



An
Bord
Pleanála

Inspector's Report PL20.248935

Development	Permission consequent to outline permission (PD/11/394) for two houses served by wastewater treatment systems and access road
Location	Lackan townland, Portrun, County Roscommon
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	PD/17/208
Applicant(s)	Michael Gaffney
Type of Application	Permission Consequent
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Michael Gaffney
Observer(s)	None
Date of Site Inspection	25 th October 2017
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site is located adjacent to the lakeside village of Portrun on the southeast side of County Roscommon, approximately 2.8km to the northeast of Knockcroghery village and approximately 9.6km to the southeast of Roscommon town centre. The area surrounding the site is accessed from a network of local roads connecting with the N61 national road, linking the towns of Roscommon and Athlone. The appeal site is located adjacent to Lough Ree, with views overlooking Portrunny Bay and the lake to the northeast. The surrounding area is characterised by rolling countryside with housing largely concentrated along a network of local roads. Portrun village includes a small cluster of houses, as well as a mooring facility for boats and a children's playground.
- 1.2. The appeal site comprises c.0.6ha of agricultural land and is located along a local road leading southeast from Portrun village, which terminates 750m to the southeast of the site along Lough Ree. The site includes over 100m frontage along the local road. A line of mature hedgerows and trees mark the southwest and southeast boundaries of the site, while a stone wall supplemented by a post and wire fence, hedgerows and a gate mark the northeast boundary of the site with the roadside. The northwest boundary is not physically marked on the ground. Land levels in the area rise steadily in a south direction away from the lakeshore with approximately a 3m difference across the site. The village to the northwest is on slightly more elevated ground.

2.0 Proposed Development

- 2.1. Outline planning permission was granted for:
- Construction of two dwellinghouses;
 - Installation of two packaged wastewater treatment systems with polishing filters;
 - A vehicular access and road off the local road;
 - All associated groundworks and landscaping.

2.1.1. Permission consequent to the outline planning permission is sought in respect of the following:

- Two three-bedroom detached single-storey dwellinghouses, both comprising c.161sq.m gross floor area (GFA);
- Location of access road.

2.2. The planning application was accompanied by a Site Suitability Assessment Report and the consent of the vendor to submit the application.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse to grant permission generally for the following reasons:

- R.1** material contravening of conditions 7 and 20 of the outline permission relating to access arrangements;
- R.2** material contravening of condition 9 of the outline permission relating to house design;
- R.3** failure to replicate the outline permission site boundaries.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer (June 2017) reflects the decision of the Planning Authority. The Planning Officer noted the following:

- The principle of permitting the proposed development has been established under the outline planning permission (PD/11/394);
- The submitted site boundaries are similar to those shown on the site layout plan submitted in response to a request for further information and not the original site layout plan submitted with the outline planning permission;

- The Department of Culture, Heritage and the Gaeltacht¹ recommended that conditions are attached to address environmental impacts;
- The specific details of the proposed vehicular access, as required by condition 7 of the outline permission, have not been shown;
- Condition 20 of the outline planning permission would result in the access road and vehicular entrance serving the houses, having to be located outside the site boundaries and would therefore contravene this condition of the outline permission;
- Minor alternation in siting of the houses is acceptable;
- Glazing of the roof to the internal link and the proposed typically-modern front doors would not comply with the requirements of Condition 9 of the outline planning permission relating to house design. Consequently, if permitted the proposed development would erode the visual amenity of the area;
- Proposed finished floor levels are in compliance with condition 12 of the outline planning permission.

3.2.2. Other Technical Reports

- None.

3.3. Prescribed Bodies

- Irish Water - no response;
- Department of Culture, Heritage and the Gaeltacht – recommendation to attach conditions to a grant of permission.

3.4. Third-Party Submissions

3.4.1. None.

¹ Formerly Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

4.0 Planning History

4.1. Subject Site

- Ref. 11/394 – Outline permission **granted** (June 2012) for two dwellinghouses served by individual wastewater treatment systems and vehicular access.

