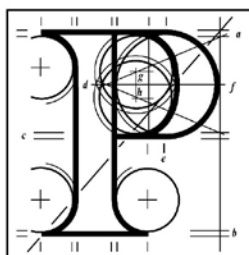


An Bord Pleanála



Inspector's Report

Development: Permission to construct 5 dwelling houses (a pair of two storey semi-detached dwellings and 3 single storey dwellings) and to connect to existing site services along with associated site works on sites numbered 34, 35, 36 & 37 as granted under application reg. no. P04/29 at Beal an Inbhir, Shanakyle Road, Leadmore West, Kilrush, Co. Clare.

Application

Planning authority: Clare County Council
Planning application reg. no. P15/408
Applicant: Patrick J Egan & James J Burke
Type of application: Permission
Planning authority's decision: Grant, subject to 18 conditions

Appeal

Appellant: Deirdre Hehir
Type of appeal: Third party v Decision
Observers: None
Date of site inspection: 6th November 2015

Inspector: Hugh D. Morrison

Site

The site is located 1 km to the west of the town centre of Kiltrush in the westernmost outskirts of the town along the northern side of the Estuary. This site is accessed off the spine road to an existing housing estate, which in turn is accessed off the Shanakyle Road, the L-2526. It lies on the southern side of the said road and beside its western extremity, which terminates in a turning head. Pairs of two storey semi-detached dwelling houses have been built to the north and east and along a separate short cul-de-sac to the south east. A cul-de-sac further to the east has been laid out to provide blocks of four or six, effectively, three storey holiday homes and to the south lies a single pair of two storey semi-detached dwelling houses, which is separately accessed from Shanakyle Road. (The foundations to a further two pairs of semi-detached dwelling houses accompany this single pair).

The site itself is regular in shape and it extends over an area of 0.1970 hectares. This site is of undulating form and it is presently vacant and continuous with land to the south, which includes the aforementioned foundations to two pairs of semi-detached dwelling houses. The site is bound to the north by a timber post and rail fence with netting wire over it. This fence is returned along the eastern boundary, where it coincides with the front garden of the nearest dwelling house to the east. Thereafter, this boundary is denoted by means of a concrete post and timber panelled fence. The southern boundary is not marked on the ground and the remaining western boundary coincides with the boundary to the overall housing estate and it is denoted by means of a pre-existing hedgerow.

Proposal

The proposal would entail the construction of five dwelling houses (total floorspace 617.53 sq m) and their connection to site services within the existing housing estate. These dwelling houses would comprise a pair of two storey semi-detached dwelling houses (each would have three bedrooms and a total floorspace of 125.60 sq m) and three single storey dwelling houses (each would have three bedrooms and a total floorspace of 122.11 sq m). The former would be laid out on the two more easterly house plots and the latter would be laid out over the remainder of the site. Each dwelling house would be served by a drive-in and each would be accompanied by front and rear gardens.

Planning authority's decision

Permission was granted subject to 18 conditions.

Technical reports

- An Taisce: The need for social and affordable housing is emphasised and green spaces are enquired after.

- Road Design: No objection.
- Irish water: No objection, standard notes requested.

Grounds of appeal

Alleged material contraventions of the CDP:

- (i) Under CDP 3.9, balanced development is required. The current proposal would upset the balance exhibited by the parent permission for the overall housing site, insofar as there is an agreement between the applicants and Clare County Council that the five dwelling houses would be sold and used as social housing.
- (ii) Under CDP 4.3, the reservation of 20% of land in new estates for social and affordable housing would be reviewed within the lifetime of the Plan. No review appears to have been undertaken to date and, if the proposed dwelling houses and the houses which are the subject of application reg. no. P15/407 are aggregated, then 40% would be used for social housing.
- (iii) Under CDP 4.4, the planning authority undertakes to acquire lands for social housing through, amongst other things, negotiated turnkey projects and yet the appellant and her neighbours as stakeholders in the estate have not been consulted concerning the authority's intentions for the subject houses.
- (iv) Under CDP 8.2, development that would have an unacceptable impact on the water environment will not be permitted. The parent permission was granted on the basis that Kilrush would have a Waste Water Treatment Works (WWTW) within its lifetime. This did not materialise and the town still has no WWTW. Accordingly, untreated waste water is discharged untreated into the Shannon Estuary (a surface water) upstream from the shell fisheries at Poulnasharry Bay.

