



An
Bord
Pleanála

Inspector's Report ABP-300590-18

Development

(1) Demolition of an existing dwelling house & garage; (2) The construction of 39 No. 2 storey dwelling houses and 3 No. Single storey dwelling houses; (3) The provision of a foul pumping station and associated rising main to existing foul sewer; (4) Retire existing 38Kv overhead lines & associate poles within the proposed development and erect 2 number triple pole 38Kv cable end poles arrangement at the northern and southern boundary of the site; (5) All ancillary site works & connection to public services

Location

Ballymacaula, Drumbiggle, Ennis, Co. Clare

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

P17/237

Applicant(s)

Woodhaven Developments Ltd

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

First v Contribution

Appellant(s)

John Madden

Pat Rowan

Observer(s)

Transport Infrastructure Ireland

Date of Site Inspection

08/04/18

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located to the west of the built-up area of Ennis town, in County Clare. The wider residential area is known as Cahircalla.
- 1.1.2. The greenfield site is bound to the south by the public road R474 leading from the Beechpark roundabout on the west, past the adjoining Golf Club and into the town centre. Forming the western boundary of the site is the N85 / Ennis by-pass. To the north-east of the site are further greenfields, zoned for low density residential development. Along the southern boundary of the site is a large two storey detached dwelling which appears to have been vacant for a time. Immediately east and west of this dwelling are agricultural entrances. A row of one-off dwellings is located on the southern side of the R474.
- 1.1.3. The site rises from the southern boundary to a high point in the north east, with ground level changes of approx. 7m. A number of localised hollows can be found within the site. In the northern section of the site, at a point close to the fencing running along the N85 boundary are the remnants of an agricultural building.

2.0 Proposed Development

- 2.1.1. On the 31st March 2017 permission was sought for the demolition of an existing two-storey house and garage (269sq.m.) and the construction of 39 no. two storey dwellings and 3 no. single storey dwellings (ranging in size from 97.8sq.m. to 163.5sq.m.) on a site of 2.39ha. The proposed development also includes a foul pumping station and the retirement of the existing 38kv overhead lines and poles.
- 2.1.2. The application was accompanied by the following:
 - Planning Application Services Report
 - Design Statement for housing development
 - Letter and Drawing from ESB Networks
 - Flood Risk Assessment
 - Environmental Noise Assessment
 - Drainage Assessment
 - Landscape Management Plan

- Ecological Survey
- Outdoor Public Lighting Report

2.1.3. A Road Safety Audit and a Traffic and Transport Assessment was submitted as unsolicited further information on the 10th of April 2017.

3.0 Planning Authority Decision

3.1. Planning Authority Reports

- 3.1.1. **Environmental Assessment:** with regard to the drainage assessment, the outdoor lighting report, landscape management plan and ecological Survey: 4 no. conditions recommended.
- 3.1.2. **Department of Arts, Heritage and the Gaeltacht:** given the scale of the proposed development it is possible that subsurface archaeological remains could be encountered. An Archaeological Impact Assessment (AIA) should be requested as Further Information. If significant remains are found a refusal may be recommended.
- 3.1.3. **Roads Design:** Further information required on 21 no. issues.
- 3.1.4. **Municipal District of Ennis:** Further information required: applicant shall be requested to submit the agreement that shows they have permission to connect to the N85 storm drainage and that capacity for same has been designed in. Applicant should be requested to confirm how storm water drainage on the adjacent site is dealt with. 5 no. items of further information required regarding Road Design.
- 3.1.5. **Planning Report:** Refers to the three zoning objectives on the site and notes that the density at 21 unit pha is lower than the general density assumption of 30 units per hectare but is acceptable. No objection in principle to the proposed development having regard to the settlement strategy for the area. Proposed development away from the buffer adequately deals with the Boards previous reasons for refusal. Issue of surface water raised by the Board is outstanding but can be addressed by way of further information. Boards third reason for refusal regarding pedestrian connectivity to the town has been addressed by way of two pedestrian and cycle connection points into the adjoining land zoned for low density residential. Submitted TIA and RSA are acceptable however other issue regarding visibility, signage and DMURS require further information. House no.s 1, 2, 4, 8, 9, 18, 21, 22-24, require further consideration in terms of overshadowing, overlooking and / or gable treatment.

Details of retaining wall and cross sections required. Location of dwellings in the buffer zone is acceptable as the shed on this part of the site no longer exists. Proposed development is within acceptable noise limits. Mix of house units acceptable. Further information required regarding the proposed pumping station and prevention of surface water entering adjoining lands. Recommendation to request further information on 8 issues.

3.2. **Prescribed Bodies**

- 3.2.1. **An Taisce:** The proposed estate should be in keeping with the needs for social and affordable housing. Does the local water system have capacity for the proposed development and concern over the cumulative impact of traffic in the Drumbiggie area?

3.3. **Third Party Observations**

- 3.3.1. Five observations were submitted to the Planning Authority. The issues raised in the observations have also been raised in the appeal and are addressed in section 6.1 below.

