



An  
Bord  
Pleanála

## Inspector's Report PL03.248574

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<b>Development</b>	To construct 57no. detached houses, entrances, roads, footpath and services and connect to public services together with all associate site works.
<b>Location</b>	Ballylannidy, Ennis, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	P16-961
<b>Applicant(s)</b>	M&G Developments
<b>Type of Application</b>	Outline Permission
<b>Planning Authority Decision</b>	Refuse Outline Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Catherine Hennessy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> of August 2017
<b>Inspector</b>	Angela Brereton

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## **1.0 Site Location and Description**

- 1.1.1. The subject site (10.69ha) is located in the rural area approx 4km to the south west of Ennis and the N85. It is in the townland of Ballylaniddy, west of Woodstock Hotel. The proposed development is accessed via Shanaway Road or via the Inch Bridge. The site is accessed by a narrow local road L8314-07 with extremely poor vertical and horizontal alignment with high dense hedgerows on both sides. The site itself is undulating and elevated throughout.
- 1.1.2. The subject site located less than 200m north of Pouladatig Cave SAC site code: 00037. There are two archaeological monuments located south of the subject site. One is CL033-111 Cashel/Ringfort which is 90m distance from the southern boundary of the subject site. The other CL033-110 is an earthwork and is 30m distance from the southern south of the site.
- 1.1.3. There are a number of detached dwellings in the vicinity of the site to the north and rear the hotel. There is a derelict house to the south east of the site. The golf course is situated to the east on the opposite side of the road to the subject site. The area to the north of the site includes Woodstock housing areas and has a more suburban appearance than the subject site which appears as part of the rural area. There were cattle seen grazing the site on the day of the site visit. The site is surrounded by stone walls and hedgerows and there are a number of field gates into the site accessed via the narrow local road to the east.

## **2.0 Proposed Development**

- 2.1.1. Outline permission is sought to construct 57no. detached dwellinghouses, to construct entrances, roads, footpaths and services and connect to public services together with all associated site works.
- 2.1.2. This application is accompanied by an Appropriate Assessment and a Bat and Habitat Assessment.
- 2.1.3. A Site Layout Plan, Drainage and Landscaping Plans are also included.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 28<sup>th</sup> of April 2017, Clare County Council refused outline permission for the proposed development for 5no. reasons which are summarised as follows:

1. The site is located in the open countryside designated as an area under *Strong Urban pressure*. It is considered that the proposed development, if permitted, would be contrary to the settlement location policy and objectives as outlined in the Development Plan which seeks to direct multiple housing units onto zoned and serviced lands. It is considered that the proposed development would materially contravene Objective CDP 3.9 of the Clare County Development Plan.
2. The proposed development by reason of its design and layout would materially contravene Objective CDP 4.7 (Housing Mix) of the Clare CDP 2017-2023. The proposed design and layout and the deficiencies in the quality of open space would represent a poor living environment for future residents and would not comply with the principles of DMURS. It would be injurious to the amenities of future occupants and to the proper planning and sustainable development of the area.
3. The proposed development which seeks to provide two estate entrances and 14no. individual house entrances in close proximity to each other on a narrow public road with poor vertical and horizontal alignment would endanger public safety by reason of a traffic hazard and obstruct road users. The proposal would be premature by reason of deficiencies in the road network.
4. Having regard to information submitted it cannot be excluded that the proposed development would not impact adversely on Pouladatig Cave SAC (site code 000037) and protected bat species. If permitted it would contravene Objective CDP 14.2 of the Development Plan which seeks to afford the highest level of protection to all designated European sites.
5. The Planning Authority are not satisfied on the basis of the information submitted that the proposed development can be adequately served or

connected to the public sewer. The proposed development would therefore be prejudicial to public health.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planner's Report

This had regard to the locational context of the site, policy and objectives and to the submissions made. It also included regard to the interdepartmental reports and noted concerns relative to the lack of details provided in the NIS, protection of bats and the poor alignment of the access road. Concerns from the Prescribed bodies including the DAU, An Taisce were also noted. Regard was also had to Public Representations. The Planner noted that the site is in the rural area and is not zoned residential development and as such Section 96 (Part V) does not apply.

They did not consider that the proposal would comply with planning policies and objectives including regard to the settlement strategy and hierarchy. It was considered that the proposal would be premature having regard to deficiencies in the road network. Also that it would lead to a substandard form of development which would not comply with DMURS. They considered that the proposal on unzoned lands would lead to a haphazard form of development and be out of character with the rural area. The Council also carried out a Screening for AA & Determination. It was noted that the PA as the competent Authority considers that the information provided in the NIS insufficient particularly in relation to the Pulatig Cave SAC and would contravene CDP 14.2. They recommended that permission be refused for reasons relating to zoning, haphazard development, lack of house type mix. traffic hazard and deficiency in the local road network and incomplete AA (NIS),

3.2.2. It is noted that an Extension of Time was given by the Council (Reg.Ref.16/961 refers) up until and including 13/05/2017.

### 3.3. **Other Technical Reports**

#### *External*

3.3.1. Irish Water - They recommended that F.I be sought and note the need to sign a connection agreement with Irish Water prior to the commencement of development.

They also note that proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints to the Irish Water Capital Investment Programme.

#### *Internal*

#### 3.3.2. Planning & Enterprise Development

The Environmental Assessment Officer has reviewed the Appropriate Assessment and the Bat and Habitat Assessment and notes concerns about each of these having regard to lack of detail and insufficient information submitted.

#### 3.3.3. Road Design

They provide that although the speed limit for this road is 80km/h the road is very narrow with very poor vertical and horizontal alignment. They are concerned about visibility from the proposed accesses and the horizontal and vertical alignment of the local road and note that a realignment of the road would be necessary.

### 3.4. **Prescribed Bodies**

#### 3.4.1. An Taisce

They have concerns about the design and layout and consider there is insufficient open space. They note concerns about the Bat Report carried out. They query relative to water management as to whether Ennis has capacity for another large estate. They consider there should be a Flood Risk Assessment. Also that in view of the Heritage in the area that an Archaeological Assessment should be carried out. They are concerned about the impact on public safety relative to the additional entrances onto the public road. They note there are no public transport links to the site. They consider that this site should not be used for development.

#### 3.4.2. Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

The AA report accompanying the application does not provide sufficient data to rule out the potential use of the development site by Lesser Horseshoe bats. They consider that F.I is required on this issue particularly to assess the potential for these bats and commuting routes to and from Pouladatig SAC development site. The potential impact of proposed lighting needs to be assessed. They are concerned that the NIS submitted is not adequate.

