



An
Bord
Pleanála

Inspector's Report ABP300578-18

Development	Provision of 39 dwellings reduced to 35 dwellings by way of further information submission.
Location	"Dun Aras", Ballymahon, County Longford.
Planning Authority	Longford County Council.
Planning Authority Reg. Ref.	17/195.
Applicant(s)	Mark Cunningham.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant(s)	(i) Liam Madden, (ii) Sean Clancy, (iii) Matthew Daly, (iv) Residents of the Dún Aras Estate and Others.
Observer(s)	None.
Date of Site Inspection	10 th May, 2018.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	5
4.1. Decision	5
4.2. Documentation Submitted with the Application	6
4.3. Observations	7
4.4. Internal Reports.....	7
4.7. Final Planning Report.....	11
5.0 Planning History.....	12
6.0 Grounds of Appeal.....	12
7.0 Appeal Responses.....	16
8.0 Development Plan Provision.....	23
9.0 Planning Assessment	24
10.0 Appropriate Assessment	33
11.0 Conclusions and Recommendation.....	34
12.0 Decision	35
13.0 Reasons and Considerations	35

1.0 Introduction

ABP300578-18 relates to multiple third party appeals against the decision of Longford County Council to issue notification to grant planning permission for a housing development comprising of 35 houses at Dun Aras, Ballymahon, County Longford. Numerous issues were raised in the third party appeals relating to traffic and road safety concerns, the impact on residential amenity, the proximity of the site to the local Ballymahon Agricultural Mart, potential flooding issues and lack of physical infrastructure to cater for the development. In 2005 An Bord Pleanála granted planning permission for 96 houses on a slightly larger site which included the subject site. 24 of these houses were built, mainly along the eastern and north-eastern boundary of the subject site. The rest of the houses remained unbuilt and some partially constructed houses were subsequently removed.

2.0 Site Location and Description

- 2.1. The 3.25 hectare site is located on backlands to the east of Main Street, Ballymahon and to the south-east of the N55 National Secondary Route (Athlone to Cavan). The irregularly shaped site has no road frontage other than that onto the Ballymulvey Road to the south. There is an existing estate road leading northward from the Ballymulvey Road serving the 24 dwellings which were constructed under the parent permission PL14.212595. Nearly all the constructed dwellings front onto this internal access road which runs along the eastern boundary of the site.
- 2.2. The remainder of the site to the west is currently undeveloped. Some site clearance works have often taken place throughout the site and at the time of site inspection the site was used for the grazing of horses. The site is surrounded by a wooden post and wire fence.
- 2.3. In terms of surrounding land uses, lands further west of the subject site comprise of open fields and separate the site from plots of land associated with buildings which front onto Main Street, Ballymahon. To the north of the subject site a small established residential cul-de-sac known as Marian Villas is located. It comprises of approximately 14 dwellings which have access onto the N59 to the north. To the rear

of Marian Villas and along the north-western boundary of the site is Ballymahon Agricultural Mart which accommodates a series of sheds and pens associated with the cattle industry.

- 2.4. An open field is situated at the north-eastern boundary of the site and the Dun Aras housing development is also located along the north-eastern and eastern boundary of the site. This housing estate represents the furthest extent of suburban type development to the east of the town.
- 2.5. The existing access road serving Dun Aras meets the Ballymulvey Road to the south. The Ballymulvey Road is a local road which runs eastwards from the town. The junction of the Ballymulvey Road and Main Street, Ballymahon is approximately 350 metres to the west. The Ballymulvey Road is a narrow third-class road with stone walls along much of its alignment. It also incorporates a number of bends which somewhat restrict forward visibility along the road. Public lighting is available along this section of the road however, there are no footpaths on either side of the Ballymulvey Road. The section of the Ballymulvey Road which serves the subject site is located within the 50km speed limit.

3.0 Proposed Development

- 3.1. The original application sought planning permission for 39 dwellings on the subject site. The housing layout was essentially configured around the perimeter of the site with houses looking into the site towards a centrally located open space. Eight dwellings were also located within the centre of the site facing onto surrounding open space. The original proposal also sought to utilise the existing raft foundations which exists near the north-western boundary of the site. These raft foundations were to accommodate the only semi-detached dwellings under the original proposal. All other dwellings proposed were detached dwellings.
- 3.2. The initial planner's report expressed some concerns regarding the original layout and house types proposed. On foot of these concerns (see section below on Planning Authority's Assessment) a revised layout was submitted. Houses that previously backed on to the north and western boundary adjacent to the cattle mart were relocated in the revised layout. A total of 17 houses were placed in a more central location within the site and interspersed throughout the central open space

area. Many of these houses were served by a new central cul-de-sac which cuts through the open space. The remainder of the dwellings are located along the north-eastern boundary and southern boundary.

3.3. Two main areas of public open space are provided

- (a) one area of open space is located directly opposite the existing houses of No. 7 – 16 Dun Aras, and
- (b) a more centrally located space is located directly opposite the houses along the southern boundary of the site. Outdoor gym/play areas are proposed within the open space areas.

3.4. The proposed house types are set out in the Table below.

House Type	No of Houses	No. of Bedrooms	Storeys/ Detached	Location in Scheme
A	3	3	2 Storey Detached	Facing south along northern boundary
B	8	3	2 Storey/ Detached	Centrally and at the south-western boundary facing northwards
C	7	3	1.5 Storey/ Detached	Centrally and at the south-western boundary facing northwards
D	4	2 & 3	2 Storey/ Terraced	Northern central area facing Northwards
E	4	2 & 3	2 Storey/ Terraced	Northern central area facing Northwards
F	3	4	2 Storey / Detached	Facing south along northern boundary
G	3	2	Bungalow / Detached	South-eastern Corner of scheme
H	3	3	Bungalow / Detached	South-eastern Corner of scheme

4.0 Planning Authority's Decision

4.1. Decision

Longford County Council issued notification to grant planning permission for the proposed development subject to 25 conditions on 19th December 2017.

4.2. Documentation Submitted with the Application

4.2.1. The following documentation was submitted with the application:

- A **Covering Letter/ Planning Report** setting out details of the planning history, the proposed development, the zoning objectives as it relates to the site, the phasing under which it is proposed to develop the site, and details of the proposed connection to services.
- Details of **Irish Water** connection and developer services.
- A **Road Safety Audit** which sets out six separate recommendations in respect of road safety on the road network serving the development. A separate report indicating how the recommendations are to be implemented was also submitted with the application file.
- The applicant also submitted a **Traffic and Transport Assessment** which examines the existing and proposed traffic conditions. It also anticipates future traffic generation resulting from the proposed development. The existing access arrangements have been analysed and junction capacity assessments have also been undertaken. The assessment concludes that the existing access to the development will accommodate anticipated traffic conditions and will sufficiently operate within acceptable levels of capacity without any adverse impact on the surrounding road network.
- An **Appropriate Assessment Screening Report** was also submitted. The European sites identified as having the most likely potential or significant impact are Lough Ree SAC and Lough Ree SPA. However, it is concluded that no elements of the proposed construction are likely to cause significant impacts on European sites mainly due to the lack of hydrological connectivity from the proposed site to Lough Ree which is located approximately 5 kilometres east of the subject site. It is therefore concluded that a Stage 2 Assessment is not considered necessary.
- A separate **Ecology Report** was also submitted which sets out details of a management plan to deal with invasive species and noxious weed management for the site. It sets out a series of measures in relation to

chemical control and physical control in order to address the issue of invasive species.