3.4. **Request for Further Information**

- 3.4.1. On the 25th May 2017 the applicant was requested to address the following issues:
- 1 visibility splays at proposed entrance, 1.8m footpaths, 2.25m cycle lanes, vertical alignments between gradients to be compliant with DMURS, corner radii to be compliant with DMURS, turning bays to be sufficient for service vehicles, omission of turning circle at main junction, visitor car parking spaces and raised tables as per the RSA.
 - 2 details of FFLs of all new dwellings, longitudinal sections through the site, details to avoid driver dazzle on the N85, details to reduce noise impact in the south-west corner of the site, boundary treatment for houses 13 and 21.
 - 3 details to avoid overlooking, cross section through houses 2 and 22 and details of proposed 1.8m high boundary wall.
 - 4 omission of house no. 1, revision of gable of house no. 2, details to avoid overshadowing of house no. 20 by house no. 21, revision of gables on house no.s

8,9,18,13 and 21, proposed retaining wall between block 14-18 and block 19-21 and cross section through houses 16 to 19.

5 proposals to avoid odour pollution from pumping station and foul sewer layout and design including details of foul sewer connection to the public sewer.

6 Agreement referred to in the FRA showing permission to connect to N85 storm drainage and revised plans showing this area outlined in blue, details of drainage system for existing house, provision of all houses above road level or alternatively suitable surface water drainage in the private area of each dwelling

7 Archaeological Impact Assessment

8 Landscaping plan to scale.

3.5. **Response to Request for Further Information**

3.5.1. The applicant responded to the FI request on the 25th of September 2017. The response was accompanied by the following:

- Traffic and Transport Report
- Archaeological Assessment
- N85 Infrastructure Provision Report

3.5.2. On the 27th of September 2017, the applicant was advised that the FI submission was deemed to be significant and required new public notices.

3.6. **Reports on File following Submission of FI**

3.6.1. **Transport Infrastructure Ireland:** Proposed development is at variance with official policy in relation to control of development on / affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012) as the proposed development or the precedent it would set would adversely affect the operation and safety of the national road network for the following reasons:

- Insufficient data has been submitted to demonstrate that the proposed development will not have a detrimental impact on the capacity, safety or operational efficiency if the N85,

- Insufficient information has been submitted to demonstrate that the proposed drainage system will not negatively impact on the N85 drainage regime,
- The Authority will not entertain future claims in respect of impacts.

3.6.2. Road Design Planning Report:

- Proposed entrance will be DMURS compliant if all vegetation is cleared and no landscaping works are allowed in the sight triangle.
- No shrubs should be planted at the first left turn off the main access road.
- 1.8m footpath, 5.5m and 5m roads, corner radii, road 3 gradient, all are DMURS compliant.
- Shared street concept with cycle markings is acceptable. Signage required.
- Paving and kerb design must comply with NRA Pedestrian Crossing Specification and Guidance.
- No surface water allowed to run onto the R474, the pond at the main junction or any internal road crossing points.
- Turning areas are in accordance with Site Development Works for Housing Areas.
- Street lantern must be DMURS compliant.
- Signs and road markings must comply with Traffic Signs manual.
- Proposed priority junction and roundabout have sufficient capacity to cater for the proposed development.
- Signage indicating distance to town centre shall be provided at the entrance. Contribution towards public lighting and 380m of footpath required.
- Applicant should be requested to contribute to traffic calming / speed reduction measures on the R474.
- Public lighting is required along the cycle / pedestrian links.
- Corner of house no. 42 is on the 60-64dB Lden noise contour. Clarification required on how much noise attenuation will accrue from the proposed 1.8m high wall.

3.6.3. **Ennis Municipal District Office: Storm Water:** existing drainage pattern on the site would be by means of soakage and transfer towards lower ground at the Claureen River. The N85 at a lower level than the site, has a filter drain at the base of the embankment to cater for groundwater. There is a storm drain under the footpath, a filter drain inside the footpath and second filter drain at the base. The second drain caters for drainage runoff from the adjoining lands to the east, including the subject site. This is the only location of this kind of filter drain on the N85. Ducts and two 300mm diameter pipes join the subject site and the land severed by the N85. The applicant has submitted correspondence to this effect. The applicant indicates that the design discharge of the attenuation pond is 31l/s allowing a greenfield run-off area of 15.5ha at 2l/s/ha. The hard surface of the N85 and the land access road to the west is approx. 2.54ha and the embankment margins are 2.55ha, all discharging to the attenuation pond. Based on these criteria the design accounted for additional drainage from the adjoining lands. The MD office have not confirmed the design criteria or the detailed design calculations of this section of storm drainage on the N85. It is reasonable to consider that a competent designer of the storm water network of the N85 would have accounted for groundwater discharge from the proposed development site. Clarification is required however on one of the points raised by the Transport Infrastructure Ireland as follows:

- Concerns that houses are constructed with adequate freeboard above road level and in locations of local hollows within the site, thus catering for more severe rainfall events. Adequate freeboard and gullies must be conditioned.
- Adjacent dwelling appears to have the capacity of an over ground storm water flow from the site to the hollow to the rear of the house. This additional capacity will not be available post development which may result in lying water in the garden of the house (FFL 25. mOD and road at gateway is 25.18mOD).
- Issues relating to foul sewer connection and decommissioning of existing septic tank are matters for Irish Water and the developer.