### 3.5. Third Party Observations

3.5.1. These have been received from local residents and their concerns include the following relevant to planning issues:

- The existing road network without major improvement is not capable of catering for the additional traffic generated.
- The proposal will have a number of exits onto the local road in close proximity to each other which will cause a traffic hazard and danger to pedestrians.
- The proposal will alter the hydrology in the local area.

3.5.2. Kelleher & Co. Solicitors and Catherine Hennessy made separate submissions in support of the application to meet the needs of people desiring this type of detached property in the area.

3.5.3. M&G Development response to the concerns raised includes the following:

- Road upgrades have recently occurred in the vicinity and the road adjacent to the subject site will be upgraded to include footpaths, lighting and landscaping.
- All sight distances are in compliance with national regulations. The proposed changes to the current narrow and dangerous road will also provide a safe means of access for pedestrians.

## 4.0 Planning History

4.1.1. The Planner's Report noted that there is no planning history on record relative to the subject site. They also noted other applications relative to the construction of two one off houses by two separate parties in proximity to the site.

## 5.0 Policy Context

### 5.1. 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. Chapter 7 concerns the home and it's 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.

## **5.2. 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.

## **5.3. 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.

#### 5.4. **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'.

## 5.5. 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’.

## 5.6. 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.

## 5.7. Clare County Development Plan 2017-2023

This sets out the overall strategy for the proper planning and sustainable development of the functional area of Clare County Council over a 6year period. It replaces the CCDP 2011-2017 and Ennis Development Plan 2008-2014 (as varied).

Section 1.4 notes that: *Ennis is the County Town and the administrative centre of County Clare. It is also designated as a Hub town in the National Spatial Strategy (NSS).*

Chapter 2 sets out the Core Strategy for the development plan for County Clare. Section 2.1 provides the criteria and includes: *The key objective is to secure a strategic and phased approach to zoning which will facilitate efficient and coordinated infrastructure provision.*

This also includes:

- *Set out the area of land already zoned, or proposed to be zoned, for residential use, or a mix of residential and other uses, and indicate the number of housing units to be provided in that area.*

- *Where appropriate, indicate if the lands are to be developed on a phased basis.*

Zone 1 refers to Limerick/Ennis/Shannon which is the core area of the Mid-West region. Table 2.1 provides the Settlement Hierarchy in County Clare which has Ennis as the county town. Table 2.4 provides Core Strategy Population Targets for Zone 1. This includes: *a) A density of 30 to the hectare for residentially zoned land and 15 to the hectare for low density residentially zoned land for Ennis and Shannon.*

Section 2.4.5 refers to the Housing Strategy and to Part V of the Planning and Development Act 2000 (as amended). As shown on the Core Strategy Map 2A the site is located in a Rural Area under Strong Urban Pressure.

Chapter 3 provides the Urban and Rural Settlement Strategy. Section 3.1 includes: *To promote sustainable growth at a scale appropriate to the existing settlements and their location within the county, thus managing their development in an attractive, incremental, plan-led manner.* Section 3.2.2 refers to the Settlement Hierarchy and Strategy. This includes CDP 3.1 which provides the general objectives for Ennis.

CDP3.9 provides it is an objective to: *a) To achieve the delivery of strategic, plan-led, co-ordinated and balanced development of the settlements throughout the county;*

*b) To carefully monitor the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Settlement Hierarchy and Strategy, including the population targets for the county.*

CDP 3.10 seeks: *a) To ensure that the sequential approach is applied to the assessment of proposals for development in towns and villages and to ensure that new developments are of a scale and character that is appropriate to the area in which they are located;*

*b) To restrict single and/or multiple large-scale developments that would lead to the rapid completion of any settlement within its development boundary, in excess of its capacity to absorb development in terms of physical infrastructure (water, wastewater, surface water, lighting, footpaths, access etc.) and social infrastructure (schools, community facilities etc.).*

Chapter 4 refers to Housing. Section 4.1 provides the Strategic Aims and refers to housing and the need to ensure that sufficient land is zoned to cater for various types of housing over the lifetime of the plans. Section 4.3.1 provides the Housing Strategy for the County. Section 4.3.3 refers to Social and Affordable Housing – objective CDP4.4 refers.

Section 4.3.6 seeks to incorporate Housing Design, Mix and Tenure – Objective CDP4.7 refers i.e: *a) To secure the development of a mix of house types and sizes throughout the county to meet the needs of the likely future population in accordance with the guidance set out in the Housing Strategy and the Guidelines on Sustainable Residential Development in Urban Areas;*

*(b) To require new housing developments to incorporate a variety of plot sizes to meet the current and future needs of residents;*

*(c) To require the submission of a Statement of Housing Mix with all applications for multi-unit residential development in order to facilitate the proper evaluation of the proposal relative to this objective.*

Chapter 8 supports the provision of Physical Infrastructure, Environment and Energy. Section 8.1 provides the Strategic Aims. Section 8.2.1 refers to Access and Movement Context. Section 8.2.4. refers to the need to implement DMURS which applies to streets and roads with a speed limit of 60kmh or less and sets out a series of requirements, recommendations and actions to ensure that streets and roads are safe, attractive and comfortable for all user's objective.

CDP8.8 seeks: *To implement the requirements and recommendations contained in DMURS in the assessment of development proposals, the preparation of design schemes and their implementation in the development of streets, roads and public realm improvement schemes in the county.*

CDP 8.11 seeks to prepare and implement a Sustainable Urban Mobility Plans for the Ennis and Environs area during the lifetime of the plan. It is noted in Section 8.2.8 that: *Ennis has been designated as an Active Travel Town and has been awarded funding to implement a number of schemes to support sustainable travel in the County Town.* Section 8.2.9 refers to the implementation of Cycling and Walking schemes CDP8.13 refers. Section 8.1.11 supports Integrated Transport Services.

Section 8.3 refers to Water Resources and notes the need to comply with the Water Framework Directive and all other EU and national legislation and regulations in relation to water quality, waste management and the protection of habitats and species. CDP8.22 provides for the Protection of Water Resources including surface and groundwater quality and quantity. Section 8.4 and CDP8.24 seeks to identify and facilitate the timely delivery of water services and the provision of integrated and sustainable water services. Section 8.4.2 refers particularly to Water Supply in the Ennis and Environs Area. CDP8.26 has regard to safeguarding the Pouladower Spring and Drumcliff Springs water resource. Section 8.4.3 refers to Wastewater Management and notes that Irish Water has responsibility for the provision and management of wastewater facilities serving sewered towns and villages, including the management of storm water - CDP8.27 refers. Section 8.4.4 refers to Storm Water Management. Section 8.5 to Waste Management – CDP8.28 refers. Section 8.5.4 refers to Construction and Demolition Waste CDP 8.31 refers. Section 8.6.3 refers to minimising Light Pollution – CDP8.35 refers.