4.3. **Observations**

- 4.3.1. A large number of submissions were received from third parties mainly residing in the vicinity of the subject site many of which reside in the Dun Aras residential estate and the Marian Villas residential cul-de-sac located to the north-west of the subject site. The planner's report states that a total of 47 submissions were received in respect of the original application highlighting an array of concerns in relation to traffic safety, flooding, anti-social behaviour, lack of footpaths, health and safety, flora and fauna, impact on property values, overall design, impact on residential amenity and inaccurate details submitted with the planning application.

4.4. **Internal Reports**

- 4.4.1. A handwritten report from the **Area Engineer** dated 30th August, 2017 requested additional information in respect of the proposed development.
- 4.4.2. A report from the **Road Design Office** notes that the proposed application is a for a reduced density development which was previously granted planning permission by An Bord Pleanála. It is recommended that a total of 20 conditions be attached where it is decided to grant planning permission.
- 4.4.3. The initial **Planner's Report** dated 5th September, 2017 sets out details of the site location and description, the proposed development, the planning history associated with the site and the development plan provisions. It also notes the internal reports received in respect of the application and that pre-planning consultations were held on 18th May, 2017. It expresses a number of concerns in relation to the overall layout and design and therefore recommends that further information be submitted in relation to the following:
- Further details as to how the proposed development fully accords with the strategic resolution land use zoning objective as it relates to the site and how specifically this proposed development is of direct benefit to the local community.

- Further details in relation to improving the green spaces including the introduction of a collection of playground features.
- Changes to the site layout providing a more innovative and creative design.
- The potential impact which could arise from the Longford/Westmeath Farmers Mart to the north-west.
- Changes in layout to ensure that the minimum rear garden lengths are met.
- The applicant is requested to submit any details of rights-of-ways traversing the site.
- Indicate how the proposed development complies with the provisions of DEHLG publication entitled 'Guidelines for Delivering Homes and Sustainable Communities (2007)'.
- Revised design drawings and revised elevational finishes to house types.
- Further details in relation to an appropriate landscaping strategy for the development.
- A revised Traffic and Transport Assessment carried out during school term and also takes into consideration traffic levels and movements from Newcastle House Hotel and the Center Parcs Holiday Village proposed.
- The applicant is also requested to submit further details in respect of the proposed right-of-way pedestrian access from the subject site to Marian Villas/Terrace.
- The applicant is requested to submit further details in relation to the provision of sightlines at the existing entrance to Dun Aras Estate onto the Ballymulvey Road particularly to the west.
- The applicant is requested to submit further details to improve pedestrian access and lighting along the Ballymulvey Road to the town centre.
- The applicant is requested to submit further details that the water connection is of sufficient size and pressure to adequately serve the proposed fire hydrant layout.

- Submit a complete redesign of the proposed sewer layout to the satisfaction of the relevant authority.

4.5. Further Information Submission

4.5.1. Further information was submitted on 22nd November, 2017. It is summarised below

- Further drawings were submitted to address the concerns in relation to layout, house type, open space and recreational areas as requested by the Planning Authority.
- The number of dwellinghouses under the revised proposal was reduced from 39 to 35. Furthermore, it is not proposed to seek full planning permission to complete the three and four bedroomed semi-detached dwellings granted full planning permission by An Bord Pleanála under PL14.212595 for which the raft foundations are already in existence. It is sought to remove these and create a parkland area as a buffer zone between the farmer's mart and the subject site.
- It is argued that the proposed children's playground and exercise areas together with the proposed parkland area will result in a development that full accords with the site resolution zoning objective as set out in Appendix 1D of the development plan.
- Dwellings have also been redesigned to ensure that a minimum 11 metre rear garden length is provided for each of the dwellings proposed.
- Also attached is a solicitor's letter (Appendix E) which clearly states that all existing rights-of-way are located within the said roads and the proposal in no way seeks to alter existing rights-of-way. The response goes on to set out how the proposed development fully accords with Best Practice Guidelines for Delivering Homes and Sustainable Communities (DEHLG 2007).
- Details of the proposed landscaping are also contained on file and a list of the proposed semi-mature deciduous trees are set out in the response. In addition, it is stated that the applicant is willing is to accept a condition in respect of landscaping.
- A revised Traffic and Transport Assessment was undertaken in accordance with the Planning Authority's requirement and the report reaches a similar

conclusion in respect of the proposed development that the proposed Phase 2 of the Dun Aras residential estate will not have an adverse impact on the traffic profile of the surrounding road network.

- A solicitor's letter is also submitted which states that the applicant enjoys the benefit of a right of way over the adjoining property which leads to Marian Villas/Terrace. It is proposed to construct a 2.5 metre high capped plastered wall on either side of the existing right-of-way with a coded electronic gate onto Marian Villas/Terrace. Suitable public lighting will also be provided.
- In relation to sightlines, it is stated that it is not proposed to alter the existing entrance or internal access road in any way which serves the Dun Aras Estate. It is noted that full planning permission was previously granted for this entrance as part of the original application.
- The applicant is willing to cede a strip of land along the entire road boundary under his ownership towards the provision of a cycleway and is also willing to accept a special financial contribution condition for the construction of a cycle path and walkway from the site to Main Street, Ballymahon prior to the commencement of development.
- In relation to surface water and sewage facilities, the applicant carried out a pre-connection enquiry to Irish Water and a letter from Irish Water is contained in Appendix G of the submission which states that a connection to the existing 100 mm watermain of the Dun Aras Estate can be facilitated.
- Details of a revised foul sewer layout is also submitted. The applicant is also willing to accept a condition of the planning permission that the proposed foul sewer shall be designed and constructed in full compliance with the requirements of the Planning Authority.
- With regard to surface water arrangements, the submission sets out a number of options in relation to attenuation tanks, the provision of surface water manholes and the provision of a new surface water pipe. All the options are set out in Drawing No. 3. The applicant is will to accept any of the options set out as a condition of planning if planning permission is granted.

- The response also goes on to set out details in relation to Part V obligations. The applicant is willing to build and transfer six dwellinghouses to the local authority which equates to 10% of the total number of proposed and existing dwellings on site.

4.6. Further Observations

- 4.6.1. A number of additional observations were submitted reiterating concerns in respect of the proposed development with regard to traffic and road safety, residential amenity and other issues referred to above.

