

Eamon Galligan S.C.

14th January, 2017.