A copy of the relevant EPA licence has been submitted. This licence is critiqued on the basis that "The solution to pollution is not dilution".

Thus, as there is no capacity to treat the waste water that would be generated by the current proposal, such water would enter the Estuary and thereby contravene CDP 8.2.

Alleged breaches of the TDP:

- Objective TDP 3.5 states "To ensure that, prior to the commencement of development, all future developments can be served by waste water treatment". Such treatment has yet to be made available.
- Objective TDP 3.13 relates to 20% of the site being for social housing. Under this application and the parallel one, this figure would rise to 36% with the prospect of a higher figure again in the future.

- Objective TDP 3.14 commits Clare County Council to acquire lands for social housing. The planning authority's draft permission is a *de facto* circumvention of this Objective, as the dwelling houses would be bought for use as social housing. The planning authority thus has a conflict of interest in this matter.
- Section 8.3.3 describes Kilrush's waste water system, which entails pumping waste water to a tidal holding tank. The future provision of a WWTW is viewed as critical to the future planned development of the town.
- Objective TDP 8.1 parallels (iv) above. Regulation 5 of the European Commission's Environmental Objectives (Surface Waters) Regulations 2009 is cited. This Regulation states that "A public authority shall not, in the performance of its functions, undertake those functions in a manner that knowingly causes or allows deterioration in the chemical status or ecological status (or ecological potential as the case may be) of a body of surface water." Increasing the discharge of untreated waste water would breach this Regulation.
- Objective TDP 8.5 refers to the Shannon River Basin Management Plan and the need for development to meet its requirements, e.g. to prevent further deterioration in water quality. This the current proposal would fail to do.
- Objective TDP 8.6 refers to the Shellfish Waters Directive and the need for development to meet its requirements. This the current proposal would fail to do.

Site notice

Contrary to the requirements of the Planning and Development Regulations, 2001 – 2013, the applicant's agent did not include his address on the site notice and so it should have been invalidated.

Ownership

The history of the housing estate is reviewed. The owners of the same have variously been cited as Leadmore West Partnership Limited, Patrick J Egan & James J Burke, and Spanish Point Homes limited. In these circumstances, the applicants should demonstrate that they are the legal owners of the site. This matter was raised at the application stage and, contrary to the advice of the Development Management Guidelines, it was not the subject of a request for further information. Where remaining doubt exists Section 34(13) of the Planning and Development Act, 2000 – 2014, is of relevance.

The applicants indicate that they purchased the site in 2003 and yet the subsequent application reg. no. P04/29 was made by Leadmore West Partnership Limited, who indicated that it was the owner of the site.

Pre-commencement contributions

A review of the parent permission granted to application reg. no. P04/29 indicates that there may be pre-commencement contributions outstanding against the existing development of the overall site.

Part V

The current application makes no reference to Part V obligations beyond stating that “there was an agreement with Kilrush Town Council under P04/29 relating to Part V.” However, the parent permission has expired and so the question of Part V does arise.

Flooding

Contrary to the applicants’ assertion, the overall site as constructed has flooded, due to a pipe of insufficient capacity.

Occupancy

Attention is drawn to the answer given to Question 2 of Part 2(a) of the completed forms, which pertains to the occupancy of the proposed dwellings. The answer given is “for sale”, when it is common knowledge that the local authority has agreed to purchase the same for social housing.