4.7. Final Planning Report

- 4.7.1. A further planner's report was submitted in respect of the information contained in the response. The planner's report considers:

- That the overall design represents an improvement over the original application.
- In relation to the right-of-way it is stated that the solicitor's letter adds clarification and has strengthened the proposal's intention to utilise the right-of-way to the east through Marian Villas/Terrace as a pedestrian route for residents. However, further details are required in respect of the finishes and it is stated that Dwelling No. 63 is to be omitted in order to enhance visibility and to create an appropriate buffer between the mart and the housing developments. The proposed woodland area will act as an appropriate buffer zone between the mart and the development proposed.
- It is also considered that the right-of-way through Marian Villas/Terrace offers an alternative pedestrian access to the town centre. Furthermore, the planned cycle route and walkway due to commence construction in 2019 will connect the existing Dun Aras Estate with the town centre. Furthermore, the applicant's willingness to transfer a strip of land along the Ballymulvey Road to accommodate a pedestrian and cycle link and a special financial contribution in respect of same is considered appropriate. It is also noted that the Roads Department within Longford County Council have not raised any

traffic concerns arising from the proposed development and any traffic arising from the Center Parcs development and the Newcastle House Hotel development. It is therefore recommended that planning permission be granted for the proposed development.

- 4.8. In its decision dated 19th December, 2017 Longford County Council issued notification to grant planning permission subject to 25 conditions.

5.0 Planning History

- 5.1. There are no history files attached. The local authority planning report makes reference to three relevant applications.

Under Reg. Ref. 04/1297 and PL14.212595 An Bord Pleanála upheld the decision of the Planning Authority and granted planning permission for a housing estate comprising of 96 dwellinghouses.

Under Reg. Ref. 06/893 permission was granted for four additional dwellinghouses together with the construction of a purpose built crèche, playschool and Montessori school.

Under Reg. Ref. 10/13 an extension of duration of permission was granted for PL14.212595 until 13th October, 2013.

6.0 Grounds of Appeal

The decision of Longford Co. Council to issue notification to grant planning permission was the subject of a number of 3rd party appeal. The appeals were submitted (i) Liam Madden, (ii) Sean Clancy, (iii) Matthew Daly, (iv) Residents of the Dún Aras Estate and Others. The issues raised in the various appeals are set out under separate headings below:

- *Non-compliance with conditions.*

The original proposal under PL14.212595 required as per Condition No. 2, that a footpath linking the site with the junction of the Main Street be completed including public lighting prior to the occupation of any dwelling unit. The grounds of appeal highlight that this is clearly not being complied with, as no such footpath has been built.

- *The need for the proposed development.*

The previous inspector's report noted that there was a glut of development in the wider area and in particular the Ballymahon area which could result in Ballymahon becoming a dormitory town for the likes of Athlone and Mullingar. This concern is still prevalent in the case of the current application.

- *Longford has had severe problems with overdevelopment.*

All development should be demand led. There is a very high risk of vacancy rates among residential development in Longford and as such the proposed development is deemed to be highly premature. There is a high prevalence of ghost estates within the county. There are more appropriate sites available within the village.

- *Traffic, transport and road safety considerations.*

It is argued that the traffic impact assessment is inadequate as it concentrates primarily on the internal site layout and not the Ballymulvey Road between the site and the town centre.

The road safety audit likewise concentrated solely on the internal layout and not the road safety implications in the wider area.

The proposal is contrary to many of the policies contained in the development plan with regard to traffic safety and enhancing sustainable modes of transport.

The Ballymulvey Road is too narrow with poor visibility at several locations and as such it does not constitute a safe pedestrian route.

The Center Parcs development together with the new Newcastle House Hotel has resulted in a significant increase in traffic along the Ballymulvey Road. It is stated that the Ballymulvey Road will be used as a construction route for works associated with the Center Parcs development.

There is no scope to permit road widening along sections of the Ballymulvey Road as there are profound changes in levels with significant drops in lands adjoining the road thereby making the road widening very difficult.

There are restricted sightlines at the junction of the entrance to the Dun Aras Estate and the Ballymulvey Road particularly in a westerly direction.

There are restricted sightlines at the junction of the Ballymulvey Road and Main Street, Ballylongford.

There are a large number of commercial premises on the Ballymulvey Road which considerably add to traffic along the route.

Because of the width alignments and high boundary walls along the road there is little physical scope to provide a footpath along this road alignment.

- *Right-of-way through Marian Villas.*

The proposed right-of-way requires access through third party lands for which consent from the third party landowner has not been obtained.

There was no prior consultation with the residents of Marian Villas in advance of the planning application about the new pedestrian access through the heretofore cul-de-sac.

A walkway is very likely to give to anti-social behaviour particularly at night.

It will turn Marian Villas from a quiet cul-de-sac into a very busy thoroughfare.

The existing lane was only ever used as an agricultural access heretofore and has never been used for pedestrian use.

- *Proximity to the Longford/Westmeath Mart.*

It is stated that this mart is the largest commercial enterprise in South Longford. The site gives rise to significant odours as well as significant noise from the animals kept in the mart. Animals are often kept through the night which exacerbates noise problems. Slurrries and outwash facilities are provided at the mart. The close proximity of the mart will give rise to significant residential amenity issues for houses in close proximity to the boundary.

- *Inadequacy of the Existing Foul Sewage and Storm Water Systems*

The existing sewage and storm water infrastructure is not functioning adequately and has in the past given rise to noxious odours and flooding on adjacent lands. Noxious odours from foul sewage systems have been

exacerbated particularly during heavy rainfall. The proposal will increase demand on the sewage system without increasing capacity and this will exacerbate already existing problems.

- There is a lack of detail regarding the surface water and foul water sewer design.
- A surface water disposal pipe from the site runs through one of the appellant's lands. It enters a drain which causes flooding on the said lands. Longford County Council did not oversee the laying of the longitudinal section of all the proposed sewers showing gradient sizes, types and classes of pipes etc. As a result, it is not clear what was constructed on site.
- The proposed development will increase the amount of hardstanding and thereby increase the run-off into this surface drain. It is anticipated that the run-off will increase by approximately 60%. The drain into which the surface water pipe flows is shallow. The pipe also incorporates a very shallow gradient estimated to be 1:700 and this inhibits efficient discharge of water from the site. As a result, it is stated that there is little or no flow in the pipe. The pipework is also set at a very shallow level within the ground and could be easily damaged by agricultural machinery traversing the pipe. Longford County Council seem to indicate that cleaning the drain will adequately address such concerns. However, this is not accepted by the applicant.
- *Proximity to the Former Ballymulvey Landfill*

This landfill is in close proximity to the subject site, c.1 km to the north of the subject site. It is an uncontained landfill that contains a lot of hazardous materials including asbestos containing material. It is argued this could pose a risk to the development.
- *Contrary to Development Plan Policy*

One of the appellants argue that it is not altogether clear whether the zoning objective which governs the site - "*Site Resolution Objective*" permits developer led housing such as that proposed. The development plan, it is argued, places greater emphasis under this zoning objective on community and social facilities rather than private residential development.

