



An
Bord
Pleanála

Inspector's Report

Development	Construction of 4 no houses and new entrance at Westfield House, North Circular Road, Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	15/176
Applicant(s)	The Estate of Nancy O'Brien
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Appellant(s)	(1) Robert Richardson (2) Residents of Westfield Park (3) Tom O'Mahony
Observer(s)	None
Date of Site Inspection	10 th June 2016
Inspector	Mary Crowley

1.0 SITE LOCATION AND DESCRIPTION

1.1 The appeal site with a stated area of 0.185 ha is located to the west of Limerick city centre and north of the River Shannon and Westfield Pond on the southern side of the North Circular Road. The appeal site is located to the rear of Westfield House and is accessed through the adjoining estate, Westfield Park. Westfield house is not listed as a Protected Structure. The surrounding area is generally residential in nature, is well established and is characterised by predominantly low-density development.

1.4 A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photographs of the appeal site and environs available to view throughout the appeal file.

2.0 PROPOSED DEVELOPMENT

2.1 Permission is sought for the construction of 4 no. houses (486.08 sq.m) (2 blocks, semi-detached) with new entrance at Westfields, connection to public sewer and all ancillary site works at site at rear of Westfield House, North Circular Road. The proposed source water supply will be from the public mains. The proposed wastewater management treatment will be through the public sewer.

2.3 The application was accompanied by the following:

- Letter from the Executor of the Estate of Nancy O'Brien consenting to the application by James Dundon to apply for planning permission.
- Foul Sewer Calculations, Stormwater Storage Calculations, Extreme Rainfall Return Periods from Met Eireann for Limerick City
- Certificate under Section 97 Planning & Development Act certifying that the provisions of Section 96 of the Planning & Development Acts 2000 – 2014 do not apply to this site.

2.4 The following **further information** was submitted on 8th September 2015

- Revised layout following discussions with Travel and Transportation Section of Limerick City and County Council.
- Following discussion with the Heritage Officer it was agreed that in relation to the AA issues, the setback afforded by the tree line and the fact that the proposed development will augment it by planting serves to reduce effects on the SAC site which addresses many of the AA issues. The development of the site, though partially in an SAC site would not have any effect on the integrity of the Natura

site as it is already heavily modified, the lower part of the site only lying with the SAC site.

- As regards may bats on the site, submitted that on inspection the block wall to be removed has no services affording roosting habitat for bats. Also that the garden shed may offer temporary foraging or resting roost but that too variable to allow for use as hibernacula. The tree and woodland area to remain. This will not be disturbed and will be fenced off during construction phase.
- A planting scheme with native species e.g. whitethorn, sallies will be furnished to thicken the existing screen and promote local variety in tree species.
- Extended contiguous elevation submitted showing the existing semi-detached houses in relation to the proposed semi-detached houses

2.5 In a further submission on 12th October 2015 the applicant submits that the flower planter appears to be an unauthorised structure hence the reason to have the proposed entrance 2m south of this structure.

2.6 A request for an extension of time on 10th November 2015 was submitted.

2.7 Revised public notices were submitted on 5th February 2016 setting out that significant further information had been furnished to the Planning Authority.

2.8 The following **further information** response was submitted on 10th February 2016

- As regards addressing the site directly from the existing hammer head i.e. widening the access 2m to the north it was found not feasible because of the existing flower planter bed in this vicinity. Submitted that flower bed appears to be an unauthorised structure and that there is an issue of ownership of this flower bed. It was therefore agreed with the Roads Department to move it 2m to the south.
- Revised site layout map with a red line showing the area to be acquired from Limerick City and County Council
- Letter from the Estate of Nancy O'Brien giving consent for a footpath to be put over the existing hammer head
- 5 m access to be provided (south of proposed entrance) in existing screen wall for access to proposed open space in order to compensate for the open space that has been lost at the entrance