The Assistant Engineer in the Planning Department initially dealing with the application recommended refusal of outline permission for the development on the basis of housing need, ribbon development, speculative development in an environmentally-designated area, pattern of development and impact on public health. The Senior Planner subsequently decided to request Further Information and the proposed development was revised from four to two houses served by individual wastewater treatment systems. Outline permission was granted subject to 21 no. conditions, the following of which are of note:

C.7 vehicular access from one point;

C.9 dwellings of traditional design;

C.12 proposed finished floor levels as per plans;

C.18 Section 48 Development Contribution;

C.19 Section 47 sterilisation agreement for the remainder of the landholding;

C.20 Minimum separation distance of 3m from the access road to the SAC.

- Ref. 04/2568 – Application **withdrawn** (August 2005) for residential development comprising 16 no. terraced two-storey houses to include foul sewer connection to the proposed effluent treatment plant to be located in close proximity to the Marina Development or an independent effluent plant within the subject application site boundary.

4.2. Surrounding Sites

- 4.2.1. There have been no recent planning applications on the immediately adjoining sites, but there have been numerous applications granted in the village to the north for housing, domestic alterations and additional moorings.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for Planning Authorities

5.1.1. The Guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. The appeal site is located within an area recognised within the Guidelines as being a 'Structurally-Weak Area', where the key objective is to accommodate demand for permanent residential development as it arises subject to good practice. The following sections of the Guidelines are of relevance to this appeal:

- Section 3.2.3 'Rural-Generated Housing';
- Section 3.3.1 'Landscape, Natural and Cultural Features';
- Section 3.3.3 'Siting and Design';
- Section 4.5 'Protecting Water Quality'.

5.1.2. Circular Letter PL 2/2017 issued in May 2017 by the Department of Housing, Planning & Local Government provides additional guidance regarding local needs criteria in Development Plans in light of a recent European Courts judgement. The Circular advises that the existing 2005 Guidelines remain in place.

5.2. Development Plan

The policies and objectives of the Roscommon County Development Plan 2014-2020 are of relevance to the appeal site.

Rural Housing Policy

5.2.1. For the purposes of rural housing policy, County Roscommon is divided into two distinct areas. The appeal site is within Category B – Areas under Urban Influence in south Roscommon, where individual housing developments will be facilitated in principle to meet the rural-generated housing need criteria set out in the 'Definition of Rural Generated Housing Need' in Table 5.3. Policies and suitability criteria for rural area types are set out in Table 5.4.

5.2.2. The following other sections of the Development Plan are also relevant to this site:

- Section 7.6 – Landscape Protection;

- Section 9.2.3 – Wastewater treatment for single houses;
- Section 9.4 - Flood Risk Protection;
- Section 9.5 - Rural Siting and Design;
- Section 9.8 - Rural Residential Consideration.

Landscape

5.2.3. The appeal site is within the ‘Upper Lough Ree Bogland’ landscape character area, according to the Landscape Character Assessment of County Roscommon and falls within the ‘river corridor’ landscape character type. This area is of ‘Very High Value’ from a landscape perspective because of its nature designations and the sense of isolation. Objectives 7.37 to 7.40 of Section 7.6 to the Development Plan refer to landscape protection.

Wastewater

5.2.4. Section 9.2.3 of the Plan addressing wastewater treatment for one-off housing states that new systems will be required to be assessed in a site-specific fashion. On-site septic tank and associated treatment systems shall be assessed and constructed under the terms of the E.P.A. publication Wastewater Treatment Manual Treatment Systems for Single Houses (2009) or any amending/replacement guidance or standard.

Non-Statutory Plans

5.2.5. In 2006 the Planning Authority published a non-statutory plan titled ‘Portrun Action Plan’, which included objectives for the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The principal grounds of appeal, submitted on behalf of the applicant by Emma Pillion Planning can be summarised as follows:

Vehicular Access (Reason 1)

- Proposals do not contravene condition 7 of the outline planning permission, which relates to vehicular access and boundaries. Proposed arrangement

has been guided by the location of the cSAC area, and to avoid contravening other conditions of the outline planning permission, including condition 6 relating to maintaining of the existing front boundary wall and condition 19 relating to an area of the landholding to be sterilised under a Section 47 agreement.