Chapter 14 refers to Biodiversity, Natural Heritage and Green Infrastructure. Section 14.2 notes the Context relative to legislation, plans and guidelines. Section 14.3 refers to Natural Heritage and Biodiversity. CDP14.1 refers to the need for buffer spaces/zones. Section 14.3.2 refers to European Sites and has regard to SACs and SPAs. CDP14.2 seeks to afford the highest level of protection to these sites. Section 14.3.3. has regard to the need for AA to ensure that future developments do not have or perpetuate adverse effects on the conservation objectives and integrity of a European Site – CDP 14.3 refers. Section 14.3.4 seeks to promote the protection and conservation of NHAs and pNHAs – CDP14.4 refers. Section 14.3.7 refers to Non-Designated Sites (Habitats and Species) -CDP14.7 refers.

Chapter 15 refers to Architecture, Archaeological and Cultural Heritage. Section 15.4 refers to safeguarding Archaeological Heritage – objectives CDP15.8 – 15.11 refer.

Chapter 17 refers to Design and Built Environment. This has regard to the creation of a sense of place, inclusivity and permeability and connectivity. CDP 17.1 also refers to the need for Design Statements for new developments. Section 17.4.2 has regard to the creation of good urban design to create high quality places in accordance with current guidance documents including the: *'Design Manual for Urban Roads and Streets' (2012) provides a statutory framework and guidance for key factors on best*

*practice in the formation of public spaces. Design Guidelines are outlined in the government publications 'Sustainable Residential Development in Urban Areas' (2009) and its accompanying document 'Urban Design Manual- A best practice guide' (2009). Section 17.4.7 refers to the provision of Design Statements. Section 17.5.1 refers to Energy Efficiency and Sustainability CDP 17.3 refers. CDP17.4 refers to Design and Built Environment.*

Chapter 18 refers to Climate Change Adaption, Flood Risk and Low Carbon Strategy. Section 18.6 seeks to ensure developments have due regard to Flood Risk Management – CDP18.6 refers. Section 18.6.2 refers to Storm Water Management and this includes the implementation of SUDS CDP18.8 refers. Section 18.6.3 and objective CDP18.9 seeks to incorporate green infrastructure and flood management.

Chapter 19 refers to Land Use and Zonings and provides the zoning strategy for the county. The Strategic Aims include: *To ensure that sufficient land is zoned and serviced to provide for sustainable development and settlement growth throughout the county, in order to achieve the specified population targets of the plan.* Section 19.4 provides a description of the individual zonings proposed in each of the settlement plans/local area plans.

CDP19.3 provides that it is an objective of the Council: *To require development proposals to comply with the zoning of the subject site in the settlement plans and local area plans.* Section 19.5 refers to the Indicative Zoning Mix.

Chapter 20 refers to Implementation and Monitoring and this includes regard to Settlement Policy, Housing, Physical Infrastructure, Biodiversity, Natural Heritage and Green Infrastructure. Also to Archaeological and Cultural Heritage, Design and the Built Environment. Table 20.1 provides the Key Performance Indicators.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A Third Party Appeal in support of the proposed development has been submitted by local resident Catherine Hennessy. She considers that this type of development is badly needed in the Ennis area. It provides for larger detached properties which are energy efficient, encourages owner occupiers and well maintained estates. She

provides that in order to address this appeal she has been in contact with the promoters of this site who have supplied her with all the relevant information.

6.1.2. Her grounds of appeal against the Council's reasons for refusal include the following:

- The promoters had considered that the proposal would be assessed under the previous development plan when the site was zoned as Phase 1 residential.
- The submission of the application was delayed as the promoters were advised that the sewerage infrastructure at the Clonroad wastewater treatment plant was being upgraded and to wait until this was complete.
- It was further delayed having regard to a letter confirming aspects in relation to Part V from the Council. They refer to a copy of the Council's letter relevant to agreement of Part V.
- The promoters have constructed all developments including and surrounding Woodstock Golf and Country Club in the same manner and style and this area is one of the most sought after in Ennis. There is only a handful of this type of development currently on the market in Ennis.
- When this application was submitted on the 12<sup>th</sup> of December 2016 - CDP 4.7 (Housing Mix) of the CCDP 2017-2023 was not effective.
- No specific plans were submitted as this is for outline permission and any issues in relation to design and layout could have been dealt with through F.I./revised plans.
- The proposed layout has ample open space and generous private open space in each lot. The development was designed to be in keeping with the exclusive housing developments in the area.
- The local roadway is 50km/hr and not 80/km/hr as stated in the Council Engineer's Report – they attach a photo showing this.
- They provide that forward visibility and sight triangles were clearly shown to be achievable in the site layout drawings submitted.
- The widening of the existing 50km/hr local roadway from 3m up to 6m wide carriageway and also inclusion of cycle lanes and footpaths as well as green



areas to support visual compliance would allow for safe traffic movements to the development.

- Had F.I been requested they had intended to submit a revised drawing reducing the number of entrances.
- The promoters have already widened the Shanaway road from the junction with the N85 to Woodstock at their own expense during previous developments, whilst also providing sewer and water services to the area. Footpaths and public lighting have been installed along the entire length of Shanaway Road.
- The promoter as evidenced in the previous development in the area is more than capable and willing to bring the additional service and infrastructure to the site.
- The Bat Report and EIS wasn't assessed and considered properly nor the proposed mitigation measures taken into account.
- They have regard to Variation 1 of the Ennis and Environs DP 2008-2014 where in consultation with the local authority a buffer zone was created between the site and the local SAC. The Council were fully aware of this cave and bats when these lands were zoned for residential development.
- In relation to the public sewer the promoters of this development installed a pump station and dual 100mm rising mains from Woodstock Golf Course down as far as the entrance to the Ros Na Ri development at the far end of the Shanaway road. They provide details of this pump station and rising mains and note that it has the capacity of catering for multiple more developments. They note that Irish Water did not have any objections.
- The promoters were responsible in conjunction with Clare County Council for the development of all infrastructure along the Shanaway Road and the Woodstock neighbourhood and a list is provided of such.
- The application appears to have been decided on the matter of zoning which is in error. All the four other reasons for refusal appear to only have been listed to strengthen the refusal.

- This application should have been assessed under the original plan which was in place at the time the application was submitted, rather than the lands being de-zoned as in the current plan.
- There is a demand for this type of housing. The proposed development is ideally located in one of the most beautiful parts of Ennis, adjacent to existing infrastructure and close to the Ennis link road at Claureen, giving easy access to the motorway networks as well as the town of Ennis. They consider that outline permission should be granted.