3.6.4. **Planning Report:**

- Item 1 Roads & Traffic Safety: issues have been resolved to the satisfaction of the Roads Design Office. Request for noise attenuation qualities of boundary wall will

be by clarification of FI. Items raised by Transport Infrastructure Ireland cannot be clarified as they were not raised in the FI request. Notes that the RDO are satisfied with the proposed junction and roundabout capacity.

- Item 2 Levels: Further clarification required regarding noise assessment and proposed boundary walls. Condition should be included restricting further residential development in the buffer zone part of sites 13 and 21. House no.s 13 and 21 may require to be omitted due to the proximity of the buffer zone.
- Item 3 Residential Amenity & Overlooking: Not satisfied that proposed development will not overlook existing dwelling to southwest. Further clarification needed.
- Item 4 Building line: House no. 1 should be omitted.
- Item 5 Pumping station: relocation although minor is acceptable as no certainty that odour will arise. Foul sewer layout and details are subject to a separate agreement with Irish Water.
- Item 6 Surface Water Disposal: Not satisfied that connection to N85 storm drain is permissible or that an alternative means of discharge has been considered. Overall strategy for storm water drainage is not clear. Further clarification required.
- Item 7 Archaeology: No objection.
- Item 8 Landscaping: can be dealt with by way of condition.

3.6.5. Four of the parties who had objected to the application submitted a response to the further information.

3.7. Request for Clarification of Further Information

3.7.1. On the 25th October 2017, the Planning Authority requested that the applicant address the following matters:

2(d) with regard to the proposed wall adjoining sites 11-13, please clarify if noise modelling has been carried out to determine the efficiency of same in protecting residential amenity

3 (a) and (b) proposals to protect the existing dwelling from overlooking from house no.s 2,-4 and 22-24.

6(a) details to clarify the that the proposed storm water drainage has accounted for the attenuated discharge from the proposed development. Planning Authority requires revised design calculations. Planning Authority requires consent from the relevant landowner to connect to the N85 storm drainage infrastructure and that the area of land to enable these works is outlined in blue. Missing sections of the Appendix 1 of the Infrastructure Provision Report must be resubmitted.

6(b) Details of the proposed purpose-built storm sewer to address concerns regarding surface water ponding in the garden of the adjoining dwelling.

3.8. **Response to Request for CoFI**

3.8.1. On the 10th November 2017 of the applicant responded to the Planning Authority's request as follows:

2(d) applicant confirms that the main purpose of the wall adjoining house no.s 11-13 is to screen roundabout traffic from the internal road traffic.

3(a) and 3(b) Survey and photographic report showing hedging. The separation distance and future planting will prevent overlooking.

6(a) Applicant has analyses the 'as-built' N85 drawings and can confirm that there is spare capacity within the pipe network and storage lagoon for the attenuated greenfield run-off of 5l/s from the proposed site. Micro drainage analysis supports this finding. Calculation is based on Met Eireann figures and IH 124 greenfield run-off for a storage solution based on 1:100 year return/

The existing lagoon has been examined and found to have sufficient capacity.

The connection to the roadside a drainage will be facilitated under a road opening licence.

The applicant has acquired all rights and privileges of the former landowner in respect of the N85. Letter from Woodhaven Developments Ltd. stating that they have acquired the legal interest and privileges of the former land owner Pat Barry, including consent to enable all services connections as submitted in the application.

Drawing no. 16-16-300 shows proposed stormwater disposal.

6(b) A 150mm land drain connected to the new storm sewer will collect storm run-off and convey it to a positive outfall in the new storm sewer.

3.9. Reports on File following submission of CoFI

- 3.9.1. **Road Design:** No noise modelling or adequate response was received to the request for details of the noise attenuation measures provided by the wall adjoining houses 11-13. This area will be subject to road traffic noise. No houses or gardens should be within the 60-64dB Lden zone.

Ennis Municipal District Office: Cost estimates of footpath from BeechPark roundabout to Cahercalla Road – 60% of this cost should be borne by the two developers with the remainder borne by the Council. Full cost of public lighting borne by two developers. Calculation Sheet attached.

Storm Water: Council are satisfied that there is adequate capacity in the N85 storm drain network to cater for the attenuated greenfield run-off from the proposed development. 6 no. conditions recommended.

Roads: 5 no. conditions recommended.

- 3.9.2. **Planning report:**

2(d) Condition should be included providing that the proposed sound attenuation structures along the boundary of the site are adequately designed to provide noise attenuation to the required standard.