3.0 OBJECTIONS / OBSERVATIONS / PUBLIC REPRESENTATION TO THE PLANNING AUTHORITY

3.1 There are a number of objections recorded on the planning file from Gary & Eileen Kinnane, Residents of Westsfields, Annette Powell, Patrick O'Brien, Cian O'Tiarnaigh, Gerard & Josephine Prendergast, C. Crowley, Tom O'Mahony, Residents of Westfield Park, P. Cunningham, Terence Foley, J. Moore, Anne Duggan and Robert Richardson

3.2 The issues raised are similar to those raised in the appeal to the Board and relate to (as summarised)

- Overall design of the proposed units, unacceptable high density / overdevelopment and visual impact. Development is over bearing, out of scale or out of character in terms of its appearance compared with existing development in the vicinity
- Adverse effect on the residential amenity of neighbours by reason of noise, disturbance, overlooking, loss of privacy and overshadowing
- The existing Westfield House will be compromised by the development and will not comply with minimum requirements for rear gardens as a result of this proposed development
- Proposed entrance through Westfield Park Cul de Sac will have an adverse impact on the character of the area
- Existing bird sanctuary and conservation area and established fauna and wildlife habitat will be affected by the development. Loss of habitat in SAC requires AA. Bat survey by qualified ecologist required and derogation license required for roosting of bats. Existing wall and mature tree survey required.
- Concern regarding potential changes to hammer head at the entrance of Westfield Park. The development would adversely affect safety or the convenience of road users of the existing Westfield Park residence. No turning circle in Westfield Park for emergency vehicles if this development goes ahead
- Site is part of a flood plain. The lands of Westfield Park has been flooded recently because the existing bank is not flood proof
- No elevations available with the plans, no cross sections provided, insufficient information on the gardens for height levels and no continuous elevations. Public notice does not state the entrance is at Westfield Park

4.0 TECHNICAL REPORTS

- 4.1 The **Chief Fire Officer** has no objection to the proposed development subject to the provision that a hydrant should be provided such that no house is more than 46 metres from a hydrant. The **Fire Authority** has no objection to the proposed development. The **HSE** in both their reports states that they have no comments on the public health aspects of this application. The **Water Services Section** state that the draft CFRAM maps have 1:1000 coastal flooding on the River Shannon at circa 5.19OD. Noted that the finished floor levels of the proposed dwellings are show on drawings submitted at 5.8m which is above the flood level.
- 4.2 The Council **Heritage Officer** recommended that some aspects of the further information received would be included as planning conditions as follows:
- No removal of soil take place off site and that any soil and sub soil be retained and used on site such as in landscaping
 - That management plan be agreed and implemented with the Council for the control of Japanese knotwood prior to development on site
 - The planning scheme referred to in the submission shall be implemented
- 4.3 The **Travel & Transportation Department** in their report of 6th May 2015 (Neal Boyle) requested further information to clearly illustrate how the proposed development can be suitably and safely accessed. The **Travel & Transportation Department** in their report of 29th February 2016 (Carmel Lynch) sought clarification on whether the application is made by James Dundon or Jim Dundon together with clarification on the next of kin and whether James Dundon is entitled to this property. AA screening requested in order to determine the impact of the development on the receiving waters in Westfields (site partially located on the Lower River Shannon SAC) and a Bat Survey due to the habitat nature in Westfields are critical items for the determination of this application. Also noted that the applicant has submitted Met Eireann data, storm water data and foul sewer data with no back up report and the implications for the receiving waters. Also noted that this area is prone to flooding.
- 4.4 The **Mid-West National Road Design Officer** (3rd March 2016) has no observations to make in relation to the above application.
- 4.5 **Irish Water** has no objection to the scheme subject to conditions set out in the report.
- 4.6 The **Department of Arts, Heritage and the Gaeltacht** in their first report states that the site is partially in the Lower River Shannon cSAC (Special Area of Conservation) (site code: 2165) and that Limerick City and County Council must therefore ensure the following:
- a) An appropriate assessment screening of the proposed works is carried out.

- b) The southern end of the site (outside the garden wall) contains woodland habitat which is in the SAC and is part of the wetland complex as well as a buffer for the wetlands. This area must be retained intact.