Site selection

Attention is drawn to the answer given to Question 8 of Part 2(a) of the completed forms, which pertains to the reason for selecting the site. The answer given is “n/a” and yet it is common knowledge that the local authority has agreed to purchase the same for social housing.

Previous compliance history

Attention is drawn to on-going enforcement proceedings in relation to 15 of the 34 conditions attached to the parent permission. Given such a track record the planning authority could have exercised its discretion under Section 35 of the aforementioned Act and refused the current application. However, it chose not to do so, thereby raising concern that it has a conflict of interest in its dual role as planning and housing authority.

Bond

The figure of 25,000 euro cited in the draft permission is considered to be too low, given the applicants past history of non-compliance.

Responses

The **planning authority** has responded to the above grounds of appeal as follows:

Alleged material contraventions of the CDP:

- (i) The planning authority's assessment of the proposal was by means of a planned approach.
- (ii) The proposal was assessed on its merits. The application does not refer to the sale of the subject houses to the local authority for use as social housing.
- (iii) See response to (ii).
- (iv) Irish Water is the body now responsible for waste water services and it raised no objection to the proposal.
- (v) See response to (iv).

Alleged breaches of the TDP:

In relation to TDP 3.13 & 3.14, the application did not refer to social housing and it was assessed on its merits.

In relation to TDP 8.1, 8.5 & 8.6, see response to (iv) above, and the proposal was the subject of Stage 1 AA Screening.

Site notice

The site notice was validated by the planning authority.

Ownership

Advice contained in the Development Management Guidelines with respect to Section 34(13) of the Planning and Development Act, 2000 – 2014, is cited.

Pre-commencement development contributions

Such contributions have been partially paid under the parent permission. The contributions now required could be deducted from the amount outstanding under this earlier permission.

Part V

Condition 3 of the parent permission required that an agreement under Part V be entered into. This was duly done.

Flooding

Correspondence from the applicants' engineer on foot of a warning notice, dated 11th April 2014, refers to works, which were subsequently approved, to overcome ponding by means of a wearing course and the installation of gullies and surface preparation works on the L2526.

Occupancy

See response to (ii) above.

Site selection

The subject houses are in the ownership of the applicants.

Previous compliance history

Progress is reported with respect to the on-going enforcement action.

Bond

The amount set is the standard amount, i.e. 5,000 euro per dwelling house.

The **applicants** have responded to the above grounds of appeal as follows:

Site history

Progress is reported with respect to the on-going enforcement action.

The CDP & TDP

The proposal would enhance the long term viability of the housing estate within Kilrush and secure social and economic benefits associated with an increase in the local permanent population.

The proposal would accord with the TDP's site specific Policy R2 that the planning authority will favour the completion of the housing estate, known as Beal an Inbhir, over the development of new green field sites in the Plan area.

Part V

Under the Part V agreement for the overall site, dwelling houses numbered 23, 24, 28, 38, 40 & 41 are reserved for affordable housing, as distinct from social housing. The applicant has incorrectly regarded these dwelling houses as social housing.

Whether the subject houses and the proposed new build dwelling houses, which are the subject of application reg. no. P15/407 would be used for social housing is not a material planning consideration.

Objective CDP 4.4

This objective refers to the local authority “negotiating turnkey projects”. This reference is cited by the applicant. However, it relates to negotiations between the local authority and land owners/developers rather than residents of existing housing estates.

The TDP

The appellant has cited selectively from the TDP. She has not drawn attention to its sustainable population goal and its objectives for social inclusion through the provision of a high quality and mix of housing for all members of the community. The appeal is effectively contesting these objectives. Furthermore, the TDP recognises that it must be able to respond to changing circumstances over its lifetime, such as the urgent requirement for permanent housing within Kilrush.