3(a) and (b) House no. 1 should be omitted with part of the site allocated to house no. 2 and the remainder to be provided as open space. Hedge to the rear of house no. 2 is 3-5m in height and will not prevent overlooking of existing dwelling. House no. 2 should be revised to a single storey dwelling. Hedge to rear of house no.s 3 and 4 is 8m in height and is sufficient to prevent overlooking. House nos. 22-24 are single storey and will not cause overlooking.

6(a) and (b) Issue of storm water has been adequately addressed. Conditions as per Municipal Office.

Noise: Regarding noise impact, a noise modelling report was submitted as part of the original application. Proposed development is within the limits of the NRA /

Transport Infrastructure Ireland standards, will not require the installation of noise barriers and is acceptable. The proposed development is on the limit of compliance with the BS noise standards. Proposed mitigation measures are acceptable subject to condition.

Summary: Principle of proposed development is acceptable. Traffic, density, design & layout, public health, flood risk, storm water management, archaeology and built heritage, ecology, and renewable energy are acceptable. Recommendation to grant subject to conditions.

3.10. Planning Authority Decision

3.10.1. On the 7th December 2017, the Planning Authority issued a notification of their intention to GRANT permission subject to 26 no. conditions. Conditions of note include:

1: permission is for 41 no. houses only

2: house no. 1 shall be omitted and area laid out as open space. house no. 2 shall be replaced with a single storey dwelling. Site no. 2 shall be increased from 12 to 15m in width.

4: boundary treatment details

5: FFL's including adequate freeboard above the road network and adequate gullies.

6: noise limits

9 landscaping requirements

10 material finishes requirements

21 storm water drainage requirements

22-26 development contributions

4.0 Planning History

4.1.1. **On the subject site:**

4.1.2. Planning Authority reg. ref: 05/1879: Planning permission was refused for 60 dwellings, a shop and the demolition of existing dwelling. The reasons for refusal related to prematurity of the proposal pending the completion of the Ennis By-pass and the design and layout of the proposed development.

4.1.3. **On the Adjoining Site to the North-East:**

4.1.4. 2006: **PL03.214836**: On a site split between Clare county Council and Ennis Town Council permission was refused for the construction of 159 dwellings a crèche at Golf Links Road, Ennis, for one reason: On the basis of the submissions made in connection with the application and the appeal, the Board is not satisfied that the site can be drained properly, having regard to the proposed system for disposal of surface water to an attenuation area located on lands which do not form part of the site proposed for planning permission and are outside the control of the applicant, and which would necessitate connection across the new Western Relief Road, which is being constructed below the level of the site. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

4.1.5. 2008: **PL58.221408 and PL03.221409**: On the same site, permission was refused for the construction of 147 dwellings and a crèche for two reasons:

1. It is considered that the proposed development would be premature by reason of an existing deficiency in the provision of sewerage facilities and the period in which this constraint may be reasonably expected to cease.
2. The Board is not satisfied that there is adequate pedestrian connectivity between the site and the urban area and, therefore, considers that the proposed development would endanger pedestrian safety by reason of traffic hazard.

4.1.6. **TC0007**: Pre-application consultation under section 5 of the Planning and Development (Housing) and Residential Tenancies Act 2016 for 148 no. residential units, ancillary surface car parking, provision of a crèche, access via new junction on Circular Road (R474) and all associated works. Ballymacuala, Circular Road, Ennis, Co. Clare.

5.0 **Policy Context**

5.1. **Clare County Development Plan 2017-2023**

5.1.1. Volume three of the development plan is the Ennis Municipal District Written Statement and Settlement Plan. Section 1 refers to Ennis. The subject site is within the development boundary of the town (see map no. 1a).

5.1.2. **Section 2.5.2** of the plan refers to new housing in Cahircalla More. It states "Recognising the need to consolidate lands closer to the town centre, a number of

areas of residentially zoned lands have been identified close to the new national school and existing retail/service providers in the neighbourhood. Development proposals on the residential sites in the Cahircalla More neighbourhood listed below must be informed by bat surveys and must ensure that there is no loss of habitat for the Lesser Horseshoe Bat. Any habitat loss must be offset by additional landscape planting to ensure connectivity across the landscape. All development proposals, including lighting proposals, must be informed by the results of the bat survey. A landscape management plan must also be prepared to protect and enhance the existing hedgerows and wildlife features. This landscape management plan shall be informed by an ecological assessment.”