Impact on SAC/SPA (Reason 1)

- By way of the Appropriate Assessment (AA) Screening document submitted at outline planning permission stage, it has been demonstrated that no adverse impact on the Lough Ree cSAC would arise and that the proposed development does not encroach any further on the Lough Ree cSAC;
- Condition 20 of the outline planning permission restricts the proposed access road from being located within 3m of the Lough Ree cSAC. To comply with this requirement, the entire development would need to be redesigned and the condition is unreasonable and unwarranted;

House Design (Reason 2)

- Proposals do not contravene condition 9 of the outline planning permission, which requires a traditional house design. Proposed house design reflects a modern interpretation of a simple cottage design, compliant with the outline permission, incorporating traditional form, scale and massing, in keeping with the rural character of the area;

Site Boundaries (Reason 3)

- Proposed site boundaries correlate with the redline site boundary utilised in the Further Information response for the Outline Planning Permission and the redline site boundaries are further guided by the requirement to comply with Condition 19 of the outline planning permission addressing an area of the landholding to be sterilised under a Section 47 agreement;

Other Matters

- The Planning Authority has refused permission consequent on the basis of matters previously addressed or of matters that can be dealt with by way of post-compliance submissions;

- Conditions relating to alteration of the site layout and access arrangements are at odds with other conditions of the outline planning permission. Strict compliance with all of the conditions of the outline planning permission is not feasible.

6.2. Planning Authority Response

6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

6.3.1. None

7.0 Assessment

7.1. Introduction

7.1.1. Initially I wish to highlight to the Board that the subject application is for permission consequent on the grant of outline permission issued for Roscommon County Council Planning reference PD/11/394 and, therefore, the principal of the proposed development cannot be assessed de novo and that it is not possible to revisit issues which have already been assessed at outline stage. Secondly, Section 36(4) of the Planning & Development Act 2000, as amended (the Act), states that where an application for permission is made to a Planning Authority consequent on an outline permission, the Planning Authority shall not refuse to grant permission on the basis of any matter which has already been decided in the grant of outline permission, provided that the Planning Authority is satisfied that the proposed development is within the terms of the outline permission. Regardless of the fact that the Board did not decide to grant the outline permission, the decision binds the Board when it considers an application for permission consequent on the grant of outline permission.

7.1.2. I have some serious reservations in relation to other elements of the proposed development, particularly in relation to housing need and flood risk, all of which were addressed in a fleeting manner in the outline planning permission, in spite of concerns being raised by internal consultees. It is not possible to revisit these issues

despite my concerns. Consequently, the main planning issues in the assessment of the proposed development are as follows:

- Entrance & Access Arrangements;
- Impacts on Lough Ree cSAC / SPA;
- House Designs;
- Site Boundaries.

7.2. Entrance & Access Arrangements

- 7.2.1. Refusal reason No. 1 of the Planning Authority's notification to refuse to grant permission consequent to outline planning permission for the proposed development, relates to the proposed vehicular access arrangements not complying with Condition No. 7 of the outline permission, which requires one access point and additional measures to address traffic safety concerns. Reason for refusal No. 1 also considered the proposed development would contravene Condition No. 20 of the outline permission, which sought to restrict works within the Lough Ree SPA/cSAC and maintain a minimum separation distance of 3 metres from the access road to the Lough Ree cSAC.
- 7.2.2. The proposed vehicular access to serve the development replicates the arrangement permitted in the outline planning permission. Condition No. 7 of the outline permission required one access point and the proposals meet this requirement. Condition No. 7 also required the gateway to serve the development to be recessed 4m from the local road and to have a splayed entrance onto the local road at an angle of 45 degrees and it is this part of the condition that the Planning Authority assert would be materially contravened in the subject proposals. This recessed gate and splayed access arrangement is not detailed on the drawings submitted with the current permission consequent application. The grounds of appeal note that the detail of the proposed vehicular access arrangements including entrance treatment is dictated by other conditions of the planning permission, which restrict development in certain parts of the landholding and appeal site.
- 7.2.3. Condition No. 7 as imposed by the Planning Authority in the outline permission does not expressly require the submission of details or drawings in response to the condition, nor does it require the proposals to be agreed with the Planning Authority. I note that the location for the entrance off the local road has not changed and this

