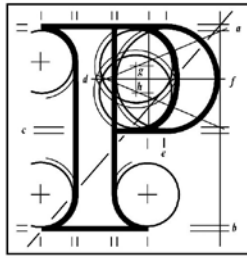


An Bord Pleanála



Inspector's Report

An Bord Pleanála Ref.: PL03.245684

Development: The construction of 80no. houses, provision of a roundabout and associated site works at Drehidnagower Road, Lifford, Ennis, Co. Clare.

Planning Application

Planning Authority:	Clare County Council
Planning Authority Reg. Ref.:	14/589
Applicant:	Michael Lynch Ltd.
Type of Application:	Permission
Planning Authority Decision:	Grant Permission

Planning Appeal

Appellant(s):	An Taisce
Type of Appeal:	Third Party
Observers:	None
Date of Site Inspection:	20 th of January 2016
Inspector:	Angela Brereton

1.0 SITE LOCATION AND DESCRIPTION

The subject site lies in the north western part of Ennis and is located on the northern side of the Drehidnagower Road, in the townland of Lifford. The rear and northern part of the site is bounded by the River Fergus. This part of the site is subject to flooding from the River and this was seen on the day of the site visit. There is grassland, marshland, scrub and there are a number of trees and hedgerows on site. The site is uneven and overgrown in parts and slopes downwards towards the river. It also appears that some increase in levels may have occurred in some parts and it was noted there are small areas of stone walls seen on the southern area of the site. There is a track that runs south to north through the site from the temporary entrance opened up from the Drehidnagower Road close to the south eastern corner of the site. There were horses on the site on the day of the site visit.

There are housing estates located to the east, these include Tobarkeel, Pine Grove and Aughanteeroe to the north east. Generally these comprise two storey detached and semi-detached houses. Some flood relief works are in progress to the west of the latter estate bounding the north eastern side of the subject site. The Watery Road and the Oak Park housing estate are located on the southern side of the Drehidnagower Road. There are a number of detached houses on larger plots with individual entrances onto the road to the south west leading up to the meandering River Fergus which runs under the bridge to the west. There is also a dwelling and separate commercial use to the north west of the site accessed via a cul-de sac entrance. There is a stone wall and hedgerows along the western and southern boundaries of the site with the road frontage.

At present there is a 'Stop Sign' controlled junction system between the Watery Road, Drehidnagower Road and the cul-de-sac Road to the north west of the site. The site is within the 50km/h area. This is the area for the proposed roundabout. There is a footpath along the southern side of the Drehidnagower Road to serve the two storey semi-detached housing that faces the site on the opposite side of the road. There is only a small area of footpath along the application side of the road close to the south eastern corner with Tobarkeel estate. There is a pedestrian zebra crossing on this road between the site and Oak Park.

2.0 PROPOSED DEVELOPMENT

This proposal is for a residential development comprising of 80no.dwellings of various house types and combinations on a site of 3.90ha and includes the following:

- The provision of a roundabout, located at the entrance/exit to the development site on the public road;
- Other works to the Drehidnagower Road;
- All ancillary site development works;
- Landscaping and boundary treatment;

The application is accompanied by a Natura Impact Assessment, Screening Report.

The total area of the landholding is given on the application form as 7.852ha.

The application form provides that the breakdown and variety of residential mix for the total of 80no.houses. This provides that 87no. carparking spaces are required but that 153no. will be provided.

Floor plans, sections and elevations have been submitted.

It is proposed to have a new connection to the public mains and sewer.

The following has been submitted with the application:

- Healy Partners Architects has submitted an Urban Design Criteria Report. This has regard to the context of the site and how it fits into its surroundings.
- A Report has been submitted by Tony Bamford Planning providing details of the proposed development and having regard to context and planning policy.
- Appropriate Assessment – Screening Report by Roger Goodwillie & Associates
- Flood Risk Assessment note by Hydro Environmental Ltd.

3.0 PLANNING HISTORY

These are relevant to permissions granted on the subject site and are noted in the Planner's Report and in the documentation submitted (Appendix C) with Reg.Ref.P13/29.

Reg.Ref.05/124 – Permission granted to Michael Lynch Limited to construct a residential development comprising 241 no. residential units, a crèche facility, ESB substation and associated site works, including 128no. terraced houses, 49no. town houses and 64no. apartments. The number of units was reduced to 236 at Further Information stage and subsequently reduced by condition no.2 of ABP Ref. PL58. 217637. The Board granted permission for the proposed development subject to 28no. conditions. This permission was for 178 no. residential units (130no. houses and 48no. apartments). It expired in June 2013.

Reg.Ref.08/97 – Permission granted to Michael Lynch Limited to consist of modifications (planning Reg.Ref.05/124, PL58.217637) and subsequent Ennis Town Council grant for 15no. apartments. This grant increased the residential units on the site to 193no. i.e: 130no. houses and 63no. apartments. This entire permission was located on 'Other Settlement Lands' and expired in November 2013.

Reg.Ref.10/3 – Permission granted for further modifications to the parent permission comprising of the omission of a number of units. This grant decreased the no. of residential units on site to 179 i.e 123no. houses and 56no. apartments.

Reg.Ref. 10/101 – Permission granted subject to conditions to Michael Lynch Ltd for modifications to the parent permission and subsequent Ennis Town Council permissions for development comprising omission of units, outline permission for 17no. serviced sites to replace omitted units. Permission was

for entrance/exit onto public road, service roads, footpaths and associated site works. This grant decreased the residential units on the site to 100no. (81no. houses and 19no. apartments).

Reg.Ref.13/29 – Application for an extension of duration of the parent permission Reg.Ref. 05/124, Ref. PL58.217637 refused by Clare Co.Co. This was refused for 3no. reasons which are summarized relevant to the Assessment below.

A copy of the Board decision relevant to the parent permission and of the Council's decision relevant to Reg.Ref.P13/29 is included in the History Appendix to this Report.

4.0 PLANNING AUTHORITY APPLICATION

External Reports

An Taisce is concerned that there is no development demand for such housing and note ghost estates in Ennis. Also, that the housing estate is too dense with insufficient green spaces. They consider that the Appropriate Assessment issue did not cover three important factors and provide a discussion of these. They are also concerned about water management and water supply issues. They consider that an Archaeological Assessment should have been submitted. They also have a number of issues concerning public and road safety issues.

Department of Arts, Heritage and the Gaeltacht

They provide that given the scale, extent and location of the proposed development it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance. They recommend a number of archaeological conditions.

In a separate submission they have regard to Appropriate Assessment and recommend that Clare Co.Co as the competent authority carry out screening and an AA if required. They have regard to Annex 1 and 2 habitats and noted that the proposed development is located partly within the Lower River Shannon SAC and will discharge surface water run-off to the River Fergus. They refer to flood relief and flood defence works near the current site and along other parts of the lower River Fergus. They also refer to other potential in-combination effects.

Irish Water recommends that if there is no direct impact to any water/wastewater services that conditions be attached.

Internal Reports

The **Road Design Planning Section** has a number of concerns about the proposed development having regard to the layout, internal road network and on site turning areas. They note some discrepancies in the layout and have regard to cycle lanes. They have concerns about the parallel parking proposed along the Dreidnagower Road. They note that the proposed roundabout was granted under a previous application and is to be constructed as specified in that application. Should permission be granted they

recommend that a Traffic Management Plan for the construction phase be included.

In response to the F.I submission they make comments regarding access to some parking related issues, and reiterate the need for a condition for a TMP if permission is granted.

Municipal District of Ennis Office

The Engineer's Report has regard to flood risk issues and notes that the majority of the site where the proposed development is sought is on the higher ground adjacent to Drehidnagower Road. They were concerned that a section of the proposed development is within the area mapped as recorded flood event and Flood Zones A&B. They agreed with the assessment of finished floor levels. They have regard to the recently constructed Flood Relief Schemes in the area and provide details of such. They had regard to Storm Water drainage and attenuation concerns and recommended that F.I be sought on this and on flood risk related issues. They also consider that the roundabout should be reviewed and included in any permission.

In response to the F.I they provide that the Council accepts the justification for direct discharge of the storm water to the river. They recommend a number of conditions relative to construction and compensatory flood storage measures, storm water discharge, and the design and construction of the roundabout and the internal road network.

The **Water Safety Development Officer** recommends that conditions be attached regarding water safety/site access during construction.

The **Fire Officer** Report recommends that the proposed works be designed and constructed in accordance with the provisions of Parts A to M of the Regulations 1997 to 2014.

Submissions received from local residents include the following:

- They question the demand for this housing relative to the number of vacant properties in the area.
- They are concerned about building in the floodplain area and note the extent of flooding in the 2009 floods.
- Implications for trees and wildlife.
- They query whether the pumping station at Elm Park capacity to take increased sewerage flows.
- Concerns about traffic implications.

The **Planner's Report** had regard to the locational context of the site, planning history and policy and to the Technical Reports submitted and submissions made. They note that the subject site is located on lands zoned as 'Other Settlement Land' in the Ennis and Environs Development Plan, permission has previously been granted for housing on these lands and that the site is also located in 'Phase 1' of the plan which allows for multiple residential development. They considered that having regard to the zoning of the site and the pattern of development in the area that the proposal would be acceptable in principle. They have regard to the proposed design and layout

and density. They noted that there is a lack connections proposed and variety in house type. They had some concerns about the layout regarding parking and open space and considered that the orientation of some of the units should be changed. They did not consider that visually the proposal would detract from the amenities of adjoining residential development.

They noted that the new roundabout at the junction of the Watery Road and Dehidnagower Road has been permitted under Reg.Ref.05/124 and that such a proposal is acceptable in principle. They had regard to Road Design concerns regarding the internal road network and parking. They have regard to site levels, flooding issues and to documentation submitted including a Flood Risk Assessment and a Report from the Area Engineer regarding flood schemes developed in the area. They also had note of the information submitted on AA and the submissions made. They noted that it is proposed to discharge surface water to the adjoining river which is an cSAC. Having regard to all these issues they recommended that detailed Further Information be sought to include the following:

- Revised Layout to include a greater mix of house types.
- Further pedestrian links to be shown.
- Revisions to the parking and shared surface areas.
- Reduction in parking areas and increase and revisions to public open space areas.
- Details of the rear boundary treatment between the open space areas and the remainder of the landholding shown blue.
- Revisions to internal roads, parking and cycle lane and layout.
- Auto-track analysis of the site to ensure accessibility for emergency and refuse vehicles.
- Applicant's legal interest to develop the roundabout area.
- Submission of a Flood Risk Assessment or omission of some of the units in the western portion of the site.
- Details of boundary treatment to the northeast of the site.
- Details on storm water disposal.
- A revised AA Screening Report to be submitted and they provide details of this.