- 5.1.3. The subject site has three zoning objectives (see map **Ennis Settlement Plan**). The majority of the site is zoned ‘R5’, a linear section along the boundary with the N85 is zoned ‘buffer zone’ and that southern section of the site accommodating the existing and adjoining dwelling is zoned ‘existing residential’.
- 5.1.4. Regarding the **zoning objective R5** on Circular Road, the plan (also section 2.5.25) states: “This site has been zoned for residential development and can accommodate high quality dwelling units with associated green areas and amenities. The buffer area between the N85 and the Residential zoning must be maintained and will not be considered as part of usable open space in the development. Development proposals must have regard to the Clare Noise Action Plan 2013 and associated Strategic Noise Maps and appropriate noise mitigation must be incorporated into any proposals. Development proposals on the site shall be accompanied by a flood risk assessment to ensure that floor levels are set to an appropriate height (1 in 100-year flood event plus climate change allowance and freeboard). A drainage impact assessment will also be required. Development proposals for this site shall also be accompanied by an ecological assessment.”
- 5.1.5. Section 19.4 of the development plan written statement sets out the ‘nature of zonings’. Of relevance to the subject site are the following:

Buffer Space: “Buffer spaces are intended to provide a buffer of undeveloped land for the conservation of biodiversity, visual amenity or green space. Buffer spaces may include natural features such as floodplains, riparian zones, turloughs, valuable

biodiversity areas including designated sites, amenity areas, woodlands, hedgerows, green spaces and archaeological features”

Existing Residential: “The objective for land zoned ‘existing residential’ is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.”

- 5.1.6. Other Policies and Objectives of the development plan that are relevant to the proposed development include:

CDP4.7 Housing Mix

CDP4.15 Green Infrastructure in Residential Developments

CDP18.6 Strategic Flood Risk Assessment

CDP18.8 Storm Water Management

5.2. Natural Heritage Designations

- 5.2.1. The subject site is located 1.6km east of the Pouladatig Cave SAC (site code 000037), 1.6km south-west of the Lower River Shannon SAC (site code 002165) and 1.7km north of the Newhall and Edenvale Complex SAC (site code 002091).

6.0 The Appeal

- 6.1.1. A First-Party appeal against the financial contributions levied by the Planning Authority and two third party appeals against the decision of the Planning Authority to grant permission were submitted to the Board.

6.2. First Party Appeal

- 6.2.1. An agent for the applicant has submitted a first party appeal against condition no.s 23, 24 and 25, in accordance with section 48(13)(a) of the Planning and Development Act 2000- 2016. The grounds of the appeal can be summarised as follows:

- The appeal is made on the grounds that the application will not be considered 'de novo'.
- Condition no.s 23, 24 and 25 provide for the special contribution for improvement of public lighting, footpaths and traffic calming measures.
- The Clare County Council adopted Development Contribution Scheme 2007-2023 states that it may require the payment of a 'special contribution' in respect of a particular development where specific costs are not covered by the general scheme or incurred in respect of public infrastructure and facilities which benefit the proposed development.
- Section 48(12)(a) of the Planning and Development Act 2000- 2016 states that 'the condition shall specify the particular works to be carried out, or proposed to be carried out, by any local authority to which the contribution relates.
- It is submitted that the requirement to pay €227,509 under condition no. 22 is without reference to an up to date Housing Strategy.
- Condition no.s 23, 24 and 25 which provide for costs for public lighting, public footpaths and traffic calming measures are a duplication of the works accounted for in condition no. 22.
- The proposed works associated with condition no.s 23, 24 and 25 are improvement works for the wider area.
- It is submitted that these costs have to be incorporated into the development contribution scheme as the subject site is zoned for housing. There are no specific site objectives requiring works identified in the special contributions.
- The possibility of special contribution conditions was not mentioned in pre-planning.
- Page 13 of the Clare County Development Contribution Scheme provides for the inclusion of only one special contribution condition. The Board is asked which of the three special contribution conditions attached to the subject grant take precedence. The Board is requested to find that condition no. 22 is in accordance with the scheme but that condition no.s 23,24 and 25 are not in accordance with the 2013 guidance on Development Contributions.

- It is submitted that there is a lack of clarity and consistency in the Councils calculations. No drawing has been provided indicating the scope of the contributions required for public lighting or footpaths.
- Lamp standards will be provided on the subject site and presumably on the adjoining site. Public lighting is provided for dwellings on Circular Road as requested in the special condition. The stated cost of €168,250 with an individual cost of €6,730 per land is uneconomical.
- It is submitted that only stone wall is required and not the required 137m of footpath and 60m of walling in condition no. 24.
- It is submitted that the traffic survey clearly shows that there is no need for traffic calming measures and therefore the applicant should not be required to pay as per condition no. 25.
- It is submitted that the transport, amenity and community facilities works covered by condition no.s 23, 24 and 25 are correctly covered by the general development contribution scheme applied in condition no. 22. The Board is requested to omit condition no.s 23, 24 and 25.

6.3. **Third Party Appeals**

- 6.3.1. Two third party appeals against the Planning Authority's decision to grant permission have been submitted to the Board.

6.4. **Third Party Appeal: John Madden, Glencairn House, Hermitage, Ennis**

- 6.4.1. The grounds of the appeal can be summarised as follows:

Storm Water

- The proposal to pump storm water to the attenuation pond adjoining the R474 is questioned.
- This attenuation pond was constructed by the NRA to alleviate the flooding caused by the construction of the road through a floodplain.
- The pond is not large enough to the existing storm water – photos submitted.
- Recent flooding of the adjoining Claureen River which drains to the Fergus River is not addressed in the drainage assessment. Flood waters in 2015 were the

highest recorded and residents of Dun Na Hinse (700m from attenuation pond) were removed by emergency service vehicles. Council residents in Cloughleigh also experienced flooding. This would be exacerbated by the proposed development.