Also requested that a bat survey is carried out by a suitable qualified ecologist prior to a decision being made on planning.

4.7 The **Department of Arts, Heritage and the Gaeltacht** in their next two reports state that the site is partially in the Lower River Shannon cSAC (Special Area of Conservation), site code: 2165 and adjacent to a wetland and that Limerick City and County Council must therefore ensure they are satisfied that the proposal will have no impact on water quality in the cSAC.

4.8 The **Local Authority Planner** in their first report requested the following **further information** as summarised:

- Requested to demonstrate how the proposed development can be suitably and safely accessed by way of a revised site layout.
- Appropriate Assessment Screening required.
- Bat survey required
- Revised design proposals requested.
- Sufficient number of plans and elevational drawings to be submitted.

4.9 The **Local Authority Planner** in their second report advised that significant further information had been received and that revised public notices were required together with the following **clarification of further information**:

- Requested to address accessing the site directly from existing hammer head i.e. widening the access 2m to the north. Letter of consent and associated title deed drawings required.
- Revised public notices setting out significant further information has been furnished to the planning authority

4.10 The **Local Authority Planner** in their third report noted that items 1 and 2 of the further information request of 5th September 2015 had not yet been responded to and that items 3 and 4 needed to be responded to if the applicant proposed to widen the access 2 metres to the south into the public green space and form a road.

4.11 The local authority planner in their final report and having considered the significant further information received recommended that permission be **granted** subject to conditions. The notification of decision to grant planning permission issued by Limerick City and County Council reflects this recommendation.

5.0 PLANNING AUTHORITY DECISION

5.1 Limerick City and County Council issued notification of decision to **grant** planning

permission subject to 34 generally standard conditions.

6.0 PLANNING HISTORY

6.1 There is no evidence of any previous planning applications on this site or any recent appeals relevant to this case in the immediate area.

7.0 POLICY CONTEXT

7.1 The operative plan for the area is the **Limerick City Development Plan 2010 – 2016**. The majority of the site is zoned **ZO.2 (A) Residential** where the objective is to *provide for residential development and associated uses*. A smaller section of the site is zoned **6A Public open Space** where the objective is *to retain all land dedicated for public open space*. Policies relevant to this appeal are set out as follows:

Policy H.4 - *It is the policy of Limerick City Council to have regard to the policies and objectives of the following Strategies and Plans:*

- *Sustainable Residential Development in Urban Areas (DEHLG 2008)*
- *Urban Design Manual – A Best Practice Guide (DEHLG 2008)*
- *Quality Housing for Sustainable Communities (DEHLG 2007)*

Policy H.5 - *It is the policy of Limerick City Council to promote increased density where appropriate to do so, having regard to the existing or proposed public transport provision and proximity to the City Centre.*

Policy H.6 - *It is the policy of Limerick City Council to ensure a balance between the reasonable protection of existing residential amenities, the established character of the area, and the need to provide for sustainable residential development.*

8.0 GROUNDS OF APPEAL

8.1 There are three third party appeals from (1) Robert Richardson, (2) Residents of Westfield Park and (3) Tom O'Mahony. The issues raised may be summarised under the following general headings:

8.2 **Traffic Impact & Car Parking** – These houses will generate traffic which the area will not be able to sustain. There is inadequate parking for visitors and residents on the proposed development. Further bin lorries will not be able to access the area due to this new development. There will be no turning circle in Westfield Park for emergency vehicles if this development goes ahead