Further information response

TBP Planning and Development Consultants response on behalf of the applicants includes the following:

- Overall the number of housing units proposed in this development has been reduced from 80 to 76 units. A revised mix of 4 varying house types is proposed and they review these in detail in Table 1.
- They provide that the open space area is exceeded.
- As part of the response they have increased the red line to incorporate all the lands up to the river bank. This accounts for regarding compensation measures which are explored in more detail in Hydro Environmental Report.
- They provided a summary of the information submitted in Table 1 of the information attached with the F.I.
- Revised Public Notices regarding Significant F.I have been submitted.

- A Flood Risk Assessment by Hydro Environmental has been submitted.
- Further details on proposals relative to Stormwater disposal have been submitted.
- A refreshed Screening Assessment has been undertaken by Roger Goodwille having regard to the Council's F.I request and taking account of flood compensation works proposed under the Flood Assessment carried out.
- A letter has been included from Clare County Council consenting to the inclusion of a roundabout to be constructed on the public road which is their ownership.

Planner's response

They had regard to the significant F.I submitted and to the internal technical reports received. They concluded that the layout of the development would be more appropriate with a greater mix of house types and a reduced density. They considered that the issues of flooding, surface water and traffic safety have been addressed. The development has been screened for AA and it is not considered that the proposal would have a significant effect on the nearby cSAC. The Planner recommended that permission be granted and that conditions be attached regarding the reduced density/layout, traffic measures (roundabout), flooding, as well as other conditions appropriate for a residential development of this nature.

5.0 PLANNING AUTHORITY DECISION

On the 1st of October 2015 Clare County Council granted planning permission for the proposed development subject to 22no. conditions. Some of these refer to technical, infrastructural and construction management issues and they include the following:

- Condition no.1 – Development to be in accordance with the revised plans submitted.
- Condition no.2 – Provides for more variety in location of house types.
- Condition no.3 – Relates to construction of the roundabout.
- Condition no.4 – Provides that the provision of the compensatory flood storage to be carried out prior to the filling in of the site for construction works and also relates to provision of buffer zones.
- Condition no.5 – Relates to storm sewers and drainage issues.
- Condition nos.6 Relates to the provision of retaining walls and boundary treatment.
- Condition no.7 – Provides for details of external finishes.
- Condition no.8 – Provides for public lighting.
- Condition no.9 – Undergrounding of services
- Condition no.10 – Naming and house numbering scheme
- Condition no.11 – Refers to comprehensive landscaping scheme.
- Condition nos. 12 & 13 – Construction Management issues.
- Condition nos. 14 & 15 – Relate to construction of roads and footpaths and cycle lanes.
- Condition no.16 – Disposal of surface water to be piped to surface water system.
- Condition no.17 – Boundary treatment between units.

- Condition no.18 – Archaeological issues
- Condition no.19 – Development to be completed in accordance with construction standards.
- Condition no.20 – Development Contributions
- Condition no.21 – Cash Bond
- Condition no.22 – Relates to agreement relative to Part V.

6.0 GROUNDS OF APPEAL

An Taisce has submitted a Third Party Appeal and their grounds of appeal are in relation to the following:

1. Flood risk on the proposed site
2. Water quality and the geology of the site
3. Protected species and habitats in the surrounding area

These are summarised as follows:

Flood Risk:

- The subject site is vulnerable to flooding from two main sources – fluvial flooding from the River Fergus and groundwater flooding due to the presence of karst. The River Fergus is a classical karst river.
- They have regard to Section 28 of the Planning and Development Acts which allows for the de-zoning or down-zoning of lands where development would comprise an unacceptable flood risk.
- They also note that a detailed Flood Risk Assessment should quantify the risks and the effects of any mitigation together with the measures need or proposed to manage residual risks.
- They consider that the Flood Risk Assessment carried out to be inadequate in that it lacks adequate information relating to the justification test and in assessing all types of flood risk including groundwater and the effects of climate change.
- They refer to an extension of the flooding area and to a study carried out by consultant geologist regarding this issue and consider that further analysis should have been carried out to adequately assess the probability of flooding the proposed development site.
- They have concerns regarding the geological makeup of the compensation storage area, particularly the reference to limestone blocks.
- They include a Report on Geology in the area from Clare Geological Services in Appendix 1 of their Appeal.

Habitat and Species Protection:

- They have regard to Habitats and Species Protection and are concerned that the analysis of bat roosts on the site is flawed and submit that further analysis should have been carried out.
- They submit that without adequate assessment that the development maybe contrary to objective CDP17.9(b) Biodiversity of the Clare CDP.
- They note the special protection allotted to bats under the Wildlife Acts of 1976-2010 and recommend that a bat survey be carried out to provide a full assessment of bats on the site.
- The AA submitted is inadequate in adequately assessing all aspects of the proposed development and lacks adequate mitigation measures for

the possible impacts to the Lower River Shannon SAC and that significant effects on the SAC cannot be ruled out.

- They consider that the proposal would be contrary to Policy EN1 of the Ennis & Environs DP and have regard also to ENI(d) relative to impact on limestone paving.

Water Quality and Geology

- The application warrants strong consideration with regard to the Water Framework Directive 2000/60/EC which imposes a positive obligation to ensure protection of water quality and avoid development which would be prejudicial both to ground and surface water.
- They submit that the proposal may have a negative impact on the surrounding water quality and particular care needs to be given due to the sites close proximity to the Drumcliff Spring and the surrounding groundwater and surface water systems.
- They have regard to the importance of the Drumcliff Spring which is a large karstic spring which can be considered as both a groundwater and surface water source.
- The groundwater and surfacewater systems throughout the catchment area are inexplicitly linked and the source is therefore a difficult one to protect.
- All of the areas requiring special protection in the Shannon IRBD have been identified, mapped and listed in a register of protected areas background document. The drinking water source at Drumcliff (Ennis) is included.
- The Geological Study includes that in order to adequately assess the impacts of the proposed development on water quality, a geological survey should have been conducted to ensure that a high quality of water status is maintained.
- The area for compensation storage is made up of broken and disturbed limestone blocks overlying bedrock then the removal of this bedrock would essentially amount to quarrying.
- They are concerned that no adequate geological analysis has been conducted to determine if the development areas included limestone or if there may be detrimental impacts on habitats, species and water quality.
- They conclude that An Taisce can find no grounds to justify the proposal having regard to:
 - A failure to scope alternative sites.
 - A failure to conduct geological investigations on site.
 - Inadequate AA.
 - Contrary to policies contained within the Clare CDP, Ennis & Environs LAP, EU Water Framework Directive.

7.0 RESPONSES

7.1 *Clare County Council*

By way of information they note that the ongoing works on the application site are being carried out under Arterial Drainage Acts 1945 and 1995, River Fergus Lower (Ennis) Certified Drainage Scheme by the Commissioners of Public Works in Ireland.

7.2 **First Party response**

TBP Planning and Development Consultants have submitted a response on behalf of the First Party. This includes that their client categorically states that he has never had any part in carrying out unauthorised works on the application site. The works referred to by An Taisce are flood defence works, being carried out by Clare Co.Co. and the OPW.

Their response to the Grounds of Appeal includes regard to the following:

Alternative sites:

- The application site has a long planning history – the Board granted permission for a substantial housing development in Ref. PL58.217637. The site's zoning that time was 'Other Settlement Land'. They have regard to the wording of the Board's decision to grant at time.
- Times have moved on and approx. 50% of the lands have been downgraded (i.e. the northern half of the site next to the River Fergus). However the application site remained zoned in the Ennis & Environs DP 2008.
- As Part of Variation no.2 the application site was allocated as Phase 1 residential, taking account of many different factors including flood risk, the site's strategic location in an established urban area, the need to ensure compact urban settlements, proximity to local services and to the town centre.
- They consider that in this regard the Council carried out its own assessment of alternative sites and having weighed up the factors considered this location suitable for residential development.
- While weighing up the various factors, flood risk does not veto zoning decisions.
- They consider that in this case the development complies with urban settlement policies. The risk of flooding can be compensated on the applicant's lands in a location removed from disturbance to the riverine SAC.

Flood Risk/Compensation works and Geology

- In direct response to the matters raised by An Taisce, Mr Cawley of Hydro Engineering Ltd has prepared a detailed Hydrological Report which they include. This is also accompanied by a Trial Hole Report from P. Coleman and Associates. Regard is had to these issues in the Assessment below.
- This was undertaken to confirm beyond doubt that a suitable depth of overburden is available on the site, to allow for the creation of the flood compensation area.
- They consider that the issue's raised by An Taisce in respect of flood risk, possible sink holes/depressions and underlying geology of the land have been sufficiently addressed.

Bats

- Mr R. Goodwille likewise confirmed in response to the F.I that there would be no risk of adverse impact on the cSAC. He concluded that the environment would be unsuitable for bats.
- They also note that many of the issues raised by An Taisce were only raised at appeal stage.

7.3 *Third Party response*

- An Taisce notes the additional information in the form of a contour map of the site as well as results of trial holes dug in the compensatory area.
- They provide that it is not possible to make further deductions about water issuing into the two trial holes because the rest water levels were not recorded, nor was any comment made about the flow of groundwater.
- They consider that the geological observations and interpretations made of all four trial holes are limited in this report. In order to adequately determine the actual amount of fractured overburden that is available to provide infill, additional trial holes would need to be carried out.
- Limestone pavement is a protected habitat and they do not consider that the description as 'Craggy limestone' is correct in this context. Limestone pavement is not flat and extensive, its main feature is the absence of topsoil because natural soil has been removed and deposited elsewhere.
- They are concerned about the small depression close to the Drehidnagower Road and note other parts of the site will have to be infilled to facilitate the development.
- They note that the proposed work is being advocated on an area of relatively untouched ground that is in the centre of the most important Regional Aquifer in the County which is clearly identified on attached maps.
- The maps show that the River Fergus as just a narrow line on the surface of one of the most important karst aquifers.
- They provide that the structural and sedimentary geology as well as the hydrogeology of the area has to be examined and understood in detail.
- Following the recent impact of severe flooding in Ireland, it is imperative to fully assess site suitability for future development and the effects of climate change going forward for increased rate of flood.