- An objective of the development plan is to protect existing flood plains from development that would exacerbate drainage and flooding problems. The proposed development is a clear breach of this objective.

Flash Flooding

- Flash flooding of the Claureen River is compounded by backwatering of the downstream River Fergus.
- The previous 18hour timeframe to reach peak flood levels has been reduced to 6/8 hours. In the December this was reduced to 3 hours, with consequent flooding of the area.
- The proposed development with its increase in hard surfaces will lead to flash flooding.
- The Drainage Assessment refers to the Greater Dublin Drainage Study and limiting the discharge from the development based on a 100-year storm event. It is submitted that given the extent of flooding recently, this is inadequate.

Attenuation Pond & Wetlands Maintenance

- No maintenance of the attenuation pond or wetland area has taken place since it was built 10 years ago. The pond is overgrown and sediment has not been removed.
- There is no natural drainage as the pond is at river level and the water cannot infiltrate the ground underneath.
- The adjoining Fergus River has been in flood since July 20th – over 23 weeks.
- The Drainage Assessment states that as part of the CPO drainage was to be to the nearest appropriate watercourse. No copies of this agreement have been presented. No analysis that the Claureen River is the most appropriate watercourse has been submitted.

Contradictory Findings

- In response to the Further Information request the Drainage Assessment states that connection to the roadside drainage is provided for in the CPO – who's rights and entitlements have passed to the Applicant. The appellant questions where the supporting evidence for this is and if all easements have been registered.
- The topography of the site is such that the eastern side drains to the roadside – where the bypass is cut. All drainage from the site must find its way to this drainage point. It is submitted that with the 6.5m ground level change from the north to the south, drainage is likely to be to the south – towards the Golf Links Road. It is submitted that an alternative disposal system has not been considered.

Environmental Impact Statement

- In the document 'Response N85 Infrastructure Provision Woodhaven' the area within the fence defining the lands acquired by the NRA for the construction of the N85 is considered is 6.5ha. The report states that the additional 2.4ha which includes the subject site, allows for a total riparian area of 9.5ha. It is submitted that this claim is not supported with analysis.
- The NRA has not provided any information about the capacity of the attenuation pond.
- That flooding patterns have changed since the construction of the road in 2004 must be recognised.
- The appellant asks what is the purpose of discharging to an already full attenuation pond? And do the Council have a responsibility to the residents of Cloughleigh and Dun na Hinse to ensure that flooding is not exacerbated?
- The applicant indicates that the stormwater attenuation area was constructed as a result of the CPO. The appellant states that this is untrue and not feasible.
- Any maintenance or cleaning of the pond will need to be cognisant of species or habitats in the pond.

Legal Access to the Attenuation Pond

- The applicants statement that they have acquired the legal interest and privileges of the former landowner – including consent to enable all service connection, is inadequate and inconclusive. It is submitted that this was not addressed by the Planning Authority.

- Copies of all registered wayleaves should have been submitted with the application. It is noted that the Board have previously refused permission on an adjoining site on the grounds of lack of certainty regarding disposal of surface water.
- The attenuation pond has been completely full on 6 no. occasions over the past 7 no. weeks – Nov 11th, Nov 22nd, Nov 27th, Dec 10th and Dec 25th. Neither the Planning Authority nor the applicant have addressed the reduced capacity of the pond.

Sightlines

- NRA guidelines require a 70m sightline on a 50kph road. To have regard to the bends on either side of the proposed entrance, sightlines of 100m are required.
- The traffic and transport assessment found that average speed on the road at 55kph, was in excess of the speed limit. The assessment refers to the narrowness of the road, that the adjoining dwelling and the large evergreen further reduce visibility on the road and that there is no hard shoulder to facilitate traffic pulling in.

Environmental Noise Impact

- The noise levels recorded on the single day of recording were barely within the acceptable threshold. It is submitted that true traffic levels are higher and that a number of samples should have been taken.
- The site was zoned for light industrial use in the draft development plan. The site was advertised for sale as a light industrially zoned site. It is submitted that this is an acknowledgment of the noise levels.
- The NRA use a threshold of 60dBa Lden at the façade of a residential development. The noise levels recorded at 57 dBA are within the margin of error. Traffic levels were not at a true level with no commercial traffic, no school traffic and no holiday traffic so soon after Christmas.
- The forecasted increase of 2-13.7% are conservative. It is submitted that this cannot be overcome by noise alleviation measures.
- The Board have previously referred to the unsuitability of acoustic noise barriers on the adjoining site.