- 8.3 **Footpath** - Objection to the use of public infrastructure to facilitate the construction of a pathway into the development
- 8.3 **Noise Nuisance** – The noise level generated will be a nuisance due to the new residents and associated visitors.
- 8.4 **Drainage** - These four new houses will put pressure on existing drains and stated that there have been issues in the past. Further there will be overdue pressure on the existing sewer system.
- 8.5 **Privacy & Amenity** – The established right to privacy and amenity will be removed from adjoining properties.
- 8.6 **Legal Interest** - The proposed entrance to the development will require an existing green area be turned into a roadway to facilitate the entrance and exit to and from the site. Submitted that this area is not the property of the promoter of the proposed developer.
- 8.7 **Development Layout** – The front gardens of the proposed houses are below the minimum requirement.
- 8.8 **Flood Plain** – This site is part of a flood plain and in recent floods in 2013 / 2014 water level rising on the site was witnessed
- 8.9 **Conservation Area** – The existing bird sanctuary and conservation area and established fauna and wildlife habitat will be affected by this development particularly due to the reconstruction required to make entrance and exit to / from the proposed development. Objection to the Local Authority Handing over any public land especially land within the Special Area of Conservation to facilitate this development and which is direct contravention of Limerick City Biodiversity Plan.
- 8.10 **Landfill Impact** - The contour of the land being handed over is such that it is 3 to 4 metres in places below the garden level of the property. A considerable amount of landfill will be required to bring the level up to garden level. This work will have a significant disruptive effect on the habitat and wildlife in this area. A retaining structure will be required and with swampy lands in close proximity foundation will prove very difficult thus adding further to the disruption of the wildlife.
- 8.11 **Westfield House** – The rear garden will be compromised by the development and will not comply with minimum requirements for rear gardens as a result of this proposed development

8.12 **Withdrawal of Application** - Application should be deemed to be withdrawn under Article 33(3) of the Planning and Development Regulations (as amended) as it failed to supply further information deadline.

8.13 Tom O'Mahony refers to the grounds of appeal included in their submission to Limerick City and County Council and also queried if there is any loss of habitat in Special Area of Conservation or if there was a Bat Survey submitted by a qualified ecologist.

9.0 **RESPONSE OF THE PLANNING AUTHORITY**

9.1 The Planning Authority in their response to the Board state that they have no further comments to make on the appeal.

10.0 **OBSERVATIONS TO AN BORD PLEANÁLA**

10.1 There are no observations recorded on the appeal file.

11.0 **FIRST PARTY RESPONSE TO THE APPEAL**

11.1 The First Party response to the appeal has been prepared and submitted by Jim Dundon & Associates on behalf of the applicant and may be summarised as follows:

11.2 The area of land in question is 49 sq.m not 132 sq.m. This land is not part of the wetlands but part of the original open space for existing Westfield's Development hence no contravention of the City Biodiversity Plan. Letter of consent form landowner attached.

11.3 The area indicated is 3 to 4m below the garden level and is in fact the open space south of the car park. This area of land is not been filled. Condition No 16 sets out the requirements of the Heritage Officer.

11.4 The pathway linking the proposed development and the existing development was a requirement of the Roads Department.

11.5 The internal memorandum which relates to the first letter appeared 9 months after and 8 days before the notification of decision to grant permission. It is submitted that if the applicant had failed to supply further information critical to the application the application would not have received a grant of permission. Record of meetings and correspondence attached.

12.0 ASSESSMENT

12.1 Having regard to the information presented by the parties to the appeal and in the course of the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle / Policy Considerations
- Traffic Impact
- Flooding
- Appropriate Assessment Screening
- Ecology
- Other Issues
 - (a) Legal Interest
 - (b) Development Contribution

13.0 PRINCIPLE / POLICY CONSIDERATIONS

13.1 Under the provisions of the Limerick City Development Plan 2010 – 2016 the appeal site is subject to two different land use zoning objectives. The bulk of the site to the north is subject to zoning objective ZO.2 (A) Residential where the objective is to *provide for residential development and associated uses*. It is within these lands that that the proposed 4 no dwelling units together with access road and parking is proposed. Having regard to the zoning objective for this section of the site together with the Land Use Zoning Matrix as set out in the Development Plan where residential development is a permitted land use in principle I am satisfied that the principle of developing dwelling houses within this area of the is acceptable land use.