8.0 **PLANNING POLICY**

8.1 *Relevant Ministerial Guidelines*

Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009

These seek to encourage high quality sustainable residential development, urban form and design. They are concerned to promote a sequential approach to development and to create an overall design framework with linkages to the existing developed area. They support Local Area Plans and the phasing of development, also having regard to the availability of infrastructure. Regard is had to the availability of community facilities, public transport and the quality of open space. Chapter 3 concerns the role of design and has regard to the context and quality of the development proposal. Chapter 4 provides for planning for sustainable neighbourhoods and has regard to public open space, traffic safety, drainage issues etc. Chapter 5 refers to Cities and Larger Towns (i.e towns with 5,000 or more people) and provides the criteria for appropriate locations for higher density developments. Section 5.9 refers to

Inner suburban/infill sites and has regard to residential infill. Chapter 7 concerns the home and its setting and discusses issues such as daylight, sunlight, privacy, open space and communal facilities.

Regard is had to the accompanying DoEHLG 'Urban Design Manual-A best practice guide 2009' and to the 12 criteria to promote quality sustainable urban design discussed in this document. Regard is also had to the application of these criteria, which are divided into three sections: Neighbourhood/ Site and Home reflecting the sequence of spatial scales and order of priorities that is followed in a good design process.

Sustainable Urban Housing Design Standards for New Apartments 2007

This provides guidelines on the design and layout of new apartments to ensure that they provide satisfactory living accommodation. This also includes guidance on daylight and sunlight, communal and private open space and recreational needs. The Appendix includes recommended minimum floor areas and standards.

Design Manual for Urban Roads and Streets 2013

The DMURS document must be taken into consideration in examining planning applications. Within the DMURS document the application of the principles to existing streets must require a flexible approach. The document calls for a safer more attractive and vibrant street and the creation of a permeable network from a multi-layered process. The process should begin with a site analysis that identifies any constraints the proposal may have on the existing network, including points of access, major destinations and strategic connection (existing and proposed). The street hierarchy in terms of trips generated, access etc.

The Planning System and Flood Risk Management Guidelines 2009

These have been adopted and are the DOEHLG Guidelines for Planning Authorities (November 2009). The key principles are:

- Avoid the risk, where possible –precautionary approach.
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

Flood Zone A has the highest probability of flooding, Zone B has a moderate risk of flooding and Zone C (which covers all remaining areas) has a low risk of flooding.

The sequential approach should aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended.

This document sets out how to assess and manage flood risk potential and includes guidance on the preparation of flood risk assessments by developers. This has regard Screening Assessment, Scoping Assessment and Appropriate Risk Assessment. It provides that only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

8.2 *Directives*

EU Water Framework Directive

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- (e) contributes to mitigating the effects of floods and droughts'.

EU Habitat Directive

The aim of the EU Habitat Directive is 'to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'.

8.3 *Other relevant Guidelines*

Appropriate Assessment of Plans and Projects in Ireland – Guidelines for Planning Authorities 2009

The obligation to undertake appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive, and both involve a number of steps and tests that need to be applied in sequential order. AA is not a prohibition on new development or activities but involves a case-by-case examination of the implications for the Natura 2000 site and its conservation objectives. In general terms, implicit in Article 6(3) is an obligation to put concern for potential effects on Natura 2000 sites at the forefront of every decision made in relation to plans and projects at all stages.

An AA is a focused and detailed impact assessment of the implications of the plan or project, alone and in combination with other plans and projects, on the integrity of a Natura 2000 site in view of its conservation objectives. The AA process encompasses all of the processes covered by Article 6(3) of the Habitats Directive, i.e. the screening process, the NIS, the AA by the competent authority, and the record of decisions made by the competent authority at each stage of the process, up to the point at which Article 6(4) may come into play following a determination that a plan or project may adversely affect the integrity of a Natura 2000 site. There are 4 stages in the process these are: screening for AA - AA - Alternative Solutions - IROPI. The need to apply the precautionary principle in making any key decisions in relation to the tests of AA has been confirmed by European Court of Justice case law. Therefore, where significant effects are likely, uncertain or unknown at screening stage, AA will be required. It is provided that other assessment

criteria, such as economic criteria, cannot be seen as overruling ecological criteria.

8.4 Clare County Council Plans

Clare County Development Plan 2011-2017

Chapter 3 refers to Urban and Rural Settlement Strategy. Section 3.2.2 provides that the Strategy for Ennis is provided in the Ennis & Environs Development Plan 2008-2014.

Chapter 4 refers to Housing and Sustainable Communities and seeks to provide for high quality and sustainable housing in appropriate locations. Section 4.1 provides that it is a strategic aim to ensure that sufficient land is zoned for various types of housing need over the lifetime of the plan.

Chapter 9 refers to Environment and S.9.1 the Strategic Aims which include that future development is considered and managed against flooding/risk S.9.2.2 refers to the Policy Framework which includes regard to the National Climate Change Strategy 2007-2012, The Planning Guidelines and Flood Risk Management 2009 and River Basin Management Plans.

Chapter 17 concerns Natural Heritage and CDP 17.3 refers to protection and management of Natura 2000 sites. CDP 17.9 refers to Biodiversity.

Appendix 1 provides Development Management Guidelines and Section A1.2 refers to Residential Development and A1.2.2 to Urban Residential Development. Section A1.3 seeks to promote SUDS systems in the design of new developments.

Section 21.5 and Appendix 6 provide the Zoning Matrix.

Volume 3 includes in Part 11 regard to the Habitats Directive Assessment and Part 111 regard to the Strategic Flood Risk Assessment.

Volume 7 includes the Housing Strategy.

Ennis and Environs Development Plan 2008-2014 (as varied)

This has been updated to incorporate Variations 1 and 2 and is dated November 2011. It has been decided (at electoral level) not to update this development plan but regard is now also had to Variation no.3. This DP is therefore still the relevant plan.

Chapter 3 contains the Core Strategy promoting the strong urban settlement of Ennis and noting that it is designated a hub town in the NSS. Section 3.4 provides the Core Strategy for Ennis and Environs. Section 3.5 refers to the Settlement Hierarchy and Strategy and this seeks to ensure that sufficient lands are zoned at appropriate locations for housing. Core Strategy Policy CS1 refers. Section 3.7 refers to the Housing Strategy.

Chapter 4 provides the Settlement Strategy within the area. Ennis Hub is the main growth area where sustainable development is to be primarily directed and concentrated. Section 4.3 refers to Managing the Growth Settlements and this includes regard to (1) Residential zoning and (2) Other Settlement Zoning.

Policy SS6 relates to Phase 1 lands and Policy SS7 to Other Settlement Land. Maps C and D refer to the designations.

The following are policies relevant to the subject site:

Policy SS6 Phase 1

It is the policy of the Development plan to concentrate all new multiple residential developments for the lifetime of the Development Plan in the designated Phase 1 areas, as outlined on maps C 'Ennis and Environs Plan Area - Zonings and Land Use Designations' and D 'Ennis Settlement Area - Zonings and Land Use Designations', subject to availability of infrastructure and amenities and environmental considerations. The Council will monitor and review the take up of such zoned phase 1 lands during the life time of the Ennis and Environs Development Plan 2008-2014.

Policy SS7 Other Settlement Land

It is the policy of the Development plan to conserve and enhance the quality and character of the area, to protect residential amenity and allow for development that is appropriate to the sustainable growth of the settlement. Multiple units of houses or apartments will not be permitted on lands zoned as O.S.L. Exceptions to this include:

- (a) O.S.L. which has phase 1 status in Ennis.*
- (b) O.S.L. within Barefield (phase 1) and Toonagh where small scale low density residential development may be considered in line which policies SS2 and SS3.*

Section 7.5 refers to Controlling Housing Developments, Policy H13 to the Conversion of Property into Smaller Units. Section 7.6 refers to New Residential Development – Policy H17 refers. Policy H18 supports a mix of house types.

Chapter 9 refers to the Natural Environment and S.9.3 refers to Nature Conservation – Policy EN1 refers. Policy EN2 refers to the River Fergus and Environs.

Chapter 13 refers to Water and Waste Water Management. Section 13.7 Policy W11 refers to Flood Risk Management.

Chapter 14 refers to Transport and Chapter 15 to Infrastructure.

Section 19.3 and Table 19.2 contain the Indicative Land Use Zoning Matrix.

Section 19.8 Policy ZL6 provides the Car Parking and Cycle Standards (Table 19.3 refers). Section 19.9 and Policy ZL7 refers to Residential Density.

Appendix 1 has regard to Development Standards and A1.10 refers to Urban Residential Development and A1.12 to Urban Infill Housing. A1.21 refers to Roads, Cycle Routes and Footpaths.

Variation no.3 provides A Strategic Flood Risk Assessment for Ennis & Environs dated November 2015.

It also includes an Appropriate Assessment Screening Statement dated November 2015.

9.0 ASSESSMENT

Having read the documentation on file, had regard to the planning history, policies, the grounds of appeal and submissions made and visited the site, I would consider that the following issues to be the most relevant to this appeal, with particular regard to the Flooding and AA issues discussed below:

- Relevance of Planning History
- Land use and development principle
- Density, Design and Layout
- Child Care Facilities
- Access and Parking
- Impact on the Character and Amenities of the Area
- Infrastructural Issues
- Policies and Guidelines relative to Flood Risk Issues
- Justification for the Proposed Development
- Appropriate Assessment

9.1 Relevance of Planning History

There is a considerable history of planning permissions for residential development on this site. The permission originally granted by the Board in Reg.Ref.P05/124 (ABP. Ref. PL58.217637) showed that the application layout for residential development permitted encompassed almost the entire landholding including the northern part of the site, proximate to the River Fergus. The subsequent history includes several modifications to the parent permission and the development was never constructed. The site remains greenfield. As shown on the photographs and documentation submitted the northern part of the site was the subject of intensive flooding in 2009.