Response to alleged contraventions:

- (i) See comments under “The TDP” above.
- (ii) See comments under “Part V” above.
- (iii) See comments under “Objective CDP 4.4” above.
- (iv) The current application was the subject of a Stage 1 AA Screening, which concluded that a Stage 2 AA was not required.
- (v) TDP 3.5 would not be contravened, as the proposal is for an extension to a previously permitted but only partially completed housing estate and Clare County Council is in compliance with the EPA’s discharge licence.

The EPA’s waste water discharge licence

Attention is drawn to the EPA’s waste water discharge licence. The maximum and normal discharges of waste water from the tidal holding tank that serves Kilrush’s sewerage system fall below the levels above which Emission Limit Values (ELVs) specified in the Urban Waste Water Treatment Regulations apply. “Appropriate treatments” are therefore relevant. These are defined to be “treatment of urban waste water by any process and/or disposal system which after discharge allows the receiving waters to meet the relevant quality objectives and the relevant provisions of the Directive and of other Community Directives.”

Water quality in the mouth of the Shannon* is of moderate status. Nevertheless, ambient results for Dissolved Inorganic Nitrogen (DIN) indicate that, notwithstanding the waste water discharges in question, the standard for good/high status is being met.

(*Inspector's note: Water quality in the Shannon Estuary is of high status).

The Marine Institute draws attention to the shellfish in Poulnasherry Bay, which attract a seasonal classification of Class B. Under the EPA's licence, "appropriate treatment" can include secondary treatment and so draft ELVs have been identified in a bid to ensure that the shellfish are protected.

The EPA's licence was the subject of Stage 1 Screening and Stage 2 Appropriate Assessment. Thus, the effect of the waste water discharge in question upon the River Shannon and River Fergus SPA and the Lower River Shannon SAC was assessed and it was concluded that "the discharges(s) from Kilrush has no overall perceivable impact on the designated site as it now exists. The improved operation of the facility, including the interception and treatment of storm overflow and nutrient reduction by secondary treatment, will have positive impact upon the receiving water."

Response to responses

The **planning authority** has no further comments to make.

The **appellant** has responded to the applicants' response as follows:

Site history

The parent permission was subject to a Part V agreement, wherein social and affordable housing obligations were addressed. As that permission and agreement have expired, the current application needs to comply on a *de novo* basis with these obligations, i.e. a maximum of 10% of the site would thereby be affected.

By contrast, although not explicit within the application, the underlying intention is to use 100% of the proposed dwelling houses for social housing. This is a material planning consideration. It is an unfair scenario to owner occupiers in existing dwelling houses on the wider housing site, who purchased on the basis of the aforementioned 20% approach.

The need for social housing in Kilrush should be addressed by means of new build, which would be advertised explicitly as social housing under Part XI of the Planning and Development Act, 2000 – 2014.

The aforementioned intention is encapsulated in an agreement between the applicants and the housing authority. This agreement lacks transparency, which is compounded by the absence of any pre-application consultation.

Changing circumstances are alluded to by way of justification for the proposal and yet there is no evidence of monitoring of the TDP to substantiate such an allusion and no material alterations have been made to this Plan.

First response

Previous discussion of the implications of the absence of WWTW revisited.

Second response

See the points made about social housing above under "Site history".

Third response

Points concerning transparency reiterated.

Fourth response

It is for the Board to decide if an EIA is required.

Fifth response

Whether the conditions of the EPA's discharge licence are being complied with is not a matter that can be addressed under the assessment of the current planning proposal.

Sixth response

See the points made about social housing above under "Site history".

Seventh response

See the points made about fairness above under "Site history".

Eighth response

It is for the Board to decide if the waste water that would be generated by the proposal would impact the environment and if further investigation of the same is warranted.

Planning history

- P04/29: 60 dwelling houses to be occupied as permanent residences or holiday homes with site works, landscaping and connections to public services: Permitted.
- Several applications to amend aspects of the parent permission followed.
- UD08/07: Warning notice issued with respect to non-compliance with 15 conditions attached to the parent permission, including condition no. 34.