- *Impact on residential amenity*

Two of the observations submitted argue that the proposed development will have an adverse impact on existing residential amenity particularly the existing houses at Dun Aras. It is argued that these houses will be overlooked by the new houses. Concern is raised in the case of No. 5 and 6 Dun Aras which are located in the southern portion of the site. It is argued that increased overlooking will adversely affect the value of existing properties.

It is also argued that the existing dwellings do not match or complement the design of the existing dwellings in Dun Aras.

7.0 Appeal Responses

Two separate responses were received on behalf of the applicant. The first response received from Cunningham Design and Planning specifically related to the third party appeal submitted by Liam Madden. The second response was received circa three weeks later and dealt specifically with the three other appeals submitted at a later date. Both responses are summarised below.

7.1. Response by Cunningham Design and Planning

- 7.1.1. This response sets out details of the proposal and the planning history associated with the site. It goes on to argue that the proposed development fully accords with the zoning objectives set out in the development plan in respect of the site resolution objective zoning. The response goes on to outline the application and the changes made to the current application on foot of additional information request from the Planning Authority.
- 7.1.2. With regard to impact on residential amenity, it is the applicant's opinion that the proposed development will have a positive impact on existing residential amenities as it will complete the existing estate and will create active recreational amenity areas for the enjoyment of existing and future residents. The revised layout also creates a wider buffer zone between the Longford/Westmeath Farmers Mart and the subject site. This will also protect residential amenity of future occupants.

- 7.1.3. In terms of overlooking of existing dwellings, the proposed development creates a sufficient separation distance of 11 metres within the rear gardens to ensure that overlooking does not take place.
- 7.1.4. With regard to traffic issues, it is reiterated that an additional traffic and transportation assessment was carried out on foot of Planning Authority concerns, whereby new traffic counts were undertaken along the Ballymulvey Road and it was concluded that the more up-to-date traffic counts demonstrate that the proposal will have very little impact on the reserve capacity of the junctions in question.
- 7.1.5. With regard to foul sewer and surface drainage issues, reference is made to a response by Irish Water (Appendix M of the submission) which concludes that, based on the details provided by the applicant, a valid connection agreement can be put in place and that connection to the Irish Water network can be facilitated. Furthermore, a direct wastewater discharge option can also be facilitated to the existing 225 millimetre sewer at Dun Aras Estate subject to, and following an upgrade, at the Ballymahon wastewater treatment plant. This may require a contribution from the applicant. The applicant is more than happy to accept a condition in this regard.
- 7.1.6. Contrary to what is stated in the grounds of appeal, the application site will not become a dumping ground for building debris and will fully comply with any conditions required by the Planning Authority.
- 7.1.7. With regard to housing need, it is stated that there is little or no houses for either sale or rent in the South Longford area. It is also envisaged that there will be a greater demand for housing in the area when the Center Parcs opens in the coming year.
- 7.1.8. With regard to dwellinghouse design, it is stated that there is a greater diversity of house types proposed and dispersed throughout the scheme than was originally submitted to the Planning Authority in the first instance. 3D images of the houses are contained in Appendix N of the submission. The response details the information contained in the Road Safety Audit and the eight recommendations contained in the Road Safety Audit will be addressed in executing the development. It is stated that the existing estate entrance has been constructed in accordance with the original grant of permission and the proposal in this instance will accommodate only 59

dwellings which is substantially less than the 88 dwellinghouses granted full planning permission by An Bord Pleanála.

7.1.9. With regard to issues concerning water pressure, again reference is made to the letters of comfort submitted by Irish Water which are contained in Appendix M of the appeal response.

7.1.10. With regard to the pedestrian walkway via Marian Terrace/Villas, it is stated that it is proposed to construct a 2.5 metre high capped wall along the existing right-of-way together with a coded electronic gate at the exit out on to Marian Villas. It is also proposed to incorporate suitable public lighting. The applicant is also willing to transfer a portion of land between the outer edge of the existing footpath which runs along the front of the site in order to facilitate a cycle path. It is also proposed to make a monetary contribution to the local authority for the construction of a cycle path/walkway from the site to the Main Street in Ballymahon prior to the commencement of development. The local authority issued a decision to grant planning permission on this basis.

7.1.11. In relation to legal ownership issues, a solicitor's letter is contained in Appendix P of the submission from Conlan Solicitor states that the applicant has acquired the property to which the subject lands relate.

7.2. A Second Response was received by HW Planning on 27th February, 2018.

7.2.1. It specifically addresses issues raised in the other three third party appeals from the residents of Dun Aras Estate, Matthew Daly and Sean Clancy. It is suggested that many of the issues raised in these appeals are "non-material", "subjective" and "unsubstantiated in nature".

7.2.2. The appeal response makes reference to the current planning policy context and in particular the Irish National Planning Framework. It is highlighted that Athlone is identified as a primary regional centre and that the plan seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. The need to achieve higher densities in urban infill and brownfield sites is formalised under National Policy Objective 11.

7.2.3. Reference is also made to the Longford County Development Plan which identifies the need to provide 2,120 new homes in County Longford. Ballymahon is identified as one of the four main settlements outside Longford Town. It also highlights many

of the policies contained in the development plan in relation to housing provision and in relation to meeting these housing requirements. It is not accepted that the proposed development is contrary to planning policy set out in the development plan. It is incorrectly suggested in the grounds of appeal that the Site Resolution Objective does not allow for residential development on the lands in question. Appendix 1D of the county development plan clearly allows for the principle of residential development on the subject site. The response goes on to set out numerous statements in the development plan which refer to the acceptability of residential development on sites governed by the Site Resolution Zoning Objective. The variety of dwellings proposed on the current application meet specialist needs of the community as well as providing high quality recreation and amenity design elements. It is argued therefore that any statement that the proposed development is not supported by adopted policy is without foundation.

7.2.4. With regard to housing demand, it is stated that the subject proposal would not have been brought forward for planning permission if it was not viable to do so. House prices in Longford have increased by 19% between 2016 and 2017. Average households rents have increased by almost 8% of the same period. The fact that the Center Parcs development has created 750 construction jobs and will give rise to approximately 1,000 permanent jobs in the local area would suggest that there is a significant future housing demand in Ballylongford. The Center Parc development is identified as the largest private tourism investment in State history and has fantastic potential to unlocking the tourist potential of the town. In addition, it is argued that Ballymahon also has an important role to play in offsetting demand for the urban generated rural housing in the hinterland of the town. Both Council and national policy seek to restrict the overproliferation of urban generated one-off housing in rural areas. Accelerating the delivery of house for private, social and rented sectors is a key priority for Government.