- It is submitted that the Planning Authority have failed to adequately address this issue.
- **Prematurity of Development:** The inadequate infrastructure on the adjoining site has not changed. Therefore, the proposed development is premature.
- **Unlit Pathways:** The Board have previously referred to the lack of pathways to the town centre. The existing unlit pathway at the Golf Club represents a significant health hazard which is compounded by the large evergreen trees.
- **Sewerage Manholes:** the capacity of the foul sewer pipe on the adjoining N85 is unknown.
- **Alteration of Electrical Cables:** It is national policy that once a public utility has been granted access to a right of way then this cannot be altered. It is submitted that to allow so would create an inappropriate precedent. This issue should have been clarified prior to the Planning Authority's decision.
- **Conclusion:** The Board is requested to refuse permission on the grounds of flooding and public interest.

6.5. **Third Party Appeal: Pat Rowan, Beechpark, Gold Links Road, Ennis**

- 6.5.1. The Appellant lives directly across the road from the proposed entrance. The grounds of the appeal can be summarised as follows:

Development Plan

- The proposed development is contrary to the three zoning objectives covering the site.
- The R5 zoning requires that a buffer be maintained adjoining the N85 and that this area will not be considered to be usable space. Buffer zones are intended to be undeveloped to allow for the conservation of biodiversity, visual amenity or green space.
- House no.s 13, 21, 37 – 42 all have parts of their plots within the buffer zone. Part of the public open space is also within the buffer zone.
- Residential development and open space are not permitted uses in “buffer zone” area.

- The applicant states that a clause will be added to the sale of house no.s 13 and 21 to require no building in the buffer zone without planning permission. This is not enforceable and is contrary to the zoning objectives.
- The applicant has suggested that a mapping error accounts for some of the buffer zone and has submitted a revised map. The applicant cannot change boundaries to suit their proposed layout.
- It is noted that the applicant made a submission to the Draft Development Plan to have the subject site changed from a low-density zone to Residential. The buffer zone was not changed between the draft and adopted plan. The buffer zone boundary should have been challenged at draft plan stage, not as part of a planning application.
- A pre-application consultation for a strategic housing development on the adjoining low-density zoned site has been made to the Board. A buffer zone runs along the boundary of the site with the N85. No development was proposed within this zone, with a 30m setback proposed. It is submitted that such a setback buffer should be proposed in the subject site.
- 8 no. houses are proposed on that section of the site zoned 'existing residential'. Multiple housing units are 'open for consideration' and 'not normally permissible' in such zones. The proposed development is overdevelopment, is out of character with the low density surrounding development and does not enhance the quality and character of the area.
- Section 2.1 of the Residential Density Guidelines require that density standards relate to the surrounding area. Having regard to the peri-urban location of the subject site and the adjoining low-density residential development the proposed increase in density is not appropriate.
- It is submitted that the proposed development has not considered the other two zoning objectives on the site.
- It is noted that the planning report of 25th October 2017 states the location of the gardens of house no.s 21 and 13 in the buffer zone was acceptable but that a condition that precluded residential development in the zone would be attached. Contradictorily the planning report also states that house no.s 13 and 21 should

be omitted from the scheme due to proximity to the buffer zone. Neither was included in the decision to grant permission.

- The proposed open space is less than the 15% required by the Sustainable Residential Development in Urban Areas Guidelines.
- It is submitted that the proposed development should be refused on the grounds that it materially contravenes the zoning objectives of the development plan.

Ownership

- The applicant has not demonstrated ownership of the small triangle of land in the north-west corner

Noise Impact

- The Appellant is concerned that noise will impact on their residential amenity given that the buffer zone is not being respected.
- The Roads Design Office raised concern over noise impacts on house no.s 42,21 and 13 which are within the 60-64dB Lden zone. The proposal to erect a 1.8m high wall will only reduce dazzle, not noise.
- The response to the Planning Authority's request for information of the wall adjoining house no.s 11-13 was not adequate. The Roads Design Report (Nov 27th) states that no houses or gardens should be within the 60-64dB Lden zone. This was not accepted by the Planning Authority and all the houses within this zone were granted permission.
- The planning report stated that 'sound attenuation structures' should be provided along the N85 boundary. No details of such structures were requested or provided.
- Condition no. 6 requires that sound attenuation measures be certified after the development is built. The appellant submits that this is unacceptable as any noise mitigation measures introduced after certification will not be subject to third party review.

Residential and Visual Amenity

- The proposed development will have a negative impact on the residential and visual amenities of the area.

- The planners report of Dec 7th states that a wall will run the entire length of the site. Drawing no. BD-14-PL17 shows the wall along sections A-B, B-C, C-D and C-E only. The Design Statement states that the existing fencing along the roadway will be retained.
- It is submitted that a 1.8m high wall along the boundary will be unsightly and visually obtrusive, being elevated over the N85.
- The landscape plan is not legible and the site layout plan shows very little planting. The proposed 12m deep planting strip on the adjoining lands should be carried into the subject site.
- House no's 1 and 2 break the building line and should be omitted.
- The proposed entrance should be opened more to allow for more open space and all houses to face the open space.
- The relocation of a triple pole directly in front of the appellant's house will be unsightly. The appellants request to have the lines underground was not addressed.
- The proposed foul sewer pumping station is too close to the appellant's property. Foul smells emanate from the existing manhole. The proposed relocation of the station and the inclusion of a decorative vent pipe does not alleviate the appellants concerns due to prevailing winds and the difference in ground level between the two sites.
- The appellant requests that the pumping station be relocated to the northern end of the site where ground levels will allow surface water to drain.
- The proposed decorative vent will be visually injurious at the front of the proposed development.