- P15/407: Permission to alter condition no. 34 of granted application reg. no. P04/29. This will involve changing house nos. 9, 10, 15, 16, 17, 18 & 20 from their use as holiday homes to use as permanent residences at Beal an Inbhir. This application is the subject of parallel appeal ref. no. PL03.245425.

Development Plan

The Kilrush Town and Environs Development Plan 2014 – 2020 (TDP) shows the site as lying within an area that is zoned proposed residential. Section 15.5 identifies Beal an Inbhir as R2 lands and states the following:

As in all cases of incomplete developments in the Kilrush Town and Environs Area, the Council will favour the completion of the Beal an Inbhir estate over the development of new greenfield sites in the Plan area.

Appendix 6.2.2: development management guidelines with respect to urban residential development.

National planning guidelines

Sustainable Residential Development in Urban Areas

Assessment

I have reviewed the proposal in the light of national planning guidelines, the CDP and TDP, relevant planning history, and the submissions of the parties. Accordingly, I consider that the application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Land use,
- (iii) Siting and design,
- (iv) Waste water, and
- (v) AA.

(i) Legalities

1.1 The appellant raises several matters relating to the validation of the current application, the ownership of the site, the manner in which the application forms have been completed, Part V, and enforcement issues. I will discuss each of these in turn.

1.2 With respect to validation, attention is drawn to the omission of the agent's address from the site notice. Note 7 to Form No. 1 of Schedule 3 to Article 19 of the Planning and Development Regulations, 2001 – 2013, requires that this

address be included. The applicants have not responded to this observation and the planning authority has simply stated that the application was validated. As legally validation is the authority's role rather than the Board's, this matter is not one that I can pursue further.

- 1.3 With respect to ownership, attention is drawn to the variety of owners that have been cited in relation to the overall site since the parent application was made in 2004. The appellant cites the advice of the Development Management Guidelines to the effect that this matter should have been explored under a request for further information at the application stage. The applicants have not responded to the said matter and the planning authority has likewise quoted the said Guidelines to the effect that the provisions of Section 34(13) of the Planning and Development Act, 2000 – 2014, could be referred to in any permission. I concur with this approach to the matter.
- 1.4 With respect to the completion of the application forms, attention is drawn to the answer given to the question relating to occupancy. Thus, issue is taken with the "for sale" response, as the appellant contends that "other" and social housing would have been the more transparent answer. The applicants have not responded to this matter, while the planning authority insists that that the future status of the proposed dwelling houses is not a material planning consideration. I consider that, if there is indeed an agreement between the applicants and the local authority to sell the subject houses, then the answer given is questionable insofar as it implies that they would be for sale on the open market rather than simply sold to the local authority. I will discuss the planning authority's response under the second heading of my assessment.
- 1.6 With respect to Part V, attention is drawn to the absence of reference to Part V beyond the statement that the parent permission for the overall site was subject to a Part V agreement. The appellant observes that this permission has now expired. The applicants state that the said agreement pertained to the provision of 6 affordable houses and the planning authority confirms the existence of this agreement. I note that the parent permission was not fully implemented prior to its expiry. Whether this has had a bearing on the implementation of the said agreement, too, is unclear. I will discuss this matter further under the second heading of my assessment.
- 1.7 With respect to enforcement issues, attention is drawn to on-going proceedings with respect to non-compliance with 15 of the 34 conditions attached to the parent permission. Against this backdrop, the appellant considers that the planning authority should have exercised the power available to it under Section 35 of the aforementioned Act to refuse the current application on the basis of the applicants' track record. That this did not happen may be a signal of a conflict of interest between Clare County Council as planning authority and housing

authority. Both the applicants and the planning authority report progress with the said issues. I note that the power available under Section 34 can be exercised by the planning authority as distinct from the Board. I note, too, that the suggested conflict of interest would not pertain to the Board.

1.8 I conclude that there are no legalities that would impede the Board from assessing the current proposal in the normal manner.