13.2 The remaining smaller portion of the appeal site to the south is subject to Zoning Objective 6A Public open Space where the objective is *to retain all land dedicated for public open space*. It is within these lands that a small are of open space ancillary to the main residential use is proposed together with a portion of the access road from the adjoining estate. Having regard to the Land Use Zoning Matrix Residential this land use *is specifically not permitted* in these areas. Further Objective ZO.6 Open Space & Recreation states that is an objective *to protect, retain and provide for open space both natural and semi natural and recreation uses throughout the City. With a **presumption against developing land zoned public open space areas for alternative purposes, including public open space within housing estates*** (emphasis added).

13.3 While the Development Plan is absolutely explicit in its Open Space & Recreation land use objective it is my view that there is an unusual overlap between the boundary of the site and the rigid line imposed by the Land Use Zoning Map in this case particularly in relation to the public open space. It is my view that to strictly impose this objective relative to the small area in question would fail to serve the

wider objective of promoting increased residential density in urban areas where appropriate to do so. Overall I agree with the Local Authority Planner that principle is acceptable in terms of compatibility with the character of development in the area, the proposed use and wider zoning objectives. Accordingly I am satisfied that the principle of the proposed open space and a section of the proposed access road within this designated public open space area is an acceptable lands use.

- 13.4 With regard to the concerns raised regarding density, design, layout and residential amenity I would add the following. This is a zoned site and therefore the densification of this site represents an efficient and sustainable use of serviced suburban land. With regards to the provision of private and public open space within the scheme I am satisfied that the proposed development makes adequate provision for private amenity space to serve both the proposed development and Westfield House. I would add that having regard to the layout and design of the proposed scheme, that the development in its architectural treatment, orientation and proximity to adjoining properties strikes a reasonable balance between the protection of the amenities and privacy of the adjoining dwellings in terms of overlooking and overshadowing. Further I am satisfied that the overall building form and layout responds to its site and context and will not detract from the visual amenities of the area. Accordingly there is no objection to the density, layout and design of the development proposed (as amended) at this location.

14.0 TRAFFIC IMPACT

- 14.1 Access to the scheme is proposed via a new entrance from Westfields Estate to the west comprising an access road and associated footpath (as amended) south of the existing flower planter bed. I note the concerns raised in the appeal regarding the impact from traffic generated together with the provision of adequate carparking.
- 14.2 The scheme appears to make provision for off street car parking for two cars in the front driveway of each house and 4 no additional car parking spaces adjoining the open space to the south one of which is designated "disabled car parking". Having regard to the Map 6 – Parking Zones of the Development Plan the appeal site is located within Parking Zone 3 where the minimum requirement is 2 car parking spaces per house together with 25% for visitor car parking. Table 16.1 General Parking Standards refers. Overall I am satisfied that there is adequate provision for car parking without impacting negatively on the amenities of surrounding properties or on traffic safety.
- 14.3 Given the location of the appeal site together with the scale for the scheme proposed I am satisfied that the vehicular movements generated by the proposed development would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in

the immediate area. Accordingly I am satisfied that the proposed development will not result in the creation of a traffic hazard.

- 14.4 It is inevitable that during the construction phase potential temporary nuisance may occur particularly in terms of noise and traffic. Further it is not unusual for a small housing scheme particularly in a suburban setting to be accessed from an existing residential road during the construction phase. Overall I am satisfied that the negative impact on traffic and amenity as a result of the construction phase of this scheme would be temporary in nature and that matters of particular concern can be dealt with by way of condition. Accordingly it is recommended that should the Board be minded to grant permission that a Construction Management Plan condition be attached requiring the details to be agreed prior to commencement of work on site.