## 6.2. Planning Authority Response

### 6.2.1. Clare County Council's response includes the following:

- They note comments regarding the Ennis & Environs DP 2008-2014. The Clare County Development Plan 2017-2023 was adopted on the 19<sup>th</sup> of December 2016 and came into effect on the 25<sup>th</sup> of January 2017. The due date for the application was the 14<sup>th</sup> of February 2017. Therefore, it was proper and lawful to determine the application having regard to the plan which was in effect on the due date.
- They have regard to DP objectives relevant to the Settlement Strategy for Ennis under which the town is divided into neighbourhoods and categorised based on the extent of zoned land and projections for growth. They note that Woodstock neighbourhood has a number of parcels of land available.
- The subject site is not zoned for development and to permit in this location would be haphazard and incongruous relevant to the settlement strategy for Ennis.
- They note their concerns relative to design and layout and lack of variation in plot size and housing mix being contrary to planning policy.
- They note the Council's Road Design's concerns relative to deficiencies in the road network and traffic safety. They provide that it is not appropriate to seek F.I re: traffic safety when the development is not acceptable in terms of zoning and the sequential approach to planned growth of settlements.

- They consider that the issues regarding the Bat Report have been comprehensively assessed in the Environmental Assessment Officer's Report. They also refer to the concerns in the DAU Report. They provide that these Reports were taken into account by the PA in their Assessment and determination of this application. They also noted their concerns regarding insufficient information in the AA.
- They note comments from Irish Water and request that the Board seeks observations in this regard.

### 6.3. Third Party Response

- This application should have been assessed under the Ennis and Environs DP 2008-2014 the land was zoned as Tier 1 Residential Development Land. The current CCDP 2017-2023 was adopted on the 25th of January 2017.
- They noted delays in the adoption of the new plan and provide that the Council provided no advice either privately or publicly that any applications submitted prior to the new plan being implemented should be in accordance with the proposed new plan.
- When this plan was being prepared the promoters lands were surprisingly omitted without any reference or correspondence from the Council with the land owners, and the promoters were forced into making an outline planning application.
- They note that applications on development land in Ennis were being refused due to deficiencies in waste water treatment at the Clonroad wastewater treatment plant and promoters were being advised to wait until the upgrade works were completed before submitting an application on the subject lands. They note that the works have recently been completed.
- Numerous applications along the Shanaway Road have been refused for on-site wwts due to the catchment area of the Drumcliff springs whereas the subject site has access to a pump chamber and a rising mains down along the Shanaway Road until it meets the public mains at the entrance to Ros Na Ri development.

- The promoters have provided all the required infrastructure in this area on the instruction and supervision of the Council and at their own expense.
- They note their concerns regarding Part V and consider that this could be dealt with at permission consequent stage.
- Based on what is currently zoned there will be no growth in the Woodstock neighbourhood for the duration of the current CDP which is contrary to its own objectives.
- They note that Housing policy CDP 4.7 (Housing Mix) was not in place at the time of the application. These issues could have been dealt with by F.I./revised plans. The development was designed to be in keeping with developments in the area and the DP in place at the time the application was submitted. Final design will be addressed at permission consequent stage.
- The road is designated as 50km/h and not 80/km/h as per the Engineer's Report. They provide a list of the proposed improvements to the existing road network and note this could have been dealt with at F.I stage.
- The Council's refusal was issued on the 28<sup>th</sup> of April 2017 in spite of the fact that the promoters had requested and were granted an extension of time up to and including the 13<sup>th</sup> of May 2017.
- The environmental matters including mitigation were all previously agreed in order to get this land zoned in the first place.
- This proposal gave due consideration to the Lesser Horseshoe Bat and was implementing the agreed mitigation measures.
- They have regard to availability of connections to public services and provide details of this. It is noted that the promoters have already installed the sewer infrastructure at their own expense and have a reasonable expectation to be allowed to continue orderly quality development surrounding the golf club and the Woodstock neighbourhood.
- The pump station that was installed has the capacity of catering for multiple more developments – point 5 of the refusal is factually incorrect.

- Public water and sewerage is not within the remit of the Council and Irish Water did not have any objections to this development.
- They conclude that this refusal is based on zoning matters and the other minor aspects should not have been included and could have easily been dealt with. This is poor planning assessment.

#### 6.4. Further Responses

6.4.1. Brian Foudy & Associates Consulting Engineers has made a response on behalf of the applicants M&G Developments and seeks to give his full support for this application. This includes the following:

- The applicants were under the assumption that the planning application was being dealt with under the Ennis and Environs Plan which was in place at the time of application. This was based on information received from elected members of the Council.
- They fully support all appeal points made by the third party appellant and have engaged with her to provide a separate more detailed response to the P.A submission.
- They have carried out considerable development in the Woodstock/Shanaway Road area and have provided all required infrastructural services at their own expense. They have a legitimate expectation to continue with orderly high quality development in the area in order to be able to get returns for their infrastructure investments otherwise there will be dire financial consequences.
- There is a housing need in the area with a number of applications refused due to sewerage. As their clients have constructed a pump chamber and a rising main in the area, this will not be an issue.
- Granting this development will protect the vulnerable landscape and regionally important aquifer along with the Drumcliff springs as one off housing and on-site wwts will be eliminated.

## 7.0 Assessment

### 7.1. Principle of Development and Planning Policy

- 7.1.1. The Planning and Development Act, 2000 (as amended) requires that development plans comprise objectives for the zoning of lands for particular purposes, in the interest of proper planning and sustainable development. The Clare County Development Plan 2017–2023 provides the strategic framework for the overall land-use objectives for County Clare and establishes a policy framework within which the more detailed settlement plans contained in Volume 3 of this plan and local area plans for the Gateway and Hub towns can be prepared. Section 1.0 of the Clare County Development Plan 2017-2023 provides: *As a result of the implementation of the Local Government Reform Act 2014, this development plan incorporates the areas formerly within the jurisdiction of Ennis Town Council and Kilrush Town Council, both of which previously had their own development plans.* This Act established four Municipal Districts in the County namely: Ennis, Shannon, Killaloe and West Clare Districts. Volume 3 orders settlements according to their relevant Municipal District. Volume 3(a) includes Ennis Municipal District Written Statement and Maps.
- 7.1.2. The Third Party's concerns relative to this site being outside the settlement boundaries for Ennis are noted in their grounds of appeal. They contend that this application was submitted under and should have been assessed under the Ennis and Environs DP 2008-2014 (as varied) when the land was then zoned as Tier 1 Residential Development Land. A copy of the Settlement Plan then showing the subject site within the settlement boundaries of Ennis is included in the Appendix to this Report. They provide details relative to reasons for delays in the submission and validation of the application. They strongly contend that the application should have been dealt with under the previous plan which was still in force at the time the application was submitted. The application is date stamped as having being lodged with Clare County Council prior to this date on the 12th of December 2016. As provided by the Council the CCDP 2017-2023 was adopted on the 19th of December 2016 and came into effect on the 25th of January 2017.