As has been noted in the Planning History above, the Council refused permission for an extension of time of the parent permission in Ref. P13/29. This is summarised as follows:

1. With regard to significant changes in the Development Objectives of the Ennis and Environs DP as varied, with regard to the phasing of developments as outlined in 'Policy SS6 Phase 1' of the Plan, such that the development would no longer be consistent with the proper planning and sustainable development of the area.
2. That proposal would not now be in accordance with Ministerial Guidelines as issued under Section 28 of the Planning and Development Act 2000 i.e:
 - The Planning System and Flood Risk Management Guidelines for Planning Authorities (Nov 2009).
 - Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (Sept 2007).
 - Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009).
3. It is considered that the proposal to extend the appropriate period of the grant of planning permission Reg.Ref.P05/124 does not meet the requirements of Section 42(1)(a)(ii)(IV)(ABP:58.217637) of the Planning and Development Act 2000 as amended, as an Appropriate Assessment would be required and was not carried out.

Therefore it is now considered that while regard is had to the Planning History this application is being looked at afresh, as a new application having regard to current guidelines and the principle of development on this site. Regard is had to the current Policies and Objectives in the Ennis & Environs DP 2008-2014 (as varied) and to the relevant Ministerial Guidelines as noted above.

9.2 Land use and Development Principle

As shown on the Land Use Zoning Map of the Ennis and Environs Development Plan 2008-2014 (as varied) the site is located proximate to the edge of town boundaries on the north western side of the town. The site is bounded by the River Fergus to the north and this area is shown zoned as open space. The main part of the site is zoned 'Other Settlement Lands' – Policy SS7 provides that multiple units of houses or apartments will not be permitted on lands zoned OSL, exceptions to this include lands zoned Phase 1. It is noted that the southern half of the site is included in Phase 1 lands – Policy SS6 refers, where it is the policy to concentrate all new multiple residential developments. The northern part of the site in the plans originally submitted was outside the Phase 1 lands in the 'Other Settlement Lands' which would be contrary to policy for such a housing development. However the revised plans submitted as part of the further information have omitted this northern part and the proposed residential development is shown entirely located within the Phase 1 lands which would be in compliance with settlement policy. As shown on the revised plans the red line boundary has been altered to encompass the whole of the landholding. Also the revised Site Layout Plan shows all the development is now to be located in the southern half of the site behind the line of the flood plain.

Section 7.6 refers to New Residential Development and Policy H17 seeks to protect the amenity of existing residential areas and to carefully consider the impacts of new developments and provides a number of criteria relevant to design and layout and the impact on the character and amenities of the area. The prevailing pattern of development in the area particularly to the east and south of the site is predominantly residential estate two storey semi or detached type houses. There is more sporadic development to the west of the site, comprising some residential on larger plot sizes with frontage to the Dredhagower Road and the detached house and commercial premises proximate to the river accessed via the cul-de-sac road to the west and north west of the site. In all, the subject site's interface with the River Fergus (which is part of the Lower River Shannon SAC) is considered an important issue.

Therefore it is considered that the principle of residential development is acceptable on this site in Phase 1 lands in accordance with the land use zoning in the Ennis and Environs Development Plan 2008- 2014 (as varied). However regard needs to be had to the design and layout, and in particular the issue of flooding risk which is associated with this site and surrounding area. Other issues raised include the impact on the adjoining Natura 2000 sites and the comprehensiveness of the AA submitted. The constraints of the site are assessed having regard to the merits of the proposed development.

9.3 Design and Layout

Regard is had to integrated development, design and layout, a range of appropriate densities i.e. efficient use of land and housing mix. The site layout plan originally submitted shows the landholding in blue and red line boundary including a link for disposal of surface water to the northern part of the site. It was then provided that the area to which the application site relates i.e the red line boundary is 3.90ha taken off the larger landholding of c.7.68ha.

The application was initially for 80 no. houses i.e 2no. 2 bed houses, 71no. 3 bed houses and 7no. 4 bed houses. The floor areas of the 4no. varying house types are given as follows:

House Type 1	Type 2	Type 3	Type 4
3 bed – 25no.	3 bed – 46no.	3 /4 bed – 7no.	2 bed -2no.
106.72sq.m	106.47sq.m	131.52sq.m	75.75sq.m

It is provided that the proposed density is 20 units to the hectare.

It was then provided that the proposed open space and shared surface would allow for 29% dedicated to public space/shared space and that the total area of public open space was 1.14ha.

The P.A were concerned about a number of issues having regard to the design and layout as originally submitted and a request for F.I was made. This included the lack of variety in house type in the scheme as originally submitted. Policy H18 of the Ennis & Environs DP seeks to encourage a mix in house types. Other issues concerned that the north eastern part of the proposal was located outside of the Phase 1 lands, and within an area that had been previously flooded in 2009.

The scheme has been revised so that the total area of the landholding is now shown within the red line boundary. The proposed layout is shown to the south of the Flood Plain line and entirely within the Phase 1 lands i.e the eastern portion that was shown located partially within the 'Other Settlement Lands' has now been omitted. As shown on the Site Layout Plan a reinforced concrete retaining wall is to be constructed to provide a further defence of the raised site development area from flooding. The no. of units has been reduced to 76 housing units within a total site area of 8.152ha. The area of the site to be developed is 3.770ha with an open space area of 0.995h. Therefore having regard to the development area the proposed density would be 20 houses per ha. It is realised that the proposed density is lower than average due to the flooding issue and need to locate the open space, particularly at the western side of the site. If the open space were to be taken out the net density would be 27 houses per ha.

Section 5.11 of the Sustainable Urban Residential Guidelines notes having regard to 'Outer Suburban/Greenfield sites' that: *the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.* Generally densities of less than 30 dwellings per ha

are discouraged. However the constraints regarding the development of this site are noted.

Four house types are proposed and a review of these is provided in Table 1 of the F.I. submitted. This notes a revised mix of house types to include a variety of house styles including 3 and 4 bedroom, end of terrace and semi-detached units are now proposed i.e:-

House Type 1	Type 2	Type 3	Type 4
3 bed – 21no.	3 bed – 41no.	4 bed - 9no.	3 bed -5no.
106 sq.m	106	147sq.m	131sq.m

Having regard to the plans submitted, while there is some variation in the floor plans, fenestration and external finishes the house types proposed are all two storey, 3 or 4 bed semi-detached type houses. Condition no.2 of the Council's permission is of note in that it endeavours to increase the mix of the variety in the house types presented. Therefore it is considered that while individually the proposed house types are acceptable, taken as a whole there is a lack in variety in design or of social mix particularly having regard to smaller households or terraced housing in the scheme.

It is considered that the houses on Plot nos.29 and 33 are shown very close to the eastern boundary with Pine Grove and it is recommended that if the Board decide to permit that these 4no. semi-detached houses (i.e. House type 2 on plots 33/34 and 29/30) be replaced by 2no. 4 bed detached houses i.e this would reduce the number of houses in the scheme from 76 to 74no. houses.

The open space quota of 10% is exceeded in the developable portion of the site at a rate of 24%. This includes the large area to the west of the main road. It is noted that having regard to the documentation submitted concerning Hydrological issues that this open space is to be located in the development area of the site which has been more likely to flood and therefore it is preferable not to have houses in this location. It is of note that the main areas of open space are shown to the east and west of the housing area and that there is no provision for a more sizable central open space area. Although there has been some improvement, in the revised layout in that the original shared surfacing proposed in the centre of the development has been removed in preference of green shared open space. It is also considered important that details of boundary treatment/concrete retaining wall and a comprehensive scheme of landscaping throughout the site including open spaces and boundaries be submitted and it is recommended that if the Board that this be conditioned.

Section 4.3 of the Planning Guidelines relate to Flooding note that: *Raising threshold and floor levels above expected flood levels can also be used to reduce the risk of flooding to a building.* Section 4.5 relates to Flood Resistant Construction. The proposed finished floor levels for the residential units within the development vary from a minimum of 7.0m up to 8.4m O.D but with the majority of units at between 7.1 and 7.5 O.D. It is important that FFLs be at least 7.0 OD and regard is had to the Council's condition no.4(d). If the Board decides to permit this should be conditioned.

9.4 Childcare Facilities

The DOE Childcare Guidelines for Planning Authorities 2001 issued as Ministerial under Section 28 of the Planning and Development Act, 2000, provides in Section 2.4 that appropriate locations for Childcare Facilities include larger new housing developments i.e: *For new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate.* This includes that this distribution of such facilities should be established having regard to the existing geographical distribution of childcare facilities and emerging demographic profile of areas.

The current application is not accompanied by a crèche and the First Party provides that there is sufficient capacity in existing such facilities in the area. The Board may decide that it is necessary to incorporate a crèche in a scheme of this size and if so, I would recommend plot nos. 15/16 of the revised layout as a more suitable location. If the Board decide to permit it is recommended that changes to the layout as noted in the Design and Layout Section above incorporate 74 rather than 76no. houses.

9.5 Access and Parking

The main and sole vehicular access to the development would be via a proposed roundabout to the west of the site at the junction of the Drehidnagower Road and Watery Road and the cul-de-sac road to the west of the site. It is provided that this roundabout was approved under the original parent permission. It is noted that the roundabout proposed in the current plans is shown in a similar location. A Traffic Impact Assessment (2005) was submitted for the original permission PL58.217637. This also referred to a Road Safety Audit. The Council's Road Design Section makes a number of comments but does not object to the location of the roundabout in the current application. It is also noted that the number of units proposed has now been considerably reduced. However the original permission has now expired and a revised and updated TIA has not been submitted relative to the current application.

A letter has been included on file from Clare County Council giving their consent for the inclusion of a roundabout on lands owned by the County Council. It is provided that the works will be carried out by the applicant/developer not the County Council and as such a Special Development Contribution would not be required. Condition no.3 of the Council's permission relates to the roundabout and if the Board decide to permit it is considered that as the parent permission has now expired that appropriate conditions should be included.

The further information submitted includes an Autotrack Layout showing the access through the site. This is also to allow for adequate turning space for emergency and refuse vehicles. A Plan showing the location of proposed surfaces to include raised speed tables, cycle track, the location of the embankment and concrete retaining wall around the northern and western part of the site has been submitted. If the Board decide to permit it is also recommended as per the Council's Road Design Report that it be conditioned

that a Traffic Management Plan be submitted relative to the construction and operational phases of the development.