Surface Water Disposal

- The applicants claim that a CPO has given permission for them to use pipework within the N85 road system and the constructed wetlands to service the subject lands has not been sufficiently demonstrated.
- The proposed surface water outlet will require substantial excavation to the N85 embankment, outside of the subject site.

- That a €10,000 fee was required of the landowner for ducts, leads to a conclusion that the provision of a surface water piped system was part of the CPO.
- As the Planning Authority would be responsible for the surface water pond and piped system across the N85, they must be aware of the agreement between the landowner and the road contractor / designer.
- No evidence of the agreement of Clare County Council or TII to the maintenance of the wetlands has been presented.
- The applicant reference to the CPO requiring 'water discharge to the most appropriate watercourse' has not shown to be a requirement of the road designers. A surface water line along the eastern side of the N85 through third party lands would reach the Claureen River.
- TII have commented that insufficient information has been submitted to demonstrate that the proposed development will not negatively impact on the drainage regime of the N85. Despite the TII requiring that their approval be received before permission was granted, no such approval was sought.
- The Board has refused permission (PL03.214836 and PL58.214841) for housing developments on adjoining sites on the grounds of drainage and surface water disposal being on lands outside of the applicants control. The attenuation area proposed for the subject development is also on lands outside of the applicants control.

Traffic Hazard / Road Safety

- The significant increase in traffic volumes outside the appellant's house will make his exit hazardous.
- There will be substantial light pollution from cars existing the estate.
- The proposed entrance should be relocated to the east.
- The TII submission that the proposed development was at variance with official policy for development affecting national roads was not addressed by the Planning Authority. This submission should be addressed by the Board.

Summary

- The board is requested to refuse permission on the grounds of materially contravening the development plan, negative impacts on residential and visual amenity and the development not being in accordance with the proper planning and sustainable development of the area.

6.6. Applicant Response to Third Party Appeals

6.6.1. An agent for the first party has responded to the two third party appeals. The agent states that the applicant acquired the site and all rights and appurtenances in Feb. 2016. The purchase included the right of access to the attenuation tank at Claureen constructed by the NRA in 2005, granted to the previous land owner as part of the CPO of his lands to facilitate the construction of the N85.

- The applicant met with the Planning Authority who indicated that a medium density development was suitable for the subject site due to the pattern of development around the site and the distance to the town centre. Unlike the adjoining site to the north-east the subject site has a zoning of existing residential and a specific objective covering the main part of the site. All the requirements of this R5 specific zoning objective have been met.
- Ennis was identified as a hub town in the National Spatial Strategy. The core strategy of the Ennis development plan sets a population target of 33,479 by 2023 and 137.20ha to meet that growth. The subject site has been zoned for that purpose.
- It is proposed to demolish the existing dwelling which has been vacant for seven years and is on an individual septic tank. The Planning Authority agreed that it should be incorporated into the overall development.
- The purpose of the buffer zone is to provide a separation from the N85. The reference in the zoning objective to nature preservation refers only to where there is a nature area to be preserved which is not the case on the subject site. The planning report considered it acceptable to include sections of private open space in the buffer zone.
- The environmental assessment officer stated that the area no longer contains any features of conservation value – being recolonizing bare ground.

- The use of a small section of the buffer zone for development is not contrary to the zoning objective as no residential development is included in the zone. The inclusion of some parts of private area in the buffer zone makes sense in terms of site size and greater security.
- It is proposed to allow wildlife access traps to facilitate future use of the area by wildlife.
- The buffer zone is not counted in the required open space area. Approximately 0.3ha has been proposed which equates to 15% of the area excluding the 2.0ha of buffer area and the two areas to the front of the site which are considered unusable.
- The reference to the application before the Board on the adjoining site to the north-east is premature pending assessment of a proposal by the Board.
- The proposed boundary wall on the outside of the buffer zone is for security purposes. Proposals for the site to the north-east can be decided when these areas are brought forward for development.
- The exclusion of the buffer zone from the open space of the site would lead to a no-man's land and would lead to planning blight.
- The triangular cut-out of the buffer zone previously accommodated a shed. This has been demolished and is now in the ownership of the applicant. This area is not proposed for any development and therefore is not contrary to the zoning objective. This was accepted by the planning report of May 25th, 2017.
- The amalgamation of the 'residential' and 'existing residential' sites is appropriate given the similarity of their zoning objectives. This has been accepted by the Planning Authority. Efforts have been made to protect the existing character of the area, leading to a lower density than was expected.
- The Environmental Noise Assessment was carried out in accordance with ISO 1996 standards. Safety factors are built