- 7.1.3. As shown on the current settlement plan for Ennis (which is now incorporated into Vol.3(a) of the CCDP 2017-2023), the site is located adjoining but outside the settlement boundaries of Ennis. It is currently in agricultural use and was being grazed by cattle on the day of the site visit. The location appears more rural, also having regard to the narrow undulating road network in the area. The northern part is more akin to adjoining the urban fringe which is partially at the edge of the built up area where suburban (low density housing sites) and rural environments interface. The Council's first reason for refusal is concerned that the site is located in the open countryside designated as an area under '*Strong Urban Pressure*' located outside of the settlement boundary for Ennis.
- 7.1.4. Chapter 4 of the current plan refers to Housing. Objective CDP4.2 a) seeks: *To facilitate the housing needs of the existing and future population of County Clare through the management of housing development throughout the county in accordance with the Settlement Strategy.* Chapter 19 refers to Land Use and Zonings. Objective CDP 19.1 seeks to ensure that Local area plans for the Hub town of Ennis and the Gateway of Shannon will be prepared during the lifetime of this development plan. Objective CDP19.2 seeks: *To ensure that sufficient lands are zoned at appropriate locations in the settlement plans and local area plans of the county, in accordance with the Core Strategy population targets, in order to meet the envisaged land-use requirements during the lifetime of this development plan.*
- 7.1.5. Section 37 of the Planning and Development Act 2000 (as amended) concerns 'Appeal to Board'. It is of note that Section 37(b) includes: *where an appeal is brought against a decision of a planning authority and is not withdrawn, the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given.* Therefore, this appeal is being dealt with de novo and must have regard to the current Clare County Development Plan, relevant plans and guidelines now in force.
- 7.1.6. Regard is had to the relevant issues including Core/Settlement Strategies, Material Contravention, Design and Layout, Access and Roads, Heritage and Biodiversity and relative to AA Screening and NIS in this assessment below.

## 7.2. Material Contravention

- 7.2.1. Regard is had to Planning and Development Act 2000 (as amended) and to the particular circumstances where a material contravention would apply. Section 34(6) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc, where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.
- 7.2.2. In this instance the proposed development is clearly not of strategic or national importance. There is no policy or guidelines or such pattern of development in the area advising that such a development should be permitted on this site. It is not considered that the policies are conflicting or not clearly stated. The Third Party contend that the proposed development is not in material contravention of planning policies and objectives and should have been considered under the Ennis and Environs DP 2008-2014 (as varied). The Council's response provides that it was proper and lawful that the application be assessed under the current plan which is in force i.e the Clare CDP 2017-2023 which has superseded the previous plan.
- 7.2.3. However, the site is not zoned land and the area is not allocated for residential development therefore having regard to the core strategy and settlement hierarchy there would be a presumption against such development located on unzoned lands, outside the urban settlement. While there is low density residential development to the north of the site, this is within the Ennis Settlement boundaries. Regard is had to Clare County Development Plan 2017- 2023 and to Volume 3(a) Ennis Municipal District Area Settlements. There are residential development sites available on zoned lands within the settlement boundaries. Section 2.11 of this plan refers to sites earmarked for development in the Woodstock Neighbourhood, which are included within the settlement boundaries.



- 7.2.4. Material contravention of Objective CDP3.9 has been cited in the Council's first reason for refusal. This has regard to the strategic plan led co-ordinated and balanced growth of Settlements and seeks to ensure compliance with the County Settlement Hierarchy and Strategy and is quoted in the Policy Section above. CDP 3.10 seeks to ensure the sequential approach to development within the settlement development boundary.
- 7.2.5. It must be noted, and as discussed above, that the proposed development is now subject to the policies and objectives of the current development plan in force which has superseded the previous County Development Plan 2011-2017 and the Ennis and Environs DP 2008-2014 as varied. These policies do not support such residential estate type multiple development on unzoned lands, outside of the settlement boundaries, therefore, the principle of this development is not supported by the Settlement Strategy of the current Development Plan. It is considered that the proposed development would be in material contravention of Objective CDP 3.9 (Monitoring and Implementation of Settlement Strategy) and CDP 3.10 (Planned Growth of Settlements).

### 7.3. **Regard to Design and Layout**

- 7.3.1. The subject application has been submitted for outline permission. Section 36(6) of the Planning and Development Act 2000 (as amended) provides: *In this section, "outline permission" means permission granted in principle under section 34 for the development of land subject to a subsequent detailed application for permission under that section. As per article 24 of the Planning and Development Regulations 2001 (as amended) an outline application in addition to the requirements of article 22(2) need only be accompanied: by such plans and particulars as are necessary to enable the planning authority to make a decision in relation to the siting, layout or other proposals for development in respect of which a decision is sought.*
- 7.3.2. In this case the plans submitted show the site boundaries relative to this elongated site which tapers to the north and is wider to the south as the stated area of 10.69ha. The site layout plan shows 57no. similar type detached houses on relatively similar plot sizes. Two separate access points are proposed to what is now a narrow undulating local road to the east of the site and 14no. individual access points i.e 16no. access points in total. A Landscape Plan has also been submitted showing

two separate areas of open space, neither of which is well distributed. The Plans provide that the green area is 1.57ha i.e 14.76% of the site area.

7.3.3. As this is an outline permission details showing the proposed house types have not been submitted. Regard is had to the Council's second reason for refusal which includes: *The Planning Authority considers that the proposed development, by reason of its design and layout, would materially contravene Objective CDP4.7(Housing Mix)*. As quoted the Objective is to secure a mix of house types and sizes and to require new housing developments to incorporate a variety of plot sizes to meet the current and future needs of residents and to require a Statement of Housing Mix with all applications for multi-unit residential development. The Third Party notes that Housing Objective CDP 4.7 (Housing Mix) was not in place at the time of the application. They consider that these issues could have been dealt with by way of F.I./revised plans. They provide that the layout was designed to be in keeping with developments in the area and the DP in place at the time the application was submitted. Also that this type of low density development is well sought after in the area. They provide that final design will be addressed at permission consequent stage.