(ii) Land use

2.1 Map F of Volume 2 of the Kilrush Town and Environs Development Plan 2014 – 2020 (DP), shows the site as lying within the settlement boundary and in an area that is zoned proposed residential. Thus, the proposed construction of five dwelling houses would, in land use terms, be permissible in principle.

2.2 The site forms part of a wider housing site that has been partial developed under the parent permission granted to application reg. no. P04/29. This permission approved 60 dwelling houses of which 20 were identified for use as holiday homes, i.e. Nos 1 – 20 Estuary View, with the remainder to be used as permanent residences. (Under an accompanying Part V agreement, the applicants state that 6 of these residences were to be reserved for affordable housing). This mix of holiday homes and permanent residences, including affordable housing, was considered appropriate.

2.3 Forty-nine of the sixty houses approved by the parent permission have been built, including all the holiday homes and possibly all the affordable houses. Thus, while the parent permission envisaged 66% permanent residences and 33% holiday homes, in practise, 48% of the former have been provided to date and the entirety of the latter.

2.4 The description of the proposal is for the construction of five dwelling houses only. No reference is made to any onward sale of these dwelling houses to the local authority for use as social housing. In land use terms, the tenure of a permanent residence is not normally of interest in assessing a planning application. Nevertheless, the appellant refers to an agreement between the applicants and Clare County Council for the said sale and neither the applicants nor the planning authority have confirmed or denied the same. Any permission granted to the current application would be silent on the possibility of social housing usage. Thus, in the absence of the said agreement, the subject houses could be sold on the open market as permanent residences. Given this situation, the applicants should address Part V of the Planning and Development Act, 2000 – 2014, and either obtain a certificate of exemption or enter into a Part V agreement, as appropriate. This matter could be conditioned.

2.5 The proposal would be appropriate in land use terms.

(iii) Siting and design

- 3.1 The proposal would entail the construction of five dwelling houses, i.e. a pair of two storey semi-detached dwelling houses and three single storey detached dwelling houses. These dwelling houses would be laid out in a row along the southern side of the spine road to the overall housing site along a portion of this road that makes up its western extremity. The pair of semi's would be sited at the eastern end of this row in a position adjacent to the nearest pair of existing semi's, while the detached dwelling houses would be sited over the remainder of the site. The depth of each of the envisaged house plots would coincide with that of the existing housing plots further to the east.
- 3.2 Under the parent permission for the overall site the western extremity of the spine road would have been lined on both sides by two storey detached dwelling houses, i.e. three to the north and four to the south, on what is the current appeal site. The said three have not been built. Instead, three pairs of two storey semi-detached dwelling houses have been built on their respective house plots. Likewise, now, the proposed pair of two storey semi-detached dwelling houses would be sited on a house plot originally envisaged for a two storey detached dwelling house and the remaining three house plots would be developed to provide single storey rather than two storey dwelling houses.
- 3.3 The design of the proposed pair of semi's would be the same as the standard design of semi's that was approved and subsequently built under the parent permission. The footprint of the proposed single storey detached dwelling houses would be similar in shape and extent to that which would be previously approved for their respective house plots.
- 3.4 In streetscape terms, the three single storey rather than two storey dwelling houses would lead to a reduction in the sense of enclosure that was originally envisaged for the western end of the spine road. The contrast of single storey forms next to and opposite two storey ones would lead to a situation wherein the former would appear elongated. And yet objectively they would be only c.1m longer and their projecting gabled front element with inserted gabled bay window would serve to restrain the sense of elongation.
- 3.5 Under Table 5.1 of the Quality Housing for Sustainable Communities Best Practice Guidelines sets out recommended minimum floorspaces for different dwelling types, including 3 bed/6 person two storey houses and 3 bed/6 person single storey houses. The proposed dwelling houses would be examples of these two dwelling types and their floorspaces would comply with those that are recommended, albeit in the case of the pair of two storey semi-detached dwelling houses there would be the need to provide more internal storage space.