15.0 FLOODING

- 15.1 As outlined by Limerick City and County Council Travel and Transportation Department together with the objections raised in the appeal the site is stated as being prone to flooding. It is noted that no Site Specific Flood Risk Assessment or any other relevant information accompanied the planning application or the appeal response. The applicant states in correspondence dated 7th September 2015 that they submitted a flood report with the application. No flood report has been made available with the appeal file and there does not appear to be any reference to this flood report elsewhere in the file.
- 15.2 Map 2 Flood Risk Areas of the Development Plan identifies a portion of the site within an area classified as Flood Zone A. I have reviewed the draft CFRAM flood extent maps (OPW website) show the estimated area inundated by a flood event of a given AEP, relevant to the appeal site and in line with the report of Limerick City and County Council Water Services Section it is evident from the draft CFRAM maps that the area immediately south of where the houses are proposed within the site have 1:1000 coastal flooding on the River Shannon at circa 5.17OD. Further the area where the access road way, ancillary car parking and open space are proposed, further south has a 1:200 chance of flooding in any given year at circa 4.71OD.
- 15.3 While the proposed houses appear to be out with the flood zone it is noted that the finished floor levels of the proposed dwellings are shown on drawings submitted at 5.8OD which is above the flood level. However it would also appear that while the dwellings are out with the identified flood zone the proposed access road way, visitor car parking and open space are all within the identified flood zone. The amenity open space is classed as a "water compatible development" and is therefore appropriate at this location. Local infrastructure such as a road and car parking is considered to be a "less vulnerable development" and may therefore be inappropriate at this location. However the finished floor level of the proposed

access road is shown on drawings submitted at between 5 OD and 5.25 OD with the car park shown at 4.8OD which is above the flood level.

- 15.4 Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established and that the type of development proposed is appropriate for this flood zone. I do not consider that the proposed development would exacerbate the risk of flooding in the area. Should the Board be minded to grant permission it is recommended a condition be attached requiring that adequate storm / surface water infrastructure is provided on site to ensure that the proposed scheme does not contribute or exacerbate the any existing deficiencies in relation to storm / surface water infrastructure in the area.

16.0 APPROPRIATE ASSESSMENT SCREENING

- 16.1 The southern portion of the appeal site (proposed access road, car parking and open space) is within the Lower Shannon SAC (002165). To the south west lies the River Shannon and River Fergus Estuaries SPA and is within 15km of the appeal site. The River Shannon and River Fergus Estuaries SPA (004077) overlaps with Lower River Shannon SAC (002165).
- 16.2 The Department of Arts, Heritage and the Gaeltacht throughout the appeal file have stated that the site is partially in the Lower River Shannon cSAC (Special Area of Conservation), site code: 2165 and adjacent to a wetland and that Limerick City and County Council must therefore ensure that an appropriate assessment screening of the proposed works is carried out. The Department further noted that AA should in particular cover any potential lowering of water quality in the Westfields wetlands and River Shannon as a result of the development such as from any drains including the surface / storm water discharges and that any loss of habitat in the SAC must be addressed. It was further stated that southern end of the site (outside the garden wall) which contains woodland habitat, is in the SAC and is part of the wetland complex as well as a buffer for the wetlands must be retained intact.
- 16.3 In addition Limerick City and County Council Travel & Transportation Department on several occasions have requested AA screening in order to determine the impact of the development on the receiving waters in Westfields (site partially located on the Lower River Shannon SAC). This was considered critical for the determination of this application. The Travel & Transportation Department noted that of this request remained outstanding despite correspondence received from the Department of Arts, Heritage and the Gaeltacht.
- 16.4 While the Local Authority Planner identified the Lower River Shannon SAC in their assessment the report is silent with regard to the River Shannon and River Fergus Estuaries SPA. Prior to the issuing of the further information request the report

concluded that there was no potential for significant effects having regard to distance from Natura site and that significant impact was not considered and therefore Appropriate Assessment was not required. However in contrast the Planning Authority subsequently in their request for further information advised that the site was partially in the Lower River Shannon SAC and required the submission of AA Screening for the proposed works in line with the requirements of the Department of Arts, Heritage and the Gaeltacht.