7.2.5. It is argued that the modified scheme does not give rise to any negative impacts in terms of residential amenity. The proposal provides a reduction in density over that permitted on the site previously with greater levels and variety of open space. With specific reference to Mr. Sean Clancy submission of No. 5 Dun Aras, it is stated that there is a minimum separation distance of 11 metres and the density of housing surrounding Mr. Clancy's house under the current application is much less than that

proposed under the grant of planning permission issued by the Board under PL14.212595. The separation distance between the dwellings in question is well in excess of 22 metres which is the national guidelines for standards between opposing windows at first floor level. There is no basis for the suggestion that the proposal will result in a 15 to 22% reduction in value of existing dwellings.

- 7.2.6. With regard to potential amenity impacts arising from the Ballymahon Mart, it is noted that the initial 15 metre separation distance to the nearest residential unit to the boundary of the mart has been extended to 27 metres by way of the omission of House No. 63 by Longford County Council. The proposed evergreen woodland along the buffer zone will act as a physical as well as an acoustic barrier between the mart and residential properties. It is also noted that some of the houses which currently exist lie closer to the Mart than houses under the current application. Reference is also made to the previous planning inspector's report which notes that prospective purchasers/occupants of any future development of the site would be fully aware of the adjoining land use and the potential impacts arising from same. The proposal will contribute to the effective and efficient use of available land within the settlement boundary.
- 7.2.7. There is no evidence to suggest that the proposal will impact on the commercial operations at Ballymahon Mart. It is noted that there is a significant number of existing residential properties within 100 metres of the existing agri-mart buildings. The potential impact arising from the development on the operations of the Mart were a significant consideration in the revised layout which included a buffer zone and landscape mitigation measures.
- 7.2.8. With regard to traffic, and access the applicant is not applying for planning permission to alter any aspect of the existing entrance to Dun Aras permitted under the previous Board's decision.
- 7.2.9. While on the one hand the appellants argue that the road is not sufficient to accommodate traffic it is acknowledged that the road is being used by HGV related traffic which suggests that the road is in fact wide enough to accommodate two-way movements. The presence of potential vehicles parked on the corner of Main Street at the junction which could inhibit visibility is a regulatory parking matter for the Council. It is also stated that Longford County Council are advancing plans under

Part 8 of the Planning and Development Act to provide a cycle/pedestrian access through this junction and along the Ballymulvey Road. These proposals include CPO measures which will likely precipitate some junction improvements in the short term. It is noted that Transport Infrastructure Ireland have raised no concerns in relation to the proposed development.

- 7.2.10. Reference is also made to the traffic and transportation assessment submitted. In terms of traffic generation, it is stated that the proposed development is of a reduced density to which was previously granted planning permission.
- 7.2.11. A Road Safety Audit has been independently prepared and the findings therein will be carried out as part of a Stage 3 Road Safety Audit on completion of the development.
- 7.2.12. With regard to non-compliance with Condition No. 2 of the parent permission, it is stated that this is legacy issue arising from a previous landownership which cannot be attributed to the applicant. The Council have confirmed that a new footpath/ cycleway along the Ballymulvey Road is at design stage and will be advanced under Part 8 of the Planning and Development Act 2000 and will include Compulsory Purchase Orders to provide footpaths long the Ballymulvey Road. The project is scheduled for construction in 2019. The applicant is committed to assisting the Council's plans and has agreed to pay a special development contribution to the value of €30,000 towards the completion of the amenity cycling and pedestrian route.
- 7.2.13. The requirement to investigate potential linkages between the subject site and the Main Street via Marian Villas arises directly from the constraints of providing a footpath along the Ballymulvey Road. Based on the above, this requirement has effectively subsided. Notwithstanding this the applicant has confirmed his ability to provide such a pedestrian linkage. A solicitor's letter has been furnished which demonstrate that there are rights-of-way over the adjoining property which could provide a safe and secure pedestrian linkage. It is noted that there was a strong level of objection to the pedestrian linkage from the residents in Marian Villas/Marian Terrace. In light of the certainty which now exists in relation to the provision of pedestrian linkages on the Ballymulvey Road and in the interests of appeasing local residents, the applicant is happy to omit this pedestrian linkage if deemed appropriate by the Board.

- 7.2.14. In relation to infrastructure services, it is reiterated that a pre-connection appraisal has been completed with Irish Water in relation to wastewater.
- 7.2.15. In relation to the contention that surface water layout is not designed to an appropriate standard, it is stated that this contention is made in the absence of conclusive evidence. It is noted that Mr. Daly purchased the lands in 2015 and has had full visibility on the presence of surface water infrastructure at that time. Notwithstanding this, the applicant has confirmed his willingness to investigate all related matters to ensure that the proposed watermain network will operate in accordance with Irish Water infrastructure standard details and this issue is addressed in Condition No. 10.
- 7.2.16. It is also stated that substantial works in relation to the installation of both foul sewer and surface water services have already been carried out on the site. Since receiving this information, the applicant has carried out expiration works and photographs are attached which indicate the amount of foul sewer and surface water services which have already been constructed on site. In addition, the applicant is willing to accept a condition of planning permission in the event that the application is successful, that the existing services shall be subject to a detailed CCTV camera survey.
- 7.2.17. On density matters, it is noted that the original development required a density of 16.9 dwellings per hectare. This has been reduced to 10.8 dwellings per hectare under the current application. This roughly complies with an average density of 12 dwellings per hectare as set out in Section 2 of the county development plan. Based on the above together with statements in the National Planning Framework, it is submitted that the general level of housing provision on the subject site is appropriate.
- 7.2.18. With regard to Condition No. 2 of the Council's current decision which relates to the omission of dwellings nos. 52 and 53, it is considered that the omission of these units is excessive and not warranted. Subject to agreement with the Board, the applicant would welcome the opportunity to retain both these units which would provide for a minimum density of approximately 10 units per hectare. This matter could be dealt with by way of condition.

- 7.2.19. One of the appellants also state that the development should be refused on the basis of the proximity to the former Ballymulvey landfill. The subject site is remote from the landfill as well as from the identified watercourses. The existing homes are Dun Aras are located closer to the Antley River than the proposed dwellings and there is no credible evidence to suggest that local watercourses will carry any unconfirmed pollutants to the subject proposal resulting in adverse health impacts.
- 7.2.20. It is argued that the applicant has raised a couple of moot legal issues in a bid to frustrate the planning process which are unsubstantiated in nature. These include issues relating to sufficient legal interest to make the application, and also rights-of-way over the lands in question. Reference is made to Section 5.13 of the Development Management Guidelines for Planning Authorities which notes that the planning system is not designed as a mechanism for resolving disputes about title to land as these issues are a matter for the Courts.
- 7.2.21. Finally, it is stated that the level of objection has been somewhat orchestrated and that a sizeable proportion of the local population support the proposed development which is deemed to be hugely positive for Ballymahon.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Longford County Development Plan 2015 – 2021. The core strategy identifies a number of unfinished housing estates and designated such sites as ‘Site Resolution Objectives’. The development plan states that the purpose of the site resolution under this zoning objective is to provide an opportunity to complete these areas to an appropriate and acceptable standard of development. This zoning identifies the challenges that these areas bring and aims to facilitate their development to provide improved residential amenity and enhance their cultural heritage, social and economic sustainability.
- 8.2. The zoning is flexible in nature and allows for the provision of community needs including education, childcare, healthcare, specialised housing such as OPDs, opportunities for local business and enterprise, active and passive recreational amenity, community facilities and local shops where such facilities would be commercial viable. Proposals for residential development in these areas will be assessed in accordance with the settlement’s position within the settlement hierarchy

and monitored in line with the population targets as set out under the Core Strategy Table and in accordance with Policy IMPCS3.