The scheme originally submitted provided for a total of 153 parking spaces which are divided between spaces provided within the curtilage of each house and in communal areas. Table 19.3 of the Ennis and Environs DP provides that a standard of 1 space per three bed house and 2 spaces for four bed house is required. In response to the Council's concerns about an excess of parking it is provided that 104 car parking spaces are proposed within the curtilage of the dwellings and 48no. spaces are provided roadside to accommodate the housing units and any visitor parking. It is provided that all parking relating to house nos.17-26 has been separated and clearly demarcated from what is now to be a green space immediately south of the parking zone. Also the Roads Design Planning Report has concern that parking space nos.63-70 appear to be only wide enough for one car, these spaces should be widened to comply with current standards. Therefore it is considered that if the Board decides to permit that while more than adequate parking is available, that it could be conditioned that some of the on-street parking be removed to allow for further landscaping, eg. 2no. of the spaces facing the Drehidnagower Road. As per the Road Design Planning Report it is important that these planted areas are designed so as not to obstruct the sightlines of motorists exiting these parking spaces. It is noted that a cycle track is to be provided along this frontage, although linkages to other parts of the estate have not been shown.

While pedestrian access is proposed from the Drehidnagower Road, the lack of pedestrian connectivity from the site particularly to adjoining residential developments to the east has been noted. The F.I submitted provides that the proposed development does not link directly to the adjoining housing estate of Pine Grove. They provide that the open space area to the north east has been designed to ensure that there is visual connectivity between the development open space and that of Pine Grove's open space. It is recommended that if the Board decide to permit that it be conditioned that there be pedestrian access between this area of the estate and Pine Grove.

9.6 Impact on the Character and Amenities of the Area

The application site is located on the side of the Drehidnagower Road on the north western side of the town and is the last substantive area of zoned development land in the area. It is provided that the site is well located within the urban fabric of the town being proximate to many services most notably the Clare Family Resource Centre (including Creche) and Lynch's Centra and wider neighbourhood facility including a butcher and pharmacy, petrol station and McDonald's restaurant. These facilities are located c.350m away close to the junction of the Drehidnagower Road with the Gort Road. Wider facilities in the area include the Ennis Leisure Centre, Sandfield Road; the Regional Park on Lees Road; and Ennis General Hospital. Appendix 1 of the documentation submitted with the application shows the location of these facilities relative to the site. It is noted that for many future residents these would be perceived a car journey away, rather than within easy walking distance.

Having regard to my site visit, it was noted that the area to the east and south is primarily residential estate type development of two storey detached and semi-detached houses. The area to the north and west appears more rural and is dominated by the flow of the River Fergus. The area immediately to the south west contains houses on larger plots with road frontage on 'Other Settlement Land'. There is a house and small commercial business at the end of the cul-de-sac to the north west of the site.

A Southern Contiguous Elevation showing the proposed frontages of the predominantly House Type 1 two storey semi-detached houses, with House Type 4 on either end to Drehidnagower Road has been submitted. It is considered positive to have these frontages, albeit set back due to the access arrangement, facing the Road. Visually the proposed development, on Phase 1 lands would fit in with the residential estate type development to the east and south of the site. However it is noted it would present a scheme with little variety in housing mix and would not offer any additional facilities to serve existing or future residents other than residential development.

9.7 Archaeological issues

An Taisce are concerned that an Archaeological Assessment has not been submitted. The DoAHG provide that given the scale, extent and location of the proposed development it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance and recommended a number of conditions regarding archaeological monitoring during construction phase.

If the Board decide to permit it is recommended that archaeological monitoring type conditions be included.

9.8 Infrastructural issues

The proposed development will collect and discharge its surface water from its hard paved areas to the River Fergus via an engineered outfall as per the Engineering Services Report and drawings submitted and therefore does not discharge directly to the ground. The First Party provide that the sewage will be collected and discharged to the Public Sewer for municipal treatment and thus operationally there is very little risk of pollution to groundwater from this residential development. They also note that good practice construction will ensure minimal risk to groundwater and surface water sources by providing suitable construction management practices and the sizing of temporary sedimentation pond areas for treatment of construction runoff and such activities can be monitored and overseen by an independent hydrologist if so conditioned.

Section 13.4 of the Ennis and Environs DP refers to sewage disposal in serviced areas. This includes that the wastewater treatment effluent from the Clonroadmore WWTP will continue to discharge to the Lower River Shannon Natura 2000 site (cSAC site code 002165). Also that, subject to the Clonroadmore upgrade taking place discharges will be significantly improved leading to an overall improvement in water quality downstream of the waste water treatment plant Policy W8 refers. Policy W9 refers to Sewage Disposal in Serviced areas. Policy W10 supports SUDS.

The First Party provides that Irish Water have confirmed that there would be capacity for the proposed development at the upgraded Clonroadmore Waste Water Treatment Plant. They also note that wider technical details of the proposed project's drainage proposals are included in the details submitted by Coleman Consulting Engineers Ltd. In particular regard is had to the drawings showing the proposed Drainage and Watermain Layouts for both the original and revised Schemes. These also show the route of the discharge point for surface water to the River at the north western corner of the site.

In this case the storm water is to be collected and discharged to the River Fergus via a 525mm diameter storm pipe that outfalls the river at the north western corner of the site. The invert level for this outfall is set at 4.1m O.D Malin and will be submerged during flood events. Storm water attenuation is not proposed as the flooding in the River Fergus is slow and prolonged. This lack of onsite attenuation is in the circumstances considered to be more beneficial for the site. Details are given of the storm sewer design in the F.I. submitted.

It is not proposed to install a flap-valve mechanism at the outfall. Discharge will be continuous as long as water enters the head (top end of the surface water sewer) or other parts of the surface water system and there will be no need for storage. It is not envisaged that the capacity of the network will be used resulting in ponding at low points. It is provided that the outflow is always open and the head of water at any location within the estate will be higher than the flood level and will cause the water to flow. The open end of the surface pipe will not cause water to be stored in the pipe system other than that at the flood level at any particular time. To ensure surface water quality is maintained in the River Fergus it is proposed to install a suitably sized petrol interceptor on the surface water line which will treat all surface water from the impermeable areas of the site and will also act as a silt trap for same.

9.9 Impact on Water Quality and the Drumcliff Spring

An Taisce consider that this application warrants consideration with regard to the Water Framework Directive 2000/60/EU. This includes regard to River Basin Management and to Flood Risk Management. It has regard to the quantitative and qualitative status and seeks to ensure 'good ecological status' and 'good chemical status' and protection of surface waters. They are concerned that the proposed development has the potential to impact adversely on water quality having regard to the surrounding groundwater and surface water systems. A Geological Report relative to the site has been included in Appendix 1 of their appeal. This notes that the bedrock in the valley of the River Fergus is well fractured pure bedded limestone that forms a distinctive landscape known as karst. They also have regard to the proximity and importance of the Drumcliff Spring as a large karstic spring which can be considered as both a groundwater and surfacewater source. This responds rapidly to recharge and is generally extremely vulnerable to contamination. The ground water and surface water systems throughout the catchment are linked and the source is therefore difficult to protect. The drinking water source at Drumcliff (Ennis) which is the main water supply needs to be

protected. There are concerns about extreme vulnerability of groundwater to pollution throughout.

Hydro Environmental Ltd has submitted a Hydrological Reply to An Taisce having regard to these issues. They provide details relative to the location of the Drumcliff Springs which are on the far side of the river from the proposed site and while within 120m of the River Fergus are over 300m from the potential construction area. They have regard to changes in water levels during flood periods and note that the Drumcliff springs discharge into the Fergus and therefore their water levels are higher than the Fergus levels. An extract from GSI groundwater mapping is presented in Figs. 1 and 2. It is provided that these clearly show an extensive contribution area to the north and west of the springs but does not show any catchment area to the East of the Fergus including any part of the proposed development site and surrounding urbanised area. They provide that given the invert of the River Fergus and driving head at the springs it is highly unlikely that recharge from the proposed development site contributes to the Drumcliff spring yield with groundwater recharge and runoff intercepted by the River Fergus channel which is at similar levels.

9.10 Flood Risk issues and Policy

The 'Planning System and Flood Risk Management Guidelines for Planning Authorities' 2009 provides Guidelines for Identification and Assessment of Flood Risk. It has regard to the source-pathway-receptor model and to the scales used for flood risk assessment. Table 2 refers and includes reference to strategic and site specific flooding. In this case in view of the history of flooding on the northern part of this site regard needs to be had to detailed risk assessment. Regard needs to be had to the core principles and to the Justification Test to include impact on drainage and of surface water runoff i.e. is it justified to site the proposed development on this site if it is prone to flooding in the first place. If this can be justified Appendix B has regard to Addressing Flood Risk Management in the Design of Development.

It is of note that Variation 3 of the Ennis & Environs DP 2008-2014 (as varied) has carried out a Strategic Flood Risk Assessment (Nov 2015). This includes details of the drainage catchment of the River Fergus and Fergus Minor and regard to Flood Risk Management and to Flood Risk Mapping. It has regard to the sequential approach and to the justification test, in particular relative to Zones A and B for highly vulnerable such as residential development, where only Zone C is considered appropriate. It is noted that Fig.1.1 has regard to Proposal sites and Flood zones. This shows that the northern part of the site is within Flood Zone A and the western part within Flood Zone B. The majority of the development area of the site as shown in the revised plans submitted is located in Zone C. It is of note that Appendix 1 A.2.2 provides: *Where a site is within Flood Zone C, but adjoining or in close proximity to Flood Zone A or B there could be a risk of flooding associated with factors such as future scenarios (climate change) or in the event of failure of a defence, blocking of a bridge or culvert. As a minimum in such a scenario, a flood risk assessment should be undertaken which will screen out possible indirect sources of flood risk and where they cannot be screened out it should present mitigation measures. The most likely mitigation measure will involve*

setting finished floor levels to a height that is above the 1 in 100 year flood level, with an allowance for climate change and freeboard. Design elements such as channel maintenance or trash screens may also be required. Evacuation routes in the event of inundation of surrounding land should also be detailed.

The Third Party An Taisce is concerned that the subject site is vulnerable to flooding from two particular sources – fluvial flooding from the River Fergus and groundwater flooding due to the presence of karst. The River Fergus is a karst river with karst features. They note the solutions of the limestone bedrock in the area make it difficult to forecast where drainage and flooding problems may arise. They provide that a detailed Flood Risk Assessment should quantify the risks and effects of any mitigation together with the measures needed or proposed to manage the risks. They also point out that the guidelines are considered under Section 28 of the Planning and Development Acts which allows for the de-zoning or down-zoning of lands where their development would comprise an unacceptable flood risk.