- 16.5 The applicant in their response to the further information request states that following discussion with the Heritage Officer it was agreed that in relation to the AA issues, the setback afforded by the tree line and the fact that the proposed development will augment it by planting serves to reduce effects on the SAC site which addresses many of the AA issues. In terms of habitats it is stated that the site itself is disturbed ground and from an ecological perspective has been heavily modified from its natural state and does not have any wetland component, which is a feature of the Westland's complex to the south. It was concluded that development of the site, though partially in an SAC site would not have any effect on the integrity of the Natura site as it is already heavily modified, the lower part of the site only lying within the SAC site.
- 16.6 To date the applicant has not submitted AA Screening.
- 16.7 As set out above the southern portion of the appeal site (proposed access road, car parking and open space) is within the Lower Shannon SAC. The qualifying interests for this Natura Site are as follows:
- Freshwater Pearl Mussel *Margaritifera margaritifera*
 - Sea Lamprey *Petromyzon marinus*
 - Brook Lamprey *Lampetra planeri*
 - River Lamprey *Lampetra fluviatilis*
 - Atlantic Salmon *Salmo salar* (only in fresh water)
 - Sandbanks which are slightly covered by sea water all the time
 - Estuaries
 - Mudflats and sandflats not covered by seawater at low tide
 - Coastal lagoons
 - Large shallow inlets and bays
 - Reefs
 - Perennial vegetation of stony banks
 - Vegetated sea cliffs of the Atlantic and Baltic coasts
 - *Salicornia* and other annuals colonizing mud and sand
 - Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
 - Bottlenose Dolphin *Tursiops truncatus*
 - Otter *Lutra lutra*
 - Mediterranean salt meadows (*Juncetalia maritimi*)

- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion*)

16.8 It is also noted that that this SAC overlaps with River Shannon and River Fergus Estuaries SPA (004077), Loop Head SPA (004119), Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161), Slievefelim to Silvermines Mountains SPA (004165) and Kerry Head SPA (004189). It is also adjacent to Clare Glen SAC (00930). The conservation objective, as set out by the NPWS is to restore the favorable conservation condition in the Lower River Shannon SAC.

16.9 Having regard to the information available it would appear that there is a direct impact on the designated SAC involving the loss of habitat. I agree with the Department of Arts, Heritage and the Gaeltacht and Limerick City and County Council Travel & Transportation Department that a site inspection report to be carried out by a suitably qualified ecologist involving screening at a minimum is required before this application can be determined. Ecological expertise is required to determine if this habitat contains qualifying interests. Further indirect effects such as water pollution or other natural processes cannot be ruled out in the absence of an AA screening report is required at minimum and if necessary an NIS. Having regard to the nature and scale of the development and its part location within a Natura 2000 site, I am not satisfied that the proposed development would not be likely to have a significant effect on this or any other designated Natura 2000 site and should therefore be subject to an Appropriate Assessment. Refusal is recommended.

16.10 as set out above to the south west of the appeal site lies the River Shannon and River Fergus Estuaries SPA. This Natura site is within 15km of the appeal site. The qualifying interests (breddign and wintering birds) for this Natura Site are as follows:

- Cormorant *Phalacrocorax carbo* breeding + wintering
- Whooper Swan *Cygnus cygnus* wintering
- Light-bellied Brent Goose *Branta bernicla hrota* wintering
- Shelduck *Tadorna tadorna* wintering
- Wigeon *Anas penelope* wintering
- Teal *Anas crecca* wintering
- Pintail *Anas acuta* wintering
- Shoveler *Anas clypeata* wintering
- Scaup *Aythya marila* wintering
- Ringed Plover *Charadrius hiaticula* wintering
- Golden Plover *Pluvialis apricaria* wintering

- Grey Plover *Pluvialis squatarola* wintering
- Lapwing *Vanellus vanellus* wintering
- Knot *Calidris canutus* wintering
- Dunlin *Calidris alpina* wintering
- Black-tailed Godwit *Limosa limosa* wintering
- Bar-tailed Godwit *Limosa lapponica* wintering
- Curlew *Numenius arquata* wintering
- Redshank *Tringa totanus* wintering
- Greenshank *Tringa nebularia* wintering
- Black-headed Gull *Chroicocephalus ridibundus* wintering
- Wetlands

16.11 As stated previously this SPA overlaps with Lower River Shannon SAC (002165). The conservation objective, as set out by the NPWS is to maintain the favorable conservation condition in the River Shannon and River Fergus Estuaries SPA.