appears broadly consistent with the terms of the outline permission. Notwithstanding the absence of details for the proposed entrance arrangements including recessed gate and splayed wing walls, this could be addressed by way of the attachment of a condition to a grant of planning permission linking the permission consequent proposed development to the outline permission. Consequently, at this point there is no strict requirement for the proposed development to satisfy the requirements of said condition, but if permission consequent is granted, the proposed development would need to accord with the conditions of the permission, including recessed gate and splayed wing walls.

- 7.2.4. In conclusion, considering the terms of the outline permission and the consistency with the current proposals, the proposed development would not materially contravene Condition 7 of the outline permission relating to entrance details and consequently this would not be a reasonable basis for refusal of permission.

7.3. Impacts on Lough Ree cSAC / SPA

- 7.3.1. As mentioned above, part of reason for refusal no. 1 of the Planning Authority decision, relates to the proposed development contravening Condition No. 20 of the outline permission. Condition 20 of the grant of outline permission required no works to take place in designated areas, and at permission consequent stage drawings are required to be submitted indicating a minimum separation of 3 metres from the access road to Lough Ree cSAC. The Planning Authority is concerned that the proposed development would take place in a designated area and the access road is not located a minimum of 3m from Lough Ree cSAC, and as a consequence would contravene Condition No. 20 of the permission.
- 7.3.2. The boundaries to Lough Ree cSAC and Lough Ree SPA are similar but not the same. The drawings submitted do not show the location of Lough Ree cSAC or Lough Ree SPA, however, overlaying the proposed site layout plan with the National Parks & Wildlife Service online maps for this area would suggest that the entire frontage of the site is within Lough Ree cSAC, while Lough Ree SPA does not encroach on the appeal site.
- 7.3.3. Based on the drawings submitted and the available Lough Ree cSAC maps, works are proposed within the area covered by Lough Ree cSAC, including the construction of an access road to serve the two proposed houses. The drawings

submitted do not indicate a minimum separation distance of 3m from the access road to the cSAC, as a sizeable portion of the access road, including the entrance would appear to be within the cSAC. The grounds of appeal assert that the condition cannot be strictly complied with, as it would conflict with the requirements of Conditions 6 and 19. Condition No. 6 requires the existing boundary to be made good except for the alterations required for the new entrance area, while Condition No. 19 requires the landowner to enter into a Section 47 agreement sterilising the remainder of the landholding outside the redline boundary from residential development for a period of 10 years. As a consequence, the grounds of appeal assert that there is no scope for the access road to traverse the area off site, within the landholding (blue line) and outside the Lough Ree cSAC area.

- 7.3.4. The terms of Condition 20 are quite clear in my opinion and as presented the proposed development does not comply with the requirements of the condition, in that works are proposed within the Lough Ree cSAC and as a 3m buffer would not be provided between the access road and Lough Ree cSAC. The alignment of the access road has not been varied in any way from the outline permission to attempt to address the requirements of the condition.
- 7.3.5. In my opinion, the Planning Authority were not constrained by Section 36(4) of the Act, as the final alignment of the proposed access road involved matters not decided at the outline stage and pivotal to the proper planning and sustainable development of the area given the sensitivity of the area. While I would accept that there appear several constraints and conflicting conditions in the outline permission, Condition No. 20 of the outline permission clearly required details to be submitted at permission consequent stage showing compliance with very specific development parameters, and the applicant has failed to present this. I note that the applicant would also have had an opportunity immediately post the decision to grant the outline permission to address conflicting conditions of the outline permission via an appeal to An Bord Pleanála under Section 139 of the Act, but this avenue was not availed of.
- 7.3.6. In conclusion, the details of the proposed development submitted for permission consequent differ materially from the terms of outline permission granted on the site by Roscommon County Council on the 7th day of June, 2012, under planning register reference number PD/11/394, and in particular condition number 20 with works proposed within a designated area and a 3m separation distance from the access

road to the Lough Ree cSAC not provided for. The Board is, therefore, precluded from granting permission consequent for the proposed development.