7.3.4. It is noted that there are low density detached houses in suburban type estate form adjoining to the north of the site. However, these are within the settlement boundary of Ennis. It is noted that the Third Party provides that there is a demand for larger detached houses in this part of Ennis. It is realised this is an outline application and detailed design of house types, open space, access etc. would be submitted at permission consequent stage. However, it is considered that as an overview as is provided in an outline application, there is a lack of variety of plot size and house type and that the proposed design and layout including access roads and open space of the scheme as presented is substandard and would not comply with CDP 4.7 and would materially contravene this objective.

#### 7.4. **Roads and Access issues**

7.4.1. The accommodation road is currently very narrow (c.3m in width) and undulating with grass in the middle and high hedges on either side. Visibility is poor in most sections adjacent to the subject site. It has the appearance of a rural country road and is within the 50km/h speed limits. Two main accesses are proposed in relatively

close proximity with internal access being either side of a row of houses. In addition 14no. accesses to individual plots are proposed, which would be akin to ribbon development along a rural road. This would mean the layout would allow for a total of 16no. access points onto a substandard rural road. The Design Manual for Urban Roads and Streets (DMURS) applies to streets and roads with a speed limit of 60 km/h or less and sets out a series of requirements, recommendations and actions to ensure that streets and roads are safe, attractive and comfortable for all users. It is not considered that the proposed design and layout including the excessive number of access points would comply with the principles of DMURS or with Objective CDP 8.8 of the CCDP 2017-2023.

- 7.4.2. It is of note that the Council's Road Design Section has concerns about the access road and the forward visibility and sight triangles at the entrances proposed. The Council's third reason for refusal relative to roads issues is noted. The Third Party provides that the promoters for this development do not agree with this. They provide that the scheme will include the widening of the local roadway from 3m up to a 6m wide carriageway and will also include cycle lanes and footpaths as well as green areas to support visual compliance and that this would allow for safe traffic movements to the development. This would also continue the road widening that has occurred to facilitate the residential development to the north which is within the settlement boundaries of Ennis.
- 7.4.3. It is noted that the promoters provide that have already widened the Shanaway road from the junction with the N85 to Woodstock at their own expense. It is also of note that Section 2.11 of the Clare CDP 2017-2023 - Volume 3(a) Ennis Municipal District Area Settlements refers to the Woodstock area i.e. within the settlement boundaries of Ennis and includes: *A number of areas have been identified for residential development in the Woodstock area. Any future residential development in this neighbourhood that would significantly increase the number of vehicle movements in the area must be accompanied by an assessment of the capacity of the Shanaway Road/Lahinch Road junction to accommodate additional traffic.* No such assessment has accompanied this application. It is also noted that there are no public transport connections in the area.
- 7.4.4. It is therefore considered that the proposed application is premature pending an upgrade of the local road. However, such an upgrade would not be necessary or

appropriate relative to such residential development as the site is located in the rural area outside the settlement boundaries of Ennis.

## 7.5. Regard to Drainage

- 7.5.1. Drainage Layout Plans have been submitted with the outline application relative to Watermain, Storm and Foul Sewers and Foul and Storm Drainage Sections are included. It is provided that all wastewater is to be disposed of via a public sewer and storm water disposal is by way of interceptor's prior soakpit with prior treatment in the form of an oil separator. Run-off of sediments into the watercourses is not envisaged due to the lack of watercourses on site.
- 7.5.2. It is noted that Irish Water requested that F.I be submitted relative to drainage capacity and connections i.e: *In the interest of Public Health and Environmental Sustainability, Irish Water Infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.*
- 7.5.3. The Council's fifth reason for refusal concerns that the P.A is not satisfied on the basis of the information submitted that the site of the proposed development can be adequately served or connected to the public sewer and that the proposal would therefore be prejudicial to public health. The P.A response to the grounds of appeal requests the Board to seek observations from Irish Water in this regard. It is recommended that this is followed up should the Board decide to permit.
- 7.5.4. The Third Party response provides that the promoters of this development installed a pump station and dual 75mm rising mains from Woodstock Golf Course down as far as the entrance to the Ros Na Ri development at the far end of Shanaway Road. They note that the Council requested the promoters to install a second rising main at their own expense to facilitate future development of the subject lands. They note the cost of this and provide it now lies empty. They provide that as they have installed the sewer infrastructure at their own expense they have a reasonable expectation to be allowed continue with orderly developments surrounding the golf club and Woodstock neighbourhood. Also that it should be noted that the pump station that was installed has the capacity of catering for multiple more developments and not only this one. They provide that point five of the refusal is factually incorrect. They

also point out that public water and sewerage is not within the remit of the Council and that Irish Water did not have any objection to this development. However, it is noted as above and in their Report Irish Water requested F.I relative to the proposed development.

## **7.6. Regard to Heritage**

- 7.6.1. The subject site is located approx.50m from the Ring Fort CL033-111 and 30m from the Earthwork Monument CL033-110. Appendix C of the AA Report submitted has regard to the Archaeological features on site. This notes that both of these features are outside the development zone. It recommends a list of investigative works to include archaeological testing and monitoring to be carried out prior to the commencement of the works. An Taisce concerns about possible archaeological features in the area are also noted. Section 15.4 of the current development plan seeks to ensure the retention of archaeological heritage, Objective CDP15.8 refers. If the Board decide to permit it is recommended that in view of the proximity of these sites to the proposed development site and any potential for archaeological findings on the present greenfield site, that a condition regarding archaeological monitoring be included.

## **7.7. Ecological issues**

- 7.7.1. A Bat and Habitat Assessment has been submitted with the application and is included in Appendix B of the Appropriate Assessment Report. This notes that the site area was zoned for bat activity from the 24<sup>th</sup> to 25<sup>th</sup> of July 2016 during a period of settled weather which is optimum for bats. The survey entailed inspecting/assessing the on-site building and also the lands for the proposed development for bat use, identifying suitable bat habitat areas and using bat detectors, assessing bat activity within the site. Survey Results are given in Section 9.0 of the Report. The nature of habitats and habitat quality for bat fauna and the likely impacts of the proposed development are discussed. Mitigation or remedial measures are recommended for the principal species of conservation interest present on site and in relation to enhancement of habitats.