9.10.1 Regard to Flood Risk Assessment submitted

The Report in Appendix 3 submitted with the application documentation provides that the subject site has been allocated as Phase 1 and sits outside the flood zone A as per the Strategic Flood Risk Assessment under by JBA in 2009. They provided that the proposed housing in view of being shown on the higher ground on the southern part of the site in this application is not subject to a Justification Test. They included a Report by Hydro Environmental Ltd in Appendix 3 and provided that a full Flood Risk Assessment was not required. This Report refers to the flooding that occurred in November 2009 was an extreme event and considered that it has an estimated return period in excess of 200years based on statistical analysis. They refer to the Ennis Flood Relief Schemes.

In response to the Council's F.I request a Report has been submitted by Hydro Environmental Ltd, Hydrological and Environmental Consultants dated August 2015 providing a Flood Risk Assessment relevant to the subject site. It is noted that the proposed site is adjacent to the River Fergus and associated floodplain and that part of the site has flooded in the past. As per the requirements of the Flood Risk Management Guidelines 2009 a stage three site specific flood risk assessment was carried out to assess and quantify the flood risk to the development and the potential impact of the proposed development on flooding.

It is provided that the lands proposed for development have been zoned under the Ennis Town Development Plan 2009-2015 and have already undergone a strategic Flood Risk Assessment and a SEA as part of the zoning process. Also that the study uses the latest available flood mapping information from OPW CFRAM study to inform the assessment in respect of the extent of flood risk zones on the site and the fluvial and combined return period design flood levels for the development. This assessment quantifies the flood risk for the site, makes recommendations as to safe finish floor levels for the residential units, assesses the flood impact of developing the lands and flood risk to the adjacent lands and identifies mitigation measures to

compensate for the loss of flood storage on site. They note that extensive sources of information have informed this FRA study. A copy of the Flood Risk Map for the JBA SFRA study (October 2009) is presented in Fig. 3. of the F.I submitted

The overall site area as shown on the revised plans submitted is in excess of 8ha with the development footprint kept primarily on the higher ground in the zoned southern half of the site away from the River Fergus and active floodplain. It is provided that some squaring of the site is proposed involving development within Flood zones A and B. This infill of flood plain area is within the zoned development land on the site and the proposal is to compensate any loss of flood storage by lowering adjacent grounds within the site immediately to the north of the development footprint area but located within the overall 8ha site area. It is provided that a retaining wall structure is proposed along the northern and eastern boundaries of the development footprint area to avoid any further encroachment into the flood plain area of the site. The topographical survey of the site by Land Survey's Ltd shows the proposed residential development area to be generally elevated at typically from 6m O.D to 7.5m O.D whereas to the north the ground falls to typically 5m making such lands more vulnerable to regular flooding.

This is evident from aerial photos of the Nov 2009 flood at the site as shown on photo nos.7 and 8 submitted and they also have regard to the JBA SFRA (2009) flood mapping in this respect. These photographs show that the northern half and part of the western portion of the site was flooded at that time. Having regard to my site visit in January 2016 (after a period of sustained rain), I noted that the top third of the landholding proximate to the River Fergus was flooded. Some flood relief works (including creation of water filled trench/ditches) proximate to the north eastern boundary of the site with the Aughanteeroe residential estate, were also seen.

The Report provides details on the Catchment Hydrology relevant to the River Fergus. It notes that the Fergus is a relatively damped catchment due to its karstic nature having a relatively slow response to rainfall, requiring prolonged wet antecedent winter conditions to exhaust catchment storage and generate flooding. They also have regard to the smaller flashier catchment of the Claureen River which joins the River Fergus just upstream of the Lahinch Road (N84) in Ennis and 0.9km downstream of the subject site. They note karst springs in a number of areas including at Drumcliff. Section 4.2 of the Report has regard to Historic Flooding, the most recent and severe event referred to being in November 2009.

The First Phase of the OPW Relief Scheme for Ennis Town was completed (town centre area in 2009/2010) and the second phase River Fergus Lower (Ennis) Certified Drainage Scheme that was given Ministerial Approval in 2013 is well underway. Details are also given of other more minor flood relief works in the Ennis catchment area. It is noted that relevant to the subject site is the Fíor Uisce Flood Alleviation Scheme that has been approved and construction is scheduled to commence in the near future so as to protect the Aughanteeroe Housing estate which adjoins the north eastern portion of the subject lands. These works form part of the scheme and will involve the

construction of a 225m long flood embankment adjacent to the west and southern boundaries to the Aughanteeroe Estate and will tie into an existing flood embankment that protects the site to the north and east. This embankment will vary in width from 7 to 12m and will have a crest elevation of 6.8mOD. Approximately 90m of this flood embankment will be constructed in the Lynch (subject) site close to the north eastern boundary. The proposed development in view of the setback will not encroach on such works. Further details are given on various Flood Relief Schemes in the area in the Council's Engineering Reports relative to the F.I. submitted.

Having regard to the Design Flood Levels for the proposed development they provide that based on the worst case flood levels it is recommended that the minimum FFL for the development be set no lower than a level of 6.9m OD which provides an acceptable standard of freeboard of 500mm over the 100 year flood with climate change flood level. It is provided that the minimum FFL of 7.0m OD is provided which exceeds the 6.9m OD level and that therefore the development will have a suitably low flood risk. The proposed road levels all exceed the 100year with climate change flood levels and public road access to the site is in the low flood risk Zone C.

9.10.2 Compensatory Flood Storage

Regard is had to Flood Risk Mapping and this includes that based on the CFRAM Study the 100 and 1000 year flood estimated levels at the site are predicted. The Flood Risk Zoning map show the location of Zones A (high probability of Flooding) and B (moderate probability). Within the proposed development area (as per the revised plans) the footprint encroaches 0.81ha of Flood Zone A and a further 0.36 of Flood Zone B – Fig.7 refers. The Flood Risk Planning Guidelines Technical Appendices (S.3.3.1) provide: *Ideally, new areas of floodplain are provided from outside of Flood Zone A & B as compensation.* The Report provides that the infill of 1.17ha of these lands by the development and consequential loss in flood storage will not have any perceptible impact on flood risk to the proposed site or to any adjacent lands and properties. The proposed developed area footprint does not encroach into the conveyance area of the River Fergus floodplain and thus upstream afflux caused by a reduction in the flood flow width and effective flow area will not occur. In this respect regard is had to Fig. 7 which includes a Flood Risk Map of the proposed development site with the layout included for reference. This would appear to show that part of the site is included in Flood Zones A and B.

A compensation storage area of 1.44ha area is proposed to the north of the development area (Fig.8 refers) with lands lowered to floodplain levels of approx. 5.1m with a number of hollows and undulations provided within this area to promote wet and dry areas and the colonisation by natural wet grassland/marsh vegetation and later by willows. They consider that this will add to the ecological value of the site. Compensation Storage Calculations are provided relative to Flood Storage Loss. Section 3.3.1 of the Flood Risk Planning Guidelines Technical Appendices includes regard to volume of flood plain equal to that lost to the proposed development should be created and that compensatory storage should be provided equal to or exceeding that lost as a result of development of each of what they refer to as horizontal 0.1m

slices. While their gross figures would indicate this, a detailed analysis of such has not been provided.

An Taisce have concerns that this area where the lands are to be raised as shown on Fig.8 are to be made up of broken and disturbed limestone blocks on top of solid limestone block. The Geological Report in Appendix 1 notes concerns about the impact of:

- a) Lowering of two elevated areas and the surrounding lands in the compensation storage area to c.5.1m O.D;
- b) Placing the excavated material as fill in the designated Floodplain Area;
- c) Landscape and Compensation Area to provide natural areas.

Regard is had to the OPW and DoEHLG Planning Guidelines concerning Flood Risk Managements 2009 in relation to a site specific flood risk assessment. This notes that management of flood hazard and potential risks in the planning system is based on the Sequential Approach which aims to guide development away from areas at risk from flooding and the Justification Approach. Section 6.4 of the Hydrological Report provides Justification Test for the Lifford Site.

9.10.3 Regard to the Justification Test

A Justification Test for the Development relative to the Flood Risk Management Planning Guidelines includes:

- The lands have been zoned for development in the Ennis and Environs Plan 2008-2018 having regard to the strategic FRA carried out by JBA in Oct 2009.
- The proposed development minimum FFLs is set at 7.0m OD which is 1.2m above the CFRAM predicted present day 100year flood level.
- External and internal road access to the development is safely within the Flood Risk Zone C.
- The proposed development does not encroach or interfere with the Flood Conveyance zone of the Fergus floodplain.
- The loss of flood storage as a result of raising lands within Flood Zones A and B will have no perceptible impact on flood levels locally and within the River Fergus. Nevertheless good practice compensation measures will be carried out and details are given of these.
- Storm water discharge will not impact fluvial flows given the nature of flooding in the slow rising characteristics of the River Fergus.
- The proposed development will not interfere with the Fíor Uisce Flood Relief Scheme Flood embankment that is proposed to protect properties at Aughanteeroe housing estate. Access to this embankment from the development site will also not be obstructed.

The Report concludes that the November 2009 flood event was an extreme event that exceeded the 100year flood levels. However regard now also needs to be had to the impacts of climate change and e.g: the significant flooding that occurred recently in December 2015/January 2016 and which has not as yet been documented.

An Taisce submit that the Flood Risk Assessment carried out for the subject proposal lacks adequate information relating to the justification test and

assessing all types of flood risk, including groundwater and the effects of climate change on this site as required by the Planning system and the Flood Risk Management Guidelines (and technical appendices). They include a study carried out by a Geologist in their Appendix 1 regarding an unrecorded depression at the southwest corner of the site and are concerned that this may lead to flooding when the groundwater levels rise, or a swallow for polluted surface water when the ground water level drops. They consider that further analysis should have been carried out to adequately assess the probability of flooding on the site. Also this Geological Report is concerned that the location of the proposed roundabout and the access of the main road into the estate is vulnerable in that it is to be located close to this depression area. They consider that the repositioning of the roundabout and access road should now be considered.