7.4. House Designs

- 7.4.1. Reason No. 2 of the Planning Authority's notification to refuse to grant the proposed development consequent to the outline permission, refers to the fact that the proposed dwellinghouses would materially contravene the requirements set out under Condition No. 9 of the outline planning permission. The condition requires details to be submitted at permission consequent stage. Both houses proposed are identical in terms of design. The reason for refusal outlines that the proposed house design would not be of traditional design, reflecting local vernacular architecture. I have reviewed the Planning Officer's report to identify which aspects of the house design they consider to not to be within the terms of Condition No. 9.
- 7.4.2. The Planning Officer asserts that use of a glazed roof to the internal corridor between the main structures would not accord with item (iii) of Condition No. 9, which requires the roof to be finished in black or blue/black slate. The main roof to the house is proposed to be finished in slate according to the drawings submitted. The glazed roof of the internal link corridor would be largely screened from view by the slate roofs on both sides of the corridor and I do not believe the condition should be read in an overly rigid manner. I am satisfied that the provision of glazing to the roof of the internal link corridor would not materially contravene the terms of the outline planning permission and a condition can be attached to a permission to reinstate the requirement for the slate to be of black or blue/black colour.
- 7.4.3. The Planning Officer considers that the proposed front windows to the house would have a pronounced horizontal emphasis and are large in scale, in contrast to the requirement for the proposed windows to have a pronounced vertical emphasis under item (iv) of Condition No. 9 to the outline permission. The Planning Officer also considers that the two glazed doors on the front elevation would not comply with terms of item (v) of Condition No. 9 which requires 'door openings compatible with traditional practice e.g. slated porch or recessed door opening'. The grounds of appeal assert that the proposed house design presents a modern interpretation of a simple cottage design. I am satisfied that the size, orientation and scale of the

windows and the type of door would be in keeping with the approach outlined in Condition No. 9.

- 7.4.4. In conclusion, considering the terms of the outline permission, including the contemporary take on the traditional cottage applied in the house design, the proposed development would not contravene Condition No. 9 of the outline permission.

7.5. Site Boundaries

- 7.5.1. Reason No. 3 of the Planning Authority's notification to refuse to grant the proposed development consequent to the outline permission, refers to the fact that the redline boundaries on the proposed site layout submitted with the subject permission consequent application differ from those submitted in the outline planning permission. I have reviewed the outline permission application and note that the Site Layout Plan drawing ref. Port/03 dated April 2012 shows redline site boundaries that correspond with the redline site boundaries on the Site Layout Map drawing No. 2017-045-02 dated 3rd May 2017 submitted with the subject permission consequent application. The Planning Officer's report states that the site boundaries are similar to those shown on the site layout plan submitted in response to a request for further information and not the original site layout plan submitted with the outline planning permission. The Further Information under the outline permission had been accompanied by public notices re-advertising the proposed development and Condition 1 of the outline permission specifically refers to the amended details submitted on 25th April 2012. Accordingly, I am satisfied that the redline site boundaries as presented in the subject permission consequent application do not materially differ from the terms of the outline permission.
- 7.5.2. A host of other conditions are attached to the outline permission including condition 2 (effluent disposal), condition 4 (building lines) and condition 12 (finished floor levels). The details submitted with the subject planning application with regard to conditions 2, 4 and 12 are within the terms of the conditions.

8.0 Appropriate Assessment

- 8.1.1. The proposed development subject of this application relates to permission consequent to an outline permission where the principle of two houses served by

individual wastewater treatment systems has already been permitted. The applicant has submitted a permission consequent application in response to conditions of the outline permission, pertaining to house designs and access road location.