- 8.3. The zoning also encourages potential applicants to actively engage with the Planning Authority in an effort to produce agreed development schemes for identified sites which will improve the existing amenities of areas and ensure a level of protection to the character of the area in which they are located.
- 8.4. Under the settlement hierarchy, Ballymahon and Lanesboro are designated as local service towns (Tier 4). Under these Tier 4 settlements emphasis will be placed on the maintenance and consolidation of growth in these towns in line with their position in the settlement hierarchy in a manner that enhances the strong and visual character and built fabric, natural heritage assets and amenities including the development of Lough Ree, with its diverse habitats and early Christian archaeological heritage in terms of tourist potential. A core strategy population allocation for the town of Ballymahon is not explicitly stated in the development plan.

9.0 Planning Assessment

I have read the entire contents of the file, visited the lands in question, have had particular regard to the planning history as it relates to the site and the issues raised in the various third-party planning appeals. I consider the critical issues in determining the current application and appeal are as follows:

- Principle of Development
- Zoning Provisions
- Housing Demand
- Traffic and Safety Issues
- Flooding Issues
- Water Supply and Sewerage Issues
- Proximity to the Longford/Westmeath Agricultural Mart
- Connectivity through Marian Villas
- Overlooking

- Proximity to Landfill
- Legal Issues

9.1. Principle of Development

In respect of the principle of development, it is important to point out that the Board adjudicated on a previous application on the subject site where it considered the principle of residential development to be appropriate on the lands in question. I would generally agree with this conclusion having regard to the site's proximity to the town centre and the site represents a logical extension of the town of Ballymahon in an eastward direction. There are however issues with regard to connectivity between the subject site and the town and this would be dealt with in more detail on the traffic and road safety section below. It is sufficient to say at this stage in the assessment that the Board under a previous application considered residential development to be acceptable on the subject site subject to quantitative and qualitative safeguards which are dealt with in more detail below. I would agree with the Board's previous decision that the principle of residential development is acceptable on the subject site.

9.2. Zoning Provisions

- 9.2.1. One of the third-party appeals argues that the proposed development does not accord with the zoning objectives as it relates to the site. It is argued that the Site Resolution Objective specifically seeks to provide uses related to community need including education, childcare, healthcare, passive recreation and amenity and specialised housing such as OPDs etc. It is also argued that in order to comply with the development plan, the subject site should be zoned for residential development.
- 9.2.2. I would not agree with this contention. I note that the Planning Authority granted planning permission for residential development on the subject site on the grounds that it took the view that the proposed development did not contravene the zoning objectives as set out in the development plan. It would be inappropriate for the Planning Authority to grant planning permission for a development that contravened the zoning objectives set out in its own plan. It is also very clear from the plan and, in particular, the core strategy within the Plan which states that "proposals for residential developments in these areas will be assessed in accordance with the settlement's position within the settlement hierarchy". While it is clear from the

section above, that Ballymahon does not have any specified designated targets in terms of number of house units to be provided under the lifetime of the plan, the plan is nevertheless clear that residential development will be assessed on its merits. Having regard to the provision of existing dwellings in the Dun Aras Estate, the planning history associated with the subject site and the wider policies set out in the Regional Planning Guidelines and the recently adopted National Planning Framework which seeks to utilise brownfield sites within existing built-up areas, I consider the proposed development to be in accordance with the zoning objective and the wider policy guidance set out in the development plan. The development plan clearly states that in the case of Tier 4 towns which include Ballymahon, that emphasis will be placed on the maintenance and consolidation of growth within the towns. The development of the subject site for residential purposes subject to appropriate qualitative safeguards is in accordance with these strategic aims.

9.3. Housing Demand

- 9.3.1. Some of the grounds of appeal argue that there is insufficient demand within the town of Ballymahon to cater for a development on the size and scale proposed and concerns are expressed that the proposal would, if developed, turn into another ghost estate. The previous inspector's report noted that "the extent of the proposed residential development currently (2005) seeking permission throughout the town is noteworthy and notwithstanding this appeal, there are a further four appeals presently before the Board accounting for approximately 430 units". The report goes on to state that "this glut of application may be as a consequence of the ending of the rural renewal tax incentive scheme".
- 9.3.2. I acknowledge that there has been a significant problem in respect of ghost estates particularly in areas of the north-west of the country where the rural renewal tax incentive scheme was operating at the time of the previous inspector's report. No such scheme is currently in operation at present and the level of development proposed under the current application is nowhere near the level of development proposed within the town in 2005. What is proposed in this instance is a development of 35 dwellings which in my view is commensurate in terms of size and scale with the settlement of Ballymahon. Ballymahon according to the population

table set out in Table 1.3.1 of the development plan is the third largest settlement in Longford with a population of 1,563. Only Longford Town and Edgesworthtown are larger. A development of 35 dwelling units cannot in my view be deemed excessive in the context of the size of this settlement of Ballymahon. Furthermore, the Daft.ie website indicates that there are approximately 35 dwellings for sale in Ballymahon at present many of which appear to be located in the rural area around the town. This compares with approximately 19 properties in Edgesworthtown and 46 properties in Longford Town. In terms of renting availability, the same website lists only 6 properties for the settlement of Ballymahon.

- 9.3.3. Finally, in relation to the issue of housing demand the Board will note that construction has commenced on the proposed Center Parcs tourist facility which is located just outside the village of Ballymahon. This will undoubtedly give rise to further housing requirements within the town for the circa 1,000 works envisaged to be employed at this tourist attraction.

9.4. **Traffic and Safety Issues**

- 9.4.1. Traffic, safety and transportation issues represented major concerns in the appeal submitted. The concerns included the following:

- Restricted sightlines at the entrance to the Dun Aras Estate.
- Restricted sightlines at the junction of the Ballymulvey Road and Main Street.
- The suitability of the road to cater for traffic associated with the proposed development. The inadequacy of the road safety audit and the traffic impact assessment submitted with the application.
- The lack of provision of footpaths on such a dangerous road.