9.10.4 Further Hydrological Justification

Further hydrological details have been submitted in response to the An Taisce Grounds of Appeal. Hydro Environmental Ltd have carried out a detailed study including walkover of the site and provide that this showed no active karst spring or swallow hole features on the site that would give rise to any concern regarding flood risk from groundwater. They provide that there is no evidence of any depressional/collapse or potential estravelle features located in the southwest corner of the site and no evidence of active springs or an estravelle in this area. Filling in of this low-lying area with suitable formation bearing rock fill material will not impact flood risk as it will maintain drainage flow paths towards the River Fergus through the infill material and will allow water levels influenced by the Fergus flood levels to rise and fall within the material. They provide that during the extreme flood of Nov.2009 the only evidence on the site and immediate surrounding area was from fluvial flooding by the River Fergus and this is clearly presented in the original Flood Risk Assessment submitted with this application.

They provide that the compensation storage design takes into account the natural contour level of 5.1m OD Malin located to the west and south of the compensation storage lands and the general lowering of the flatter lands with this compensation storage area requires excavations of 0.5 to 1.0m at most. Fig.3 of their Hydrological Response shows the contours on site. They provide that two large mounds displaying limestone outcrop can be easily excavated and would be classified as craggy limestone and not limestone pavement. Details are given of the Trial hole investigation involving 4no. trial holes dispersed over the compensation storage area and they refer to the Report and mapping showing the location of the trial holes submitted by P.Coleman Consulting Engineers. Therefore they provide that the provision of compensation storage can easily be achieved at the level of 5.1mOD proposed. They note that the River Fergus is a dampened seasonal river system with flooding coinciding with the winter period of November to March based on over 40years of flow records. Therefore is possible to carry out such that excavation works outside of the flood period and therefore manage the site runoff.

The First Party response also provides that the development now proposed would see less than 80 houses developed, set well back from the cSAC, on

the southern half of the site at suitable ground level with adequate flood compensation. Also that the applicant can compensate for loss of flood plain on his own lands immediately north of the site, in a location removed from disturbance to the riverine cSAC. They consider that flood risk should not veto planning decisions on suitably zoned lands in a compact urban area.

The further response from An Taisce considers that it is not possible to make further deductions about water issuing into the two trial holes because the rest water levels were not recorded, nor was any comment made about the flow of underground water. They consider that the geological observations and interpretations made for all four trial holes are limited in this report. They provide that it appears that the amount of subsoil available for use in the compensatory area will be limited without quarrying into the fractured bedrock and bedrock. Also that in order to adequately determine the actual amount of fractured overburden that is available to provide infill, additional trial holes would need to be carried out.

They note that the proposed works are to be carried out in an area of relatively untouched ground that is in the centre of the most important Regional Aquifer in County Clare, which is clearly identified on the maps submitted. It is also an area where natural artesian springs abound and where subsurface geology is complex. The maps show that the River Fergus as just a narrow line on the surface of one of the most important karst aquifers. The structural geology as well as the hydrogeology of the area has to be examined and understood in detail. Following the recent episode of severe flooding in Ireland it is imperative to fully assess site suitability for future development and the effects of climate change.

9.10.5 Conclusion relative to Justification issue

Relative to all these issues it is noted by the Council that ongoing works on the application site are being carried out under the Arterial Drainage Acts 1945 and 1995, River Fergus Lower (Ennis) Certified Drainage Scheme by the Commissioners of Public Works in Ireland. Details of these works have not been submitted relative to their impact on the proposed compensation storage area and the development of this site. It is considered that in order to make a proper assessment such relevant details should have been submitted with this application.

Section 5.1 (Box 5.1) of the Flood Risk Management Guidelines provides a Justification Test for development management. In this case in view of the history of the site and the land use zoning it is provided that alternative sites have not been considered. Also it has not been ascertained that the proposed development will reduce overall flood risk or increase it elsewhere. It is also noted that part of the development area of the site and compensatory storage area is within the floodplain and Zones A and B.

Regard is also had to Flood Risk Management in Section 13.7 and Policy W11 of the Ennis & Environs DP. This provides that: *No development will be permitted on lands designated as 'Flood Risk Area'*. Also it includes that: *proposals for development, including the infilling of land, in floodplains or any other areas which have been identified as being at risk from flooding or*

perform a flood control function, will not normally be permitted. This also includes that proposals for development in such areas will only be considered where it can clearly be demonstrated that they comply with a number of measures relative to mitigation of flood risk which are provided.

I am concerned that based on the above there are a number of issues, which need to be resolved in relation to the development of this site and the risk of flooding in the wider area. While it is questionable whether the mitigation measures proposed for the current application are acceptable having regard to the implications for this particular site, the wider implications for flooding impact, need to be considered/established to ensure flood risk for the area is minimized. Regard is has to the advice given in the DoEHLG Guidelines for 'The Planning System and Flood Risk Management' 2009, and it is considered that a precautionary approach is needed pending a more detailed analysis relative to the impact of the development, the compensatory storage area and of flood risk to the wider area. On the basis of uncertainty relative to these issues, I would recommend that the proposed development is premature and that on this basis permission should be refused. However if the Board decide to pursue further information, I would recommend that the applicant be asked to submit a more detailed analysis relative to the issues raised and mitigation measures.

9.11 Appropriate Assessment

An AA Screening Report by Roger Goodwille and Associates has been submitted in Appendix 4 of the details submitted with the planning application. The northern part of the application site area comprises part of the European site, Lower River Shannon SAC (site code 002165). The Report has regard to the Habitats and Flora on site and provides details of these. It has regard to qualifying interests relative to habitats and species in the cSAC. These include Atlantic Salmon and Otter (Annex IV species on the EC Habitats Directive) and they provide that these are the only two organisms relative to this section of the site/SAC. This notes that Otter are very likely along the river but no markings were seen along this stretch. River Lampreys have occasionally been recorded though it is provided that this area is not particularly suited to breeding conditions. It is noted that the DoAHG provide that in the case of Lamprey species, the new fish pass will mean that former obstructions at the Mill Weir Bridge no longer exist. While no bats were recorded it was provided that they could not be ruled out. Details are given of designated bird species in the nearby SPA. It is provided that the site at Lifford would sometimes be visited by a few mallard, teal, wigeon or curlew but not in significant numbers. Also use of the area by wintering birds at Ballyalla or on the Fergus estuary is minimal and the birds themselves are essentially transitory.

The Lower River Shannon SAC is described in the Site Synopsis as of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the EU Habitats Directive. Conservation Objectives of the cSAC include to maintain Annex 1 habitats and Annex 11 species for which the site has been selected at favourable conservation status. A copy of the Qualifying interests, Conservation Objectives and Site Synopsis for the Lower River Shannon SAC has also been included in the Appendix to the

Inspector's Report. This includes Map 17 which provides an indication of Otter Commuting.

The Screening Report provides that potential impacts on the Natura 2000 site habitat could be brought about by obliteration, sediment loss and site drainage which species could be disturbed by increased human presence. The Report initially concluded that the only impacts will be a reduction of open habitat in the urban area and the loss of some feeding grounds for common terrestrial birds and bats. Also that the development can be completed without any significant effect on any Natura 2000 site during construction and operation and that there is no possibility of cumulative effects.

It is provided that while the overall site includes part of the SAC no development is taking place on this section or on a zone of 50-100m behind it. The only exception is to run a pipe for site drainage to the river which will have a petrol interceptor unit. Having regard to the plans originally submitted the DoAHG is concerned that the outfall pipe will be laid within the SAC close to the river, and will discharge to the river. They noted that it is a requirement that Clare Co.Co. as the competent authority carry out robust screening for AA and an AA, if required under Part XAB, Sections 177U and 177V of the Planning and Development Act 2000 as amended. They noted the Qualifying interests and advised that regard be had to construction and operation phases and to in-combination effects. They noted that the latter could arise from increased loading of the wastewater treatment plant, increased water abstraction, flood relief and defence works near the current site and along other parts of the lower River Fergus, other housing development, amenity and recreation initiatives including associated woodland loss/fragmentation, commitments to other development in land use zonings and other discharges to the river. They also provide that any other significant effects particularly in relation to flora or fauna and including impacts on protected species and their habitats need to be taken into account fully before a decision is made to authorise the proposed development.

An Taisce was concerned that the AA Screening Report did not cover three important factors relevant to the site being adjacent to the River Fergus SAC and previous history, the need for a Flood Risk Assessment, and concern regarding what happened to a stream (Horn Stream) that originally crossed the site and what impact this natural water flow will have on flooding.

9.11.1 AA (Screening) Revised

Subsequent to the Council's F.I request a revised (August 2015) AA (Screening) Report by Roger Goodwillie & Associates has been submitted. The purpose of the report is to screen the proposed development for possible ecological impacts on the Natura 2000 network in particular the closest candidate SAC – the Lower River Shannon (Site Code 2165). Details are given of the sources of information and a description of the habitats and flora of the area and on the site. Habitats include Marsh, Grassland, Trees and Scrub and details are given of the species of flora within. Fauna include the rabbit and fox, badgers have not been seen for a number of years and otters are likely in the river area. Small mammals include wood mice, hedgehog and

pygmy shrew. Some species of bat have also been recorded. A number of bird species including snipe and butterflies have also been noted.

The Evaluation found that the site contains varied habitats typical of the Fergus River and adjacent limestone areas and that the floodplain has a rich flora and a number of more uncommon plants were noted. In general the most interesting areas from an ecological viewpoint are the floodplain and the woodland rise in the SW corner. No features of special interest having regard to vertebrate fauna arise. They provide that the bat species found are well distributed through most of the country.

Part 4 of the Report provides the AA having regard to the EU Habitats Directive and in particular Article 6(3). The project description notes that a housing development is planned on the south-eastern half of the site utilising most of the higher ground where bedrock is exposed. This will require filling to bring floor levels up to 6.5-7m OD. Access will be from the Drumcliffe Road (Drehidnagower Road) at the SW corner, avoiding the compact woodland clump there.

The proposal allows for a wildlife corridor along the eastern boundary of the site. Before construction there is also an associated project for a flood bank (Aughanteeroe Flood Scheme Embankment) to protect the existing houses on the eastern side. They provide that a wildlife corridor has been left at the back of the gardens and along the eastern side of the estate and that badgers are no longer present. Having regard to the Site Layout Plan submitted it is noted that this wildlife corridor along the eastern site boundary is very narrow and the open space area indicated as a wildlife corridor is cut off from the undeveloped northern part of the site. It is considered that it is unlikely to be much used by wildlife.