- 8.1.2. I note that in their assessment of the amended proposals seeking outline permission, the Planning Authority concluded that the developer had carried out an Appropriate Assessment Screening in accordance with the requirements of the EU Habitats Directive, which yielded a finding of no significant adverse effects on the integrity of the Lough Ree cSAC. Screening for Appropriate Assessment was not undertaken by the Planning Authority in the subject permission consequent application, which I can only presume is on the basis of the requirements set out in Section 36(4) of the Act, as this matter had already been decided in the grant of outline permission.
- 8.1.3. Neither an Appropriate Assessment (AA) Screening Report nor a Natura Impact Statement (NIS) were submitted with the application or appeal. An AA Screening Report initially accompanied the outline planning application (Ref. PD/11/394) at Further Information stage. The AA Screening Report was prepared by Concannon Consult Structural & Civil Engineers.
- 8.1.4. Based on the available maps provided by the National Parks & Wildlife Service, part of the site is within the boundaries of the Lough Ree candidate Special Area of Conservation (cSAC) (Site Code No. 000440)². The boundary to the Lough Ree Special Protection Area (SPA) (Site Code No. 004064)³ follows the northeast side of the local road adjoining the site. Other than the Lough Ree cSAC and Lough Ree SPA, there are nine other European sites within 15km of the subject site, as listed below:

Site	Code	Distance	Direction
Corbo Bog cSAC	002349	8.3km	north
Fortwilliam Turlough cSAC	000448	5.8km	northeast
Lough Funshinagh cSAC	000611	7.7km	south

² Lough Ree is a cSAC as it is not yet subject of a Statutory Instrument.

³ Conservation of Wild Birds (Lough Ree Special Protection Area 004064) Regulations 2012 – Statutory Instrument 456 of 2012.

Lough Croan Turlough SPA	004139	13.1km	southwest
Four Roads Turlough SPA	004140	14.5km	southwest
Four Roads Turlough cSAC	001637	14.5km	southwest
Lisduff Turlough SAC	000609	12.8km	southwest
Ballinturly Turlough SAC	000588	11.1km	west
River Suck Callows SPA	004097	13.0km	west

With the exception of the Lough Ree cSAC and Lough Ree SPA, I am satisfied that the other sites within 15km of the appeal site can be 'screened out' on the basis that significant impacts on these European sites could be ruled out as a result of separation distance from the appeal site and given the absence of any hydrological or other pathway to the appeal site.

8.1.5. Lough Ree is situated on the River Shannon between Lanesborough and Athlone. and is the third largest lake in the Republic of Ireland. It has a very long, indented shoreline and hence has many sheltered bays. Although the main habitat, by area, is the lake itself, interesting shoreline, terrestrial and semi-aquatic habitats also occur.

8.1.6. The following Conservation Objectives are set for Lough Ree SPA:

Conservation Objectives for Lough Ree SPA (004064)
To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.
To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ree SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

8.1.7. Lough Ree SPA is of high ornithological importance for both wintering and breeding birds and is of special conservation interest for the following species: Whooper Swan, Wigeon, Teal, Mallard, Shoveler, Tufted Duck, Common Scoter, Goldeneye, Little Grebe, Coot, Golden Plover, Lapwing and Common Tern.

8.1.8. On the basis of the species and habitats distribution within the SPA, including most recent use of the appeal site as agricultural pastures, only effects on those conservation objectives relating to wetland habitats are likely. Arising from this, likely significant impacts, with reference to the Lough Ree SPA sites conservation objectives, would be via pollutants or sedimentation to surface water (e.g. run-off silt, fuel oils) at construction and operational phases of the proposed development.

8.1.9. The following Conservation Objectives are set for Lough Ree cSAC:

Conservation Objectives for Lough Ree cSAC (000440)
To restore the favourable conservation condition of Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation in Lough Ree SAC;
To restore the favourable conservation condition of Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) in Lough Ree SAC;
To restore the favourable conservation condition of Degraded raised bogs still capable of natural regeneration in Lough Ree SAC;
To maintain the favourable conservation condition of Alkaline fens in Lough Ree SAC;
To maintain the favourable conservation condition of Limestone pavements in Lough Ree SAC;
The status of Old sessile oak woods with Ilex and Blechnum in the British Isles as a qualifying Annex I habitat for the Lough Ree SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this habitat;
To restore the favourable conservation condition of Bog woodland in Lough Ree SAC;
To maintain the favourable conservation condition of Otter in Lough Ree SAC.