- 7.7.2. It provides that no bat roost was identified in the old single storey house on-site during the present survey. Several bats of four other species were detected foraging or commuting within the grounds to the very south of the field over the course of the survey. Details of more common bat species are given and it is noted that eight of the nine known Irish species of bat can be expected to occur in the vicinity of Ballylannidy. Historically, lesser horseshoe bats are known to occupy the nearby caves at Pounagolloor and Pouladatig (Site Code 000037) during the winter months; however, no bats of this species were encountered within the proposed development site during the present survey due to the season in which the survey was undertaken. It is provided it is normal for bats to leave the hibernation roost and move to old stone buildings or mature trees for the summer months.
- 7.7.3. It is noted that the habitats on site are variable, comprising of improved grassland, hedgerows and hazel/ash scrub and there are no large mature trees on site. The hedgerows to the south and proximate to the southern boundary of the site is where most activity occurred. It provides that this and the scrub and hedgerows boarding the exist cave site should be retained and extended where possible and this and other suggested enhancements and conservation measures form part of this Report. Therefore, boundary hedgerows should where possible be retained.
- 7.7.4. A description is given of the cave systems and associated streamways and habitats, relative to Pounagolloor Cave (approx. 200m from the site) and Pounadatig Cave (also known as Inch Cave and Pouladatig Cave). The adjoining Nooaff East Cave System (Site Code:000037) is an internationally important site for the lesser horseshoe bat species. This site was also a former Area of Scientific Interest (ASI) and a CORINE Site. Under the EU Habitats Directive, this cave system contains caves that are described as the habitat 'Caves not open to the public' and Pounadatig Cave is also considered to be of paramount importance for the conservation of Annex 11 species the lesser horseshoe bat. The impacts of the proposed development on this SAC were investigated and the results included in this report.
- 7.7.5. Section 10 of the Report provides Conservation and Enhancement Measures. This provides that a buffer zone should be established to protect boundary hedgerow/treeline habitats, which are utilised by bats and other wildlife as wildlife corridors and foraging and breeding habitat. This includes the south western and

southern boundaries to the site should be maintained and allowed to increase in size, width and diversity, whilst allowing for continued agricultural use of adjoining farmland. Also that in general a buffer of c.4m should be maintained as perimeter around the site to protect the hedgerows and treelines and their root systems.

7.7.6. Mitigations measures and recommendations include regard to the introduction of a bat box scheme, regard to issues relative to bat protection and concerning remedial works to trees. Also linear landscape features such as treelines and hedgerows being retained or enhanced and night scented and native plant species to be used throughout. It is provided that lighting should be avoided where possible as it has been shown to deter some bats from foraging. The proposed development site should be screened to eliminate light spill. Advice is given to seasonally curtail any blasting/rock breaking operations relative to the proposed development. Also that vibration and dust should be kept to a minimum in accordance with best practice. It is advised that bat monitoring should be carried out and that the cave systems should be monitored yearly during the optimum bat occupancy period to ascertain numbers of bats using the systems. This should be done in association with the NPWS. It is provided that no disturbance is envisaged to the cave systems due to the distance/buffer zone and mitigation measures to be implemented.

7.7.7. Regard is had to the impact of works on site during Construction Phase and this includes retention of buffer zones, mitigation measures relative to pollution hazards and that best construction practices should be implemented and operational hours should be kept to daylight hours only. Once the development is completed it is not envisaged there will be an impacts due to the mitigation measures put in place. Regard is had to habitat creation/restoration, replacement, enhancement and landscaping and habitat management. It is noted that the proposed development requires visual screening during operational phase. A monitoring programme should continue to address potential pollution hazards to the satisfaction of the NPWS and other statutory bodies. It is recommended that if the Board decide to permit that conditions be included relative to landscape augmentation/screening particularly along the southern and south western site boundaries, low lighting and bat monitoring.

## 7.8. Screening for Appropriate Assessment

- 7.8.1. An AA is the process through which an assessment of the effects of a plan or project on European sites is undertaken. European sites make up the Natura 2000 network which comprise Special Protection Areas under the Birds Directive, Special Areas of Conservation under the Habitats Directive and Ramsar sites designated under the Ramsar Convention (collectively referred to as European sites.) 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. 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.
- 7.8.2. An Appropriate Assessment was compiled for the subject site to fulfil the requirements of the Habitats Directive and was prepared in accordance with the DoEHLG Guidance on AA of Plans and Projects in Ireland (as amended in Feb 2010). Stage 1 Screening was carried out, this includes regard to Methodology and Project Description. This also has regard to the proposed phasing of the development. The proposed development site is not located within any Natura 2000 site (SAC or SPA) and is approx. 190m to the north of the nearest Natura 2000 site Pouladatig Cave SAC Site Code 000037. In view of the proximity to the SAC and cave systems it is necessary to proceed to Stage 2 of the AA (either alone or in combination with other projects or plans) on the grounds that the project may hinder the bat colony within the Pouladatig Cave system and its ecological structure and function.
- 7.8.3. A description is given of the existing environment. It is noted that the site is undulating with moraine hills with an overlay of improved grassland layer of topsoil. Regard is also had to stone walls and hedgerows surrounding the site. It is noted that the grassland did not correspond to any grassland habitat listed on Annex 1 of the EU Habitats Directive. Other wildlife noted during the survey include fox, hare



and common bird species. No habitats for protected bird species were recorded on site. The Bat Habitat Assessment is included in Appendix B of this AA Report.

- 7.8.4. Pouldatig cave is a natural limestone cave situated near Inch Bridge, west of Ennis. A description is given of the cave and it is used as a hibernating site for the Lesser Horseshoe Bat. The site is not subject to visitor disturbance and is considered to be a safe hibernating site for this bat species. Details are given of the Conservation Objectives and Qualifying Interests. The Objective for the Pouladatig Cave system is: *to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex I/II species for which the SAC has been selected.* This is an SAC selected for the following habitats and/or species listed on Annex I/II of the EU Habitats Directive: (8310) Caves - not open to the public i.e a priority habitat; (1303) Lesser Horseshoe Bat. An Assessment is provided of Potential Impacts – Table 4.1 refers to Construction Phase and Table 4.2 to Operational Phase. It is provided that depending on the factors there will be either be no significant impact or short term/little impact provided best practice is adhered to having regard to both Construction and Operational Phases.
- 7.8.5. Section 4.3 has regard to potential for Indirect and in Combination Impacts. It is noted that the site is not subject to visitor disturbance and is considered to be a safe hibernating site for the Lesser Horseshoe Bat in the winter months. Details are provided that none of the elements of the proposed project are likely to significantly impact on any Natura site. Regard is had to the issue of cumulative impacts. Note is had of policies and objectives relative to Natura 2000 sites in the Clare CDP 2011-2017. Mitigation is best achieved through the avoidance of negative impacts where possible. Mitigation measures within the proposed project include: - Screening of the proposal; use of appropriate lights within the development; planting of scented plants and climbers; implementing a buffer zone within the project.
- 7.8.6. Regard is also had to the provisions of the current Clare CDP 2017-2023 and the concept of the provision of a Buffer Space in Section 19.4 (Nature of Zonings) of the current Clare CDP i.e. *Buffer spaces are intended to provide a buffer of undeveloped land for the conservation of biodiversity, visual amenity or green space. Buffer spaces may include natural features such as floodplains, riparian zones, turloughs, valuable biodiversity areas including designated sites, amenity areas, woodlands, hedgerows, green spaces and archaeological features.* It is provided this would

provide a buffer between the proposed development site and the existing SAC to give additional protection to the SAC and habitats. This buffer space is shown colour coded to the south of the site on the plan submitted entitled 'Proposed Project and SAC'. Section 14.3.10 refers to Promoting and Protecting Biodiversity and Wildlife Corridors – CDP14.11 refers and includes: c) *To ensure that there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 3km of known roosts.* Section 14.3.16 refers to the protection of Woodlands, Trees and Hedgerows- CDP 14.17 refers.