The lower part of the site is to be partly modified for flood storage by lowering ground south of the edge of the cSAC area. This will reduce the area of tree and bush habitat on the site for a time as well as the animals that depend on it. The material excavated will be used elsewhere on the site. It is provided that the resulting hollows will become colonised naturally by wet grassland/marsh vegetation and later by willows, which will probably add to the overall area of this habitat on site. It is concluded that the SAC area will remain intact and the qualifying species will not be impacted by the proposed development.

Regard is had further to the Natura 2000 sites i.e the habitats, species and qualifying interests of the Lower River Shannon SAC. Most of the estuarine part of the site has been designated an SPA under the EU Birds Directive, primarily to protect a large number of migratory birds present in winter. These have been noted above. Objectives are also given for the lesser horseshoe bat but this appears to be more relevant to other Natura 2000 Sites in the area. Details are provided of three habitats for these species on other Natura 2000 sites within 10km of the subject site.

Other Natura 2000 sites in the area are noted to be the River Shannon and River Fergus SPA (Site Code 4077) which begins at Clarecastle, and

Ballyallia Lough which is both an SAC (0014) and SPA (4041). Toonagh Estate cSAC (Site Code 2247), Pouladatig Cave (Site Code 0037) and Dromore Woods & Loughs cSAC (Site Code 0032) and within 10km. These are mentioned because they are listed for populations of the lesser horseshoe bat, a mobile species with potential to occur over a greater area.

It is noted that there will be intervention in the area between the SAC and the building site in the form of excavation for flood storage (Fig.8 of the Flood Risk Assessment submitted at F.I stage refers). The work is to be done in summer when river levels are low to accumulate in this area without reaching the river. Being hollows, run-off during construction will tend to accumulate in the area rather than enter the River. No vehicles will enter the SAC area during excavation work. It is noted that the hollows will take out some of the existing vegetation and will lead to a direct loss of bat feeding habitat. It is provided that the bats recorded were all pipistrelles though it is possible that lesser horseshoe bats visit at times. However they predict this effect will be temporary and minor and that there will be a greater amount of scrub there in the future. They intend to limit light spill to lessen the intrusion of the development on bats. Also increased cover will be better for otters in this section of the river.

The Report provides that sediment loss is unlikely during construction stage, however preventative measures (settlement trenches etc) are available to avoid impact on the river or drains leading to it. There will also be a retaining wall for site infilling. It is provided that a Method Statement for this aspect of the work will be submitted by the contractor before commencement.

They provide that the construction of a flood prevention bank on adjacent land (Aughanteeroe) has potential to have a more significant effect in that it is much closer to the designated area. The current proposal will not add to any impact that it may have. The only impacts will be the reduction of open habitats in the urban area and the temporary loss of some feeding grounds for common terrestrial birds. They consider that an increase in scrub on the lower lands is expected in the future and will be of benefit to wildlife.

It is provided that the wider implications of increased population with regard to waste treatment do not give rise for concern. While wastewater treatment is at or close to limits a recent inspection of data for the Fergus estuary (EPA 2012) concludes that phosphate and BOD levels remain within standards. Any enrichment will be assimilated naturally by the estuarine ecosystem and may likely result in greater amount of invertebrate food for birdlife in the SPA. A Screening Matrix is included. This includes that the minimum distance of the proposed development (i.e as shown on the revised Site Layout Plan the area where it is proposed to locate the housing) from the cSAC is 109m and the maximum 168m. As shown on Fig.8 of the Flood Risk Assessment submitted the area where it is proposed to reduce levels for the compensation storage area is adjacent to the cSAC.

The First Party provides that having regard to the AA carried out that the proposed development will not have any significant adverse impacts and that

in this regard there are no cumulative impacts in combination with other projects.

9.11.2 Regard to Third Party concerns:

The Third Party An Taisce considers that the AA submitted with the application is inadequate in adequately assessing all aspects of the proposed development and lacks adequate mitigation measures for possible impacts on the Lower River Shannon SAC. Also, that they would not be able to rule out significant impacts on the Lower Shannon SAC and on protected species (including bats), their habitats and that this proposal would be contrary to Policy EN1 (*Proposed Developments and protection of areas of nature conservation*) of the Ennis & Environs DP. It is of note that An Taisce are concerned that the study relative to bat roosts on site is flawed and that there may be a possibility of roosts on the 'small cliff of embedded limestone' along the eastern boundary. They submit that further analysis should have been carried out and have regard to the limestone geology of the area. It is noted that limestone features found in a karst landscape provide accommodation for all forms of wildlife, particularly protected species such as the Lesser Horseshoe bat. They are concerned that the proposed development is contrary to the objectives concerning promotion and protection of biodiversity. Policies CDP 17.3 (Natura Sites) and 17.9 (Biodiversity) of the Clare CDP 2011-2017 refer. It is noted that all bat species are protected under Annex IV of the Habitats Directive. Also if bats species were present on site which were affected by the proposed development a derogation license must be applied for from the NPWS. They recommend that a full assessment be made and a bat survey be carried out.

The First Party response from Mr Goodwillie (Ecologist) notes the Third Party concerns regarding bats. However this provides that none of the terrain is suitable for roosting or hibernation and provides an explanation for this. While there is no way of proving a negative it is considered that the exposed limestone is highly unsuitable for use by bats. Also, that there is no suggestion of large cavities or caves so the possibility of hibernating lesser horseshoe bats can be ruled out.

Having regard to these issues if the Board decide to permit it is considered necessary that it be established, pre consent and prior to any development taking place, whether any derogation or similar licences might be required, in accordance with the recommendations regarding Article 23 of the Habitats Regulations, 1997 in NPWS Circular 01/07.

An Taisce also noted an area of limestone pavement forming a gently undulating flat tableland at around 8.5m high. They note that while the First Party describes this area as 'Craggy limestone' they are concerned about any works to Limestone Pavement, which is an Annex 1 priority protected habitat. The area in which priority habitat is situated is the area that has been proposed for the main development of houses. Therefore they consider that the proposed development would be contrary to Policy ENI(d) i.e: *There will be no unacceptable effects on features of geological or geomorphological importance*. They are concerned that no adequate analysis was conducted in order to determine the soil, subsoil and bedrock profile and if the development

area is made of broken limestone block overlying bedrock, they have regard to the compensatory storage area and consider there may be detrimental environmental impacts on habitats, species and water quality. Also the accompanying Geological Report provided in Appendix 1 of their Appeal is concerned that the intended actions proposed in the conditions of the permission granted by the Council should be considered to be potentially harmful to the existing environment, groundwater, habitats and wildlife of the site and therefore should not be carried out.

9.11.3 Conclusion regarding AA

The issue to be ascertained at this stage is whether the proposed development would adversely affect the integrity of the European site in view of its qualifying objectives. Having regard to the proximity of the works in particular for the compensatory storage area, to the Lower River Shannon SAC and to the works proposed to allow for the changes in levels on the site to ensure that the development area is raised relative to the flooding issue and to the discharge of surface water into the River Fergus (route via the SAC) regard is had to the precautionary principal, and to the issues raised by An Taisce. I am not convinced in this case that the documentation submitted is adequate to ascertain that the proposed development either at construction or operational stages would not affect the qualifying objectives and the integrity of the SAC. Mitigation measures and/or Alternative Solutions have not been presented. There has also been inadequate information submitted to ascertain that there are no in combination effects in relation to the proposed works on other Natura 2000 sites within the area.

I would consider that as noted in the assessment of the documentation submitted there are deficiencies in the NIS having regard to the recommendations in 'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities' (DOEHLG 2009) which it is considered precludes the competent authority i.e. the Board from accepting the NIS.

Therefore I would conclude on the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site, Lower River Shannon SAC in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

10.0 CONCLUSION AND RECOMMENDATION

Having regard to the above it is considered that the principle of the development of this site complies with the Land Use Zoning for Phase 1 lands as given in the Ennis and Environs Development Plan 2008-2014 (as varied). Issues concerning the particular constraints on this site have been noted. It is considered that having regard to the design and layout, the proposal would result in a relatively bland form of development lacking in variety, residential mix and pedestrian linkages. However if the Board decide to permit it is recommended that they incorporate a number of modifications in conditions referred to in the relevant sections of the assessment above.

However I am not satisfied on the basis of the information submitted that the significant flooding issues relative to the development of this site and the impact on the wider area at risk from flooding has been adequately addressed in this application. I would consider that the proposed development has not been adequately addressed in relation to the Justification Tests, having regard to 'The Planning System and Flood Risk Management Guidelines 2009' and in relation to the issues raised in the more recent Strategic Flood Risk Assessment (November 2015) in Variation no.3 and relevant to Section 13.7 and Policy W11 of the Ennis and Environs DP and would therefore consider that this proposal is premature.

As noted above it has been concluded on the basis of the information submitted that it cannot at this stage be ascertained that the proposed development would not either individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s). In such circumstances the Board is precluded from granting permission.

In view of the above, I recommend that the current application be refused for the reasons and consideration given below.

REASONS AND CONSIDERATIONS

1. On the basis of the information provided with the application and appeal and having regard to the Natura Impact Statement submitted the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site *Lower River Shannon SAC 002165*, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. The site is located within and proximate to the flood plain of the Fergus River and is in an area at risk of flooding. It is considered that the applicant has not provided sufficient information to demonstrate compliance with the Justification Tests in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities, November, 2009', or relative to the Strategic Flood Risk Assessment provided in Variation No.3 and to Policy W11 (Flood Risk Management) of the Ennis and Environs Development Plan 2008-2014 (as varied). The proposed development would, therefore, constitute an unacceptable risk of flooding, conflict with the said Ministerial Guidelines and be contrary to the proper planning and development of the area.
3. Having regard to the design and layout, it is considered that this proposal would result in a monotonous form of development, lacking in variety of house type and social mix which would be contrary to Policies H18 (House Type Mixture), and would be substandard in linkages and distribution of open space. The proposed development would, therefore, seriously injure the amenities of future and adjacent occupiers and be contrary to the proper planning and sustainable development of the area.

Angela Brereton,
Planning Inspector,
11th of February 2016