

An  
Bord  
Pleanála

**Board Direction**  
**BD-012163-23**  
**ABP-313205-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/05/2023.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

#### **Reasons and Considerations**

1. Having regard to the deficiencies in the information provided in the submitted Natura Impact Statement, in particular the lack of information in respect of the relationship between the dry ditch, a potential overflow channel from the Park Canal, which runs through the north of the site and the canal, and to the lack of detailed survey material in relation to 'Otters' [1355] and 'Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation' [3260]; and in relation therefore to potential impacts on the qualifying interests of the Lower River Shannon Special Area of Conservation (site code 002165), including, but not limited to, 'Otters' [1355] and 'Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation' [3260]; and having regard to the inadequate information provided within the Natura Impact Statement in relation to the potential impacts on the special conservation interests associated with the River Shannon and River Fergus Estuaries Special Protection Area (site code 004077), resulting from development on the site and from potential impacts both on the adjacent Park Canal and on the wetlands to the north of the Park Canal, the Board is not satisfied

that the proposed development would not adversely affect the integrity of the Lower River Shannon Special Area of Conservation (site code 002165) or of The River Shannon and River Fergus Estuaries Special Protection Area (site code 004077), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting permission for the proposed development.

2. The current development plan is the *Limerick Development Plan 2022-2028*. Under this plan, the land use zoning of the site is 'New Residential'. Certain uses, included in the proposed development, are generally not permitted in principle in this zoning, which includes retail units. The retail units form an integral part of the structure of Block 1. Under Section 9 (6) (b), of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, the Board is precluded from granting planning permission where the proposed development, or part of it, materially contravenes the development in relation to the zoning of the land.
  
3. The current development plan is the *Limerick Development Plan 2022-2028*. The statement of consistency submitted with the application relates to the previous development plan and so has been superseded. There has been a material change in planning policy in relation to the Building Height Strategy of the aforementioned plan, where the locations for building height are identified on Map 6.8. Policy TB2 states that generally, tall buildings outside the City Centre will only be permitted at designated centres. The site is not identified as a one to support a tall building. The site is not located in an area where densities in excess of 100 units per hectare are encouraged. In the absence of a material contravention statement relating to the height objectives of the Development Plan and reference to same in the public notices, and having regard to the totality of the current development plan which refers specifically to the National Planning Framework 2018 and to the Urban Development and Building Height Guidelines 2018 (as amended), it is considered that a grant of planning permission for the proposed development would be contrary to proper planning and sustainable development.

4. On the basis of the information submitted with the application, the Board is not satisfied that the relationship between the dry ditch, a potential overflow channel from the Park Canal, which runs through the north of the site and the canal has been fully explored, so as to whether there is an existing hydrological link between the channel and the canal. The proposed development includes the filling in of this channel. In the absence of clarity in relation to the effects of this action on the canal during periods of flood, the Board is not satisfied that the proposed development would not give rise to flooding elsewhere. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Note:**

The Board noted the recommended reason for refusal of the Inspector relating to the potential for traffic hazard from the second (easternmost) vehicular entrance to the site from PA Healy Road and the associated consideration, it is considered necessary and desirable that a second vehicular access is provided, in the interest of traffic safety and convenience and to integrate the proposed development into the area. While the Board shared the general concern of the Inspector in this regard, it was considered that this issue would ordinarily warrant further consideration including a potential conditioned change to the proposed development, rather than a full refusal. However, having regard to the substantive reasons for refusal set out above, it was decided not to pursue this issue further in the context of the current application.

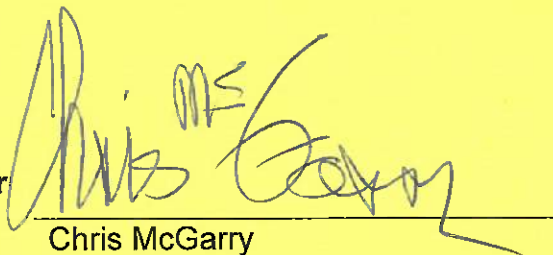
**Note 2:**

The Board noted the commentary of the Inspector relating to the Urban Development Building Height Guidelines 2018 (as amended) insofar as those Guidelines refer to the potential interaction of building location and materials to impact flight lines and/or collision for birds in proximity to sensitive bird areas. Having regard to the site location and to the wider area context including the city centre area of Limerick and

to the distance to the River Shannon and River Fergus Estuaries SPA (Site Code: 002165) the Board determined that the subject site would not constitute a site proximate to sensitive bird areas, as articulated in the above-mentioned Guidelines.

The Board also noted the overall concern as set out in the Inspector's report, and also in the assessment by the planning authority, as to potential deficiencies in the survey and related material (albeit different elements) within the confines of the Appropriate Assessment exercise. In this regard, the Board shared specifically the concerns of the Planning Authority and concluded in any future application at this location a more comprehensive detailing of issues, including overflow/surface water implications, survey detail in relation to otters and particular vegetation in the adjoining European site, would be necessary to enable a full and complete assessment of impact to be undertaken for the purposes of Appropriate Assessment.

Board Member



Chris McGarry

Date: 15/05/2023