- 3.6 Each dwelling house would be served by a drive-in, which would provide one off street car parking space, and each dwelling house would be served by front and rear (south south west facing) gardens of adequate size.
- 3.7 The siting and design of the proposed dwelling houses would be appropriate to the receiving environment of the partially completed housing estate and as dwelling types they would essential comply with current floorspace standards. Accordingly, these dwelling houses would be compatible with the existing amenities of the estate and they would afford a satisfactory standard of amenity to future occupiers.

(iv) Waste water

- 4.1 The proposed dwelling houses would be connected to existing services within the overall housing site. With respect to waste water, the sewer within this site is connected to the public sewerage system, wherein waste water is pumped from Kilrush to a tidal holding tank at Leadmore West, which discharges into the Shannon Estuary at Skagh Point on the ebb tide. No waste water treatment is currently undertaken.
- 4.2 The appellant draws attention to the above situation. She cites several objectives within the CDP and TDP, which are being breached by the same. These objectives are expressed negatively, e.g. Objective 8.2 of the CDP, and positively, e.g. Objective 8.1(c) of the TDP. Thus, the former relates to the need to avoid development that would have an unacceptable impact upon the water environment and the latter relates to the need to ensure that future development can be served by waste water treatment, which is in accordance with Irish and EC standards.
- 4.3 The appellant further draws attention to the EPA's Waste Water Discharge Licence (ref. no. D0075-01) for Kilrush's sewerage system. Schedule C of this Licence states that the specified improvement programme envisaged for this system is that of the installation of a new waste water treatment plant (WWTP) providing secondary treatment and that such installation must be completed by 31st December 2015. Schedule A addresses discharges and their monitoring. Emission Limit Values (ELVs) are cited for the period commencing with the operation of the new WWTP, i.e. from 1st January 2016 on. No interim ELVs are cited.
- 4.4 There is no evidence either before me or from my site visit to indicate that the new WWTP is, as yet, under construction. The prospects for such construction were raised with the Minister for the DoECLG by a local TD and in a written answer, given on 10th April 2014, he confirmed that Departmental approval was given to a preliminary report for a sewerage scheme in July 2011 and that a

revised PPP report was subsequently approved in August 2013. Clare County Council were thus in a position to proceed with the preparation of Contract Documents for the Scheme. However, responsibility for the delivery of such schemes has, since 1st January 2014, been transferred to Irish Water. The sewerage scheme is currently listed in Irish Water's Proposed Investment Programme 2014 – 16 as at Stage B, i.e. review scope and commence construction.

- 4.5 The appellant accepts that it is not the role of the planning system to enforce the aforementioned EPA discharge licence. That said, her contention that the current proposal would generate additional waste water, which, as an untreated discharge into the Shannon Estuary, could only add to existing pollution levels, is incontestable. Accordingly, Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009 – 2012, is relevant. This Article states that “A public authority shall not, in the performance of its functions, undertake those functions in a manner that knowingly causes or allows deterioration in the chemical status or ecological status (or ecological potential as the case may be) of a body of surface water.” Notwithstanding the fact that the Shannon District River Basin Management Plan 2009 – 2015 shows the water quality of the Shannon Estuary downstream of Kilrush as high, as one of the core objectives of this Plan is to prevent deterioration, I consider that to accede to the proposal in advance of the new WWTP would be contrary to Objective 8.5 of the TDP, which seeks to uphold the Plan in the consideration of proposals.
- 4.6 The appellant also draws attention to the proximity downstream from Kilrush of the shell fisheries at Poulnasharry Bay. Objective 8.6 of the TDP refers to the need to uphold the Shellfish Waters Directive. The Marine Institute responded to the EPA's public consultation process in connection with the aforementioned discharge licence. Seasonal variations mean that the said fisheries are particularly sensitive to pollutants. The resulting discharge licence seeks to address this matter as an interim measure in advance of the new WWTP.
- 4.7 The applicants draw attention to the fact that the current proposal pertains to part of a previously permitted housing site and they request that it be viewed within this context. I note that the parent permission thus referred to dates from 2005 and that it expired in 2010. I note, too, that many of the provisions discussed above have taken effect in the years since this permission was granted and so they would not have had a bearing on the same. Accordingly, significant changes in the material planning considerations that are relevant to the assessment of even part of the said housing site have occurred in the intervening period of time.