- 9.4.2. I will deal with each of these issues below.

With regard to sightlines at the junction of the Dun Aras Estate and the Ballymulvey Road, the applicant points out that it is not proposed to undertake any alterations to the junction already permitted by An Bord Pleanála under PL14.212595. It is abundantly clear that the Board considered in the case of the previous application that the sightlines were suitable to cater for traffic at this junction. Indeed, the Board considered the proposed junction to be suitable for a greater number of housing units than is proposed under the current application. Furthermore, it was apparent

from my site inspection that speed restriction signs have been moved further along the Ballymulvey Road whereby presently the entrance to the subject site is located in a 50kmph zone. Having regard to the speed restrictions along this section of the Ballymulvey Road I consider that adequate sightlines are afforded to traffic exiting the estate in both directions.

With regard to the junction between the Ballymulvey Road and Main Street, I would again stress that this junction is currently in operation for all traffic along the Ballymulvey Road and has been for many years. As in the case of the junction into the Dun Aras Estate, it is not proposed to alter the junction in question under the current application. Again this junction was deemed suitable for traffic egressing from the Ballymulvey Road onto Main Street under the previous application. I

acknowledge having inspected the site that sightlines can be restricted by the presence of on-street parking in proximity to the junction. If the Planning Authority considers this to be a problem, it is within its remit to remove some of the parking bays on either side of the junction. The present junction arrangements between the Ballymulvey Road and Main Street are not proposed to be altered under the current application and the junction arrangements have been deemed to be suitable in granting previous developments along the Ballymulvey Road including the parent permission on the subject site. I therefore do not consider it appropriate to refuse planning permission on the grounds that both the access into the estate and the access between Ballymulvey Road and Main Street incorporate restricted sightlines.

It is argued that both the Road Safety Audit and the Traffic Impact Assessment are inadequate. Any perceived inadequacies contained in either of the documents would not alter my view, having inspected the site and the road network serving the site, that the traffic generated by an additional 35 houses would give rise to an unacceptable level of traffic congestion on the road network surrounding the site. It is clear from the previous application determined by the Board that it deemed the surrounding road network to be adequate to cater for the traffic generated. Concerns are expressed that the cumulative impact arising from the development in association with the Center Parcs development and a new hotel development would significantly impact on the surrounding road network. The Board will note from the photos attached (see Photo No. 10) that traffic associated with the Center Parc development is prohibited from using the Ballymulvey Road for access. The sign at

the entrance to the Ballymulvey Road clearly requires cars and HGV construction traffic to access the Center Parcs development via the R392 (the Ballymahon to Mullingar Road which leads eastwards out of the town).

With regard to the suitability of the road to accommodate traffic, my significant concern relates to the absence of footpaths. I have walked the road in question and have noted its narrow grass verges and its restricted forward visibility. It is imperative in my view that if any intensification of residential development was to take place, that footpaths be constructed from the entrance of the Dun Aras Estate to the main road. That section of the Ballymulvey Road as a pedestrian link in the absence of designated footpaths represents a significant safety concern for pedestrians. It is my view that any development cannot proceed without the provision of a footpath along that section of the road.

The Board will be aware that the existing development contravenes Condition No. 2 of the parent permission. Condition No. 2 of the Board's decision in respect of PL14.212595 required "that a footpath linking the site to the junction of the Main Street shall be included including public lighting prior to the occupation of any dwelling unit". This condition has clearly not been complied with. For all intents and purposes the existing development can be considered unauthorised as it has not been carried out in accordance with the permission granted. To grant a further intensification of development in the absence of a footpath in my view would be wholly inappropriate. It is of course open to the Board to incorporate a similar condition to Condition No. 2 of the previous grant of planning permission requiring that a footpath be provided prior to the commencement of development. However, having regard to the history of non-compliance in respect of this particular condition it may be more appropriate to refuse planning permission on the grounds of prematurity. The applicant argues that the current application is being proposed by a different developer and that this developer is not accountable for past failures to comply. Notwithstanding this, it would in my view be totally inappropriate to incorporate a condition under the current application which was flagrantly ignored under the previous application. Having regard to the history of non-compliance in respect of providing a footpath along this stretch of the Ballymulvey Road. I consider that planning permission should not be granted until such time as the footpath along the Ballymulvey Road is in place.

The applicant in response to the grounds of appeal state that Longford County Council are advancing plans under Part 8 of the Planning and Development Act to provide cycle and pedestrian access along the Ballymulvey Road. These proposals include CPO measures. I note that in excess of 12 years have elapsed since the grant of planning permission under PL14.212595 and no progress has been made in respect of providing a footpath along the said road, together with the fact that a compulsory purchase of lands is required in order to execute the pathway. There is no evidence to suggest that the works in question could be completed by 2019 as suggested in the applicant's response to the grounds of appeal. While it always open to the Board to include a similar type condition to that issued under the parent permission requiring that no development commence or that no new houses be occupied in the absence of the provision of a footpath, there is a possibility in my view that the footpath may not be in place during the life of the 5-year planning permission which could be issued in respect of the current application. With this in mind, together with the non-compliance with the previous condition, I would recommend that the Board refuse planning permission for the proposed development on grounds of prematurity.

9.5. Flooding Issues

I inspected the site at the adjoining agricultural lands to the east into which surface water from the existing development discharges. I found no evidence of ponding or any evidence of flooding or water breaching the banks of the existing drain into which the piped surface water from the site discharges. I am cognisant of the photographs attached to the grounds of appeal submitted by Mr. Matthew Daly. The applicant in his response to the grounds of appeal has given an undertaking to examine and investigate all related matters to ensure that the proposed network will conform with Irish Water infrastructure standard details in respect of surface water drainage. If the Board are minded to grant planning permission for the proposed development, I consider that this issue could be adequately addressed by way of condition.

9.6. Water Supply and Sewerage Issues

The grounds of appeal argue that sewage infrastructure serving the existing houses is inadequate and gives rise to odour problems, particularly during periods of heavy

rainfall. Having inspected the site and its surroundings I did not encounter any odour problems. Neither the Planning Authority nor Irish Water have expressed any concerns in respect of the potential development and wastewater capacity issues subject to an upgrading of the wastewater treatment plant at Ballymahon. The applicant has indicated that a pre-connection appraisal has been completed by Irish Water in relation to wastewater. Irish Water have confirmed that a direct wastewater discharge option can be facilitated to the existing 225 millimetre sewer subject to the upgrade of works at the Ballymahon wastewater treatment plant. This requires that the return activated sludge pumps be replaced with pumps of a higher specification. Irish Water have stated that they may require the applicant to provide a contribution towards the cost of the required upgrades (see Appendix M of submission by Mark Cunningham to the response to the grounds of appeal). On the basis of the information submitted I again consider that this issue can be adequately addressed by way of condition.