8.1.10. Lough Ree cSAC is selected for a range of habitats including: natural eutrophic lakes, orchid-rich calcareous grasslands, degraded raised bogs, alkaline fens, limestone pavements, old oak woods and bog woodland. This site is of high conservation importance owing to the presence of the otter, which listed in Annex II

of the EU Habitats Directive. Part of the development site would be located within the SAC.

- 8.1.11. The Site Synopsis for the River Moy cSAC identifies artificial enrichment of the waters by agricultural and domestic waste, and also by peat silt in suspension which is increasingly limiting the light penetration, and thus restricting aquatic flora to shallower waters, as posing the greatest threats to the aquatic life of the lake. As part of the site is within the boundaries of the Lough Ree cSAC and there is potential for loss of habitat and a potential direct pathway exists. Arising from this, likely significant impacts, with reference to the Lough Ree cSAC sites conservation objectives, would be either through loss or fragmentation of habitat or via pollutants or sedimentation to surface water (e.g. run-off silt, fuel oils) at construction and operational phases of the proposed development.
- 8.1.12. I do not consider that there are any specific in-combination effects that arise from other plans or projects.
- 8.1.13. The Department of Arts, Heritage and the Gaeltacht was notified of both the outline planning application and the permission consequent planning application, and in their response submitted at permission consequent application stage, they stated that the proposed development has the potential to cause deterioration in water quality of adjacent environmentally designated sites due to pollution / eutrophication caused by the proposed wastewater treatment systems. The Department recommended attachment of conditions to mitigate the potential impacts of the development. I note that the recommended conditions to mitigate the potential impacts of the development attached are similar to those conditions attached to the outline planning permission.
- 8.1.14. Using the source-pathway-receptor model, I do not consider, on the basis of the information submitted, that the proposed development (i.e. the reserved details submitted consequent to the outline permission) would be likely to impact on the conservation objectives of the Lough Ree SPA or Lough Ree cSAC site in question through the potential mechanisms outlined above. With the implementation of good construction management including conditions of the outline permission, I am satisfied that the proposal would not result in a reduction in the quality of the SPA or

cSAC habitat or the status of protected bird or animal (otter) species and subsequently the conservation status of the designated site.

- 8.1.15. I do not consider that the subject proposals would have the potential for loss or fragmentation of habitat.
- 8.1.16. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Ree SPA (Site Code: 004064), the Lough Ree cSAC (Site Code: 000440) or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.
- 8.1.17. **Note:** Section 36(4) of the Act restricts the Board from revisiting issues that have already been assessed at outline stage. However, I note the obligations set out within the Birds and Habitats Directives⁴, and whether or not their provisions would take precedence over Section 36(4) of the Act and allow for Appropriate Assessment of the project in totality at permission consequent stage of the planning process. If this was the case a differing conclusion to the Appropriate Assessment than that offered in Section 8.1.16 above could be arrived, in that, on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board could not 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 Lough Ree cSAC (Site Code: 000440), in view of the site's Conservation Objectives. In such circumstances, the Board would be precluded from granting approval/permission. If the Board was minded to come to this conclusion, I note that this would represent a new issue.

9.0 Recommendation

- 9.1. I recommend permission be **refused** for the following reasons and considerations.

⁴ Including S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011.

10.0 Reasons and Considerations

10.1.1. It is considered that the details of the proposed development submitted for permission consequent differ materially from the terms of outline permission granted on the site by Roscommon County Council on the 7th day of June, 2012, under planning register reference number PD/11/394, and in particular condition number 20 with works proposed within a designated area and a 3m separation distance from the access road to the Lough Ree cSAC not provided for. The Board is, therefore, precluded from granting permission consequent for the proposed development.

Colm McLoughlin
Planning Inspector

1st November 2017