16.12 Having regard to the information available it would appear that there may be a potential indirect impact on the designated SPA by reason of the source-pathway-receptor pathway as water pollution or other natural processes cannot be ruled out in the absence of an AA screening report. As set out previously I agree with the Department of Arts, Heritage and the Gaeltacht and Limerick City and County Council Travel & Transportation Department that a site inspection report to be carried out by a suitably qualified ecologist involving screening at a minimum is required before this application can be determined. Ecological expertise is required to determine at a minimum if there are likely significant impacts on the integrity of this European site based on the source-pathway-receptor pathway risk assessment principle. Having regard to the nature and scale of the development and proximity to the this Natura 2000 site, I am not satisfied that the proposed development would not be likely to have a significant effect on this or any other designated Natura 2000 site and should therefore be subject to Appropriate Assessment. Refusal is recommended.

17.0 ECOLOGY

17.1 The Department of Arts, Heritage and the Gaeltacht stated that a number of bat species roost and forage in the Westfield area and that Bat roosts may be present on the site. All bat species are protected by the Wildlife Acts of 1976 – 2010 and are listed on Annex IV of the Habitats Directive (Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora). The Department therefore recommended that a bat survey should be carried out by a suitable qualified ecologist prior to a decision being made on planning. Any such survey should include any walls and mature trees that would be removed or interfered with during the project. Further state that if bat species are found to be roosting on the

buildings or trees a derogation license must be applied for from the National Parks and Wildlife Service of this Department.

- 17.2 In addition Limerick City and County Council Travel & Transportation Department requested a Bat Survey due to the habitat nature in Westfields. Similar to the issues raised regarding AA screening this information was considered critical items for the determination of this application. The Travel & Transportation Department noted that this request also remained outstanding despite correspondence received from the Department of Arts, Heritage and the Gaeltacht.
- 17.3 The Planning Authority in their request for further information required the submission of a bat survey to be carried out by a suitable qualified ecologist in line with the requirements of the Department of Arts, Heritage and the Gaeltacht.
- 17.4 The applicant in their response to the further information request stated that on inspection (qualifications of who carried out the inspection not specified) the block wall to be removed has no services affording roosting habitat for bats. It was considered that there were too many variables to allow for use as hibernacula remove shed in winter time.
- 17.5 To date the applicant has not submitted a Bat Survey for the site. Based on the information provided with this appeal I am not satisfied that the proposed development will not adversely impact on the habitats of the area or its flora or fauna; bats in this case. Refusal is recommended.

18.0 OTHER ISSUES

- 18.1 **Legal Interest** - The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.
- 18.2 **Development Contributions** - Limerick City and County Council has adopted a Development Contribution scheme under **Section 48** of the Planning and Development Act 2000 (as amended) in September 2013. Section 1.5 sets out the categories of development which will be exempted from the requirement to pay a development contribution under the scheme. The proposed development does not fall under the exemptions listed in the scheme and it is recommended that should the Board be minded to grant permission that a suitably worded condition be attached

requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

16.0 CONCLUSION AND RECOMMENDATION

16.1 Having considered the contents of the application, the provisions of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the reasons and considerations set out below.

17.0 REASONS AND CONSIDERATIONS

1. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement 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 No Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.'
2. The Department of Arts, Heritage and the Gaeltacht states that a number of bat species roost and forage in the Westfield area and that Bat roosts may be present on the site. All bat species are protected by the Wildlife Acts of 1976 – 2010 and are listed on Annex IV of the Habitats Directive (Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora). A bat survey is required to the determination of this appeal. The Board cannot be satisfied on the basis of the information available in connection with the planning application and the appeal, that the proposed development would not have an adverse impact on any bat species roost and forage that may be present on the site. To permit the proposed development would therefore contrary to the proper planning and sustainable development of the area.

Mary Crowley,
Senior Planning Inspector
22nd August 2016

Report Ends MC