7.8.7. Mitigation measures also include Collaboration with the Council and the NPWS prior to the construction to develop a program of works around the movements of the Lesser Horseshoe bat as well as other species in the area. It is provided that no night time works should be carried out. Construction practices should be implemented across the project to ensure the best method of construction methods are being used for the purposes of eliminating any noise or vibration and disturbance. Up to date procedure and standards should be used. Appendix D of the AA Report includes a listing of Proposed Best Practice Measures relative to construction. It is also provided that monitoring of these mitigation measures should be carried out in association with the NPWS.

## 7.9. Considerations regarding AA

7.10. The AA Report submitted concludes that the conservation objectives for the Natura 2000 site will not be compromised by the project, nor will the project have any significant impact on the designated site or the species for which it is designated. The Report concludes a finding of no potential for significant effects on the Natura 2000 site.

7.10.1. There is concern that the exclusion area provided by the buffer space will not be sufficient in relation to possible impacts of the proposed development on the protected bat species. The concerns of the Council's Environmental Assessment Officer include that the site is located within less than 200m of the Pouladartig Cave SAC and is well within the appropriate exclusion zone of 6km from any lesser horseshoe bat roost. This also includes that the Natura Impact Statement as presented does not contain complete, precise and definitive conclusions in particular in relation to the Pouladartig Cave SAC which acts specifically as a hibernation roost.

There is concern that bat surveys were not taken at the optimum time. Reference is also had to possible linkages to the bat population at Newhall-Edenvale Complex cSAC (Site Code 2091). It is provided that the bats may travel via the woodlands at Beechpark and Cahircalla Wood pNHA Site Code 1001, to Newhall-Edenvale Complex cSAC. Also that more scientific information is required on the movements of bats in order to inform the AA process and to make an informative decision.

- 7.10.2. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs is concerned that the AA Report accompanying the application does not provide sufficient data to rule out the potential use of the development site by Lesser Horseshoe bats. They provide that a comprehensive four season bat survey of bat usage of the site by a suitably qualified ecologist should be carried out. This should have regard to bat commuting routes to and from Pouladatig SAC and relative to the development site. Also that regard need to be had to the potential impacts of proposed lighting on bats including the Lesser Horseshoe bat. They are concerned that sufficient scientific information has not been submitted for AA purposes.
- 7.10.3. As part of their Assessment, the Council carried out a Screening for AA & Determination. They have regard to the qualifying interests and special characteristics of European Sites within 15km of the application site, and note that this includes Pouladatig Cave SAC (000037) and the Lower River Shannon SAC (02165). They provide that the impact of in combination effects on adjacent Natura 2000 sites is unknown and note that incomplete information has been provided in the AA. The Screening Report concludes that the potential for significant effects to European sites cannot be ruled out.
- 7.10.4. It is noted that the Council's fourth reason for refusal is concerned that insufficient information has been submitted and that it is not fully known whether the proposed development either individually or in combination with other plans and projects would not have a significant impact on the qualifying interests and integrity of the Natura 2000 site. They provide that the proposed development would contravene Objective CDP 14.2 (Protection of European Sites) of the Clare CDP 2017-2023. This includes:
- a) To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters.*

7.10.5. Having regard to the documentation submitted and to the submissions made, it is considered that a lack of scientific information has been submitted regarding the impact of the proposed development on the protected species – the Lesser Horseshoe Bat, relevant to the qualifying interests of Pouladatig Cave SAC (000037). Therefore, it is considered that the proposed development would contravene Objective CDP 14.2 and that it cannot be ruled out that the proposal would not have a detrimental impact on the Natura 2000 site.

## **8.0 Recommendation**

8.1. Having regard to the assessment above, the documentation submitted, the submissions made, including the third party appeal and to the site visit, it is recommended that outline permission be refused for the proposed development for the reasons and considerations below.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site in the rural area on unzoned lands outside the settlement development boundary of Ennis it is considered that the proposed residential development, would be unacceptable in terms of the appropriate and sustainable use of these rural and agricultural lands, would be contrary to the core strategy and settlement policy and objectives which seeks to direct multiple housing units onto zoned and serviced lands, and to the delivery of strategic, plan-led , co-ordinated and balanced development of settlements as set out in Objective CDP3.9 of the Clare County Development Plan 2017-2023. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. While an outline application the overall design and layout of the proposed development is substandard and fails to provide for adequate mix of house and plot sizes and would be contrary to Objective CDP4.7 of the Clare County Development Plan 2017-2023. The proposed number of access points onto the substandard local road is excessive and fails to provide for a layout and street form as per Objective CDP8.8 of the said Development Plan. It is therefore, considered that the proposed development would provide for a poor

living environment for future residents of the proposed houses and would seriously injure the amenities of the area. The proposed development would, therefore, be contrary to the Clare County Development Plan 2017-2023, to national policy as set out in the Design Manual for Urban Roads and Streets 2013 and the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009 and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the need for improvement works to the local road network to facilitate such a development, it is considered that any development of the subject lands would be premature pending the provision of these improvement works. Furthermore, it is considered that, if developed prior to the carrying out and completion of these improvement works, the proposed development in this rural area would endanger public safety by reason of traffic hazard, including hazard to pedestrians and cyclists. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
4. On the basis of the information provided with the application and appeal and having regard to the Natura Impact Statement submitted the Board is not satisfied that the proposed development either individually, or in combination with other plans or projects would not be likely to have a significant effect Pouladatic Cave Special Area of Conservation (Site Code 000037), in view of the site's Conservation Objectives. In such circumstances the proposal would be contrary to Objective CDP 14.2 of the Clare County Development Plan 2017-2023 and the Board is precluded from granting permission.

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Angela Brereton  
Planning Inspector

30<sup>th</sup> of August 2017