9.7. Proximity to the Longford/Westmeath Agricultural Mart

- 9.7.1. The mart was operating during my site inspection and while I noted some noise from the livestock within the mart building there was no discernible odour problems.
- 9.7.2. I am also aware of the fact that the application has been revised resulting in relocation of dwellinghouses away from the common boundary between the subject site and the Ballymahon Mart. The separation distances between the proposed dwellinghouses and the agricultural mart are similar and in most cases are greater than the separation distances between the mart and the adjoining dwellinghouses on Marian Terrace. I would agree with the previous inspector's conclusions that while concern has been raised in respect of the juxtaposition between agricultural and residential uses, it is considered that the prospective purchasers/occupants of units in the proposed scheme would be fully aware of the adjoining land use and the potential impacts arising from same. The Board would appear to have been in agreement with this conclusion as it granted planning permission for 88 dwellinghouses under the parent permission. The Board should also note that under the original layout a higher number of semi-detached dwellings backed directly onto the common boundary between the subject site and the mart, than is the case under the current application before the Board.

9.8. **Connectivity through Marian Villas**

A lot of concerns is expressed particularly of the residents of Marian Villas that if a new pedestrian linkway is permitted from the subject site through the Marian Villas and onto the Main Street to the north-west of the subject site that this would give rise to a significant level of disturbance and anti-social behaviour. There is nothing to suggest that, with the appropriate lighting and the provision of a security gate as suggested in the response to the grounds of appeal, that the pedestrian access will give rise to anti-social behaviour are an unacceptable level of disturbance. The provision of a pedestrian access would create greater connectivity between the subject site and the Main Street and would offer a shortcut for pedestrians accessing services along the northern Main Street of Ballymahon. The Urban Design Manual – A Best Practice Guide highlights the importance of connectivity in designing new residential developments. A new pedestrian access such as that proposed would undoubtedly be beneficial in urban design terms. It would also offer more sustainable pedestrian linkages between the subject site and the town.

9.9. **Overlooking**

The layout of the revised development submitted to the Planning Authority on 22nd November, 2017 does not give rise to any issues in relation to overlooking in my opinion. Most of the dwellinghouses are situated around the perimeter of the site and those dwellinghouses located in the centre of the site all incorporate rear garden lengths of 11 metres or more. Mr. Clancy, the resident of No. 5 has specifically referred to the potential for overlooking in respect of proposed house nos. 54 and 55 which are located to the rear of his existing dwelling. In the case of both proposed dwellings a separation distance between the proposed dwellings and Mr. Clancy's rear elevation are in the order of 30 metres which is well in excess of the standard distance of 22 metres in the case of 2-storey residential dwellings. I am therefore satisfied that the potential for overlooking is negligible.

9.10. **Proximity to former Ballymahon Landfill**

The former Ballymahon landfill is located in excess of a kilometre to the north of the subject site. While the grounds of appeal highlight the fact that the former landfill incorporates no engineered base-linings and also allegedly accommodates a large amount of hazardous material including asbestos, there is no evidence presented in

the grounds of appeal that the landfill is contaminating land or groundwaters in the vicinity of the site or as to how the landfill could pose a specific threat to the houses in question. I reiterate that the Board granted planning permission for a previous housing development on the subject site notwithstanding the presence of a former landfill to the north of the site. Thus I do not consider that the presence of a historic landfill on lands in excess of a kilometre to the north of the site would justify a refusal of planning permission in this instance.

9.11. Legal Issues

9.11.1. Finally, the grounds of appeal express concerns that the applicant may not have sufficient legal interest in the rights of way or in the site itself to carry out the proposed development. To address this contention the applicant has submitted a solicitor's letter indicating that the applicant acquired the property in question on the basis that it enjoyed the benefits of the rights-of-way over adjoining property and specifically the right-of-way leading to Marian Villas/Terrace. On the basis of this letter, I have no reason to believe that the applicant does not have sufficient legal interest to carry out the development in question. I would further refer the Board to the Development Management Guidelines for Planning Authorities (June 2007) and in particular Section 5.13 of these Guidelines which states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over lands; these are ultimately matters for resolution in the Courts. It should also be noted that Section 34(13) of the Planning Act states that a person shall not be entitled solely by reason of a permission to carry out any development. Therefore, any potential legal disputes in respect of land ownership or rights-of-way are a matter for a Court of Law and not a matter for An Bord Pleanála.

10.0 Appropriate Assessment

A Stage 1 Appropriate Assessment Screening Report was submitted with the application. It notes that the subject site is located in excess of 5 kilometres to the east of the nearest European sites the Lough Ree Special Area of Conservation (Site Code 000440) and the Lough Ree Special Protection Area (Site Code 004060). The screening report goes on to set out the qualifying interests associated with both these European sites and it concludes that the nature and scale of the proposed

development which is not hydrologically linked to the European sites in question will not have a significant effect on the said European Sites. The screening report submitted also assesses the potential in combination impacts and indirect impacts and concludes that no such impacts are likely to arise.

Having assessed the site and the nature of the development proposed I consider the conclusions in the AA Screening Report to be reasonable.

It is not unreasonable to assume that good management practice will be carried out in respect of construction works on site together with the small scale and temporary nature of the construction works to be undertaken. I would agree that the proposed development is unlikely to have a significant effect on the Lough Ree SAC or Lough Ree SPA Natura 2000 sites. It is therefore reasonable to conclude that on the basis of the information contained on file which I consider adequate in order to issue a screening determination that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on the Lough Ree SAC or Lough Ree SPA Natura 2000 site or any other European sites in view of the conservation objectives and a Stage 2 Appropriate Assessment (and a submission of an NIS) is not therefore required.

11.0 Conclusions and Recommendation

Arising from my assessment above I consider the principle of residential development to be acceptable on the subject site. However, I would not recommend a grant of planning permission in the absence of a constructed footpath along the Ballymulvey Road in order to accommodate a safe and secure pedestrian link between the subject site and the Main Street via Ballymulvey Road. I am also cognisant of the fact that it was a requirement of the parent permission that such a pedestrian footpath be provided prior to the occupation of any houses granted under Reg. Ref. PL14.212595. Having regard to the non-compliance with the condition under the previous planning application, I would consider it inappropriate that the Board would grant planning permission in the absence of the construction of a footpath between the subject site and the main road along Ballymulvey Road. I therefore consider the proposed development to be premature pending the provision of such a footpath.

12.0 Decision

Refuse planning permission based on the reasons and considerations set out below.

13.0 Reasons and Considerations

It is considered that the subject site is served by a road network which is substandard in light of the non-provision of public footpaths and cycleways along the Ballymulvey Road. In the absence of such convenient pedestrian and cycle access to Main Street, Ballymahon the proposed development would be premature pending the provision of a footpath along the Ballymulvey Road between the subject site and Main Street, Ballymahon. The proposed development would, therefore, endanger public safety by reason of a traffic hazard.

Paul Caprani,
Senior Planning Inspector.

21st May, 2018.