4.8 I conclude that, whereas the new WWTP was previously envisaged as being insitu by the end of 2015, this timeline has slipped and so certainty over when this Plant will be constructed and become operational is not available. Given that the proposal would add to the existing untreated waste water entering the Shannon Estuary, it would lead to a deterioration in the quality of this surface water and, as such, this proposal would be contrary to Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009 – 2012, and a core objective of the Shannon District River Basin Management Plan 2009 – 2015 and the Objectives in the CDP and the TDP that reflect these provisions. Thus, the proposal would be premature.

(v) AA.

5.1 The site is not in a Natura 2000 site, although c. 420m to the south west of it lie the River Shannon and River Fergus Estuaries SPA (site code 004077) and the Lower Shannon SAC (site code 002165). The current proposal is for the construction of five dwelling houses, which would be connected to the public sewerage system that discharges into the Shannon Estuary. This Estuary is the subject of the aforementioned Natura 2000 sites and so there is a source/pathway/receptor route between these houses/the public sewerage system/these Natura sites.

5.2 The appellant submitted a copy of the EPA's waste water discharge licence for the aforementioned public sewerage system and a copy of the accompanying inspector's report, within which a summary of the Stage 1 Screening and Stage 2 Natura Impact Study (NIS) for this system is set out. The said NIS concludes that the discharge in question has no overall perceivable impact on the said sites as they now exist.

5.3 The current proposal is for five dwelling houses only. The waste water that they would contribute to the discharge in question would be minimal. The Conservation Objectives for the said SPA relate to the maintenance of the favourable conservation status of 22 species of birds. The Conservation Objectives for the said SAC relate to either the restoration or the maintenance of the favourable conservation status of creatures, vegetation, and landscape/ seascape features. Given the scale of the additional discharge, I do not consider that the proposal would be likely to have a significant effect, either individually or in combination with other plans or projects, on the European sites in view of their said Conservation Objectives.

5.4 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a

significant effect individually or in combination with other plans or projects on a European site.

Recommendation

In the light of my assessment, I recommend that permission to construct 5 dwelling houses (a pair of two storey semi-detached dwellings and 3 single storey dwellings) and to connect to existing site services along with associated site works on sites numbered 34, 35, 36 & 37 as granted under application reg. no. P04/29 at Beal an Inbhir, Shanakyle Road, Leadmore West, Kilrush, Co. Clare, be refused.

Reasons and considerations

Under Objective 8.2 of the Clare County Development Plan 2011 – 2017, the planning authority undertakes to refuse development that would have an unacceptable impact upon the water environment and, under Objective 8.1(c) of the Kilrush Town and Environs Development Plan 2014 – 2020, the planning authority undertakes to ensure that development can be serviced by waste water treatment that is in accordance with Irish and EC standards.

The proposed dwelling houses would be served by the Kilrush sewerage system, which discharges untreated waste water into the Shannon Estuary. While there are plans to upgrade this system to incorporate waste water treatment, these plans have yet to progress. Thus, the dwelling houses would add to existing discharges, thereby leading to an increase in pollution and a deterioration in water quality.

Accordingly, to accede to the proposed dwelling houses in advance of the said upgrade would be premature and it would cause water pollution that would be contrary to the aforementioned Objectives of the County and Town Development Plans. Thus, these dwelling houses would not accord with the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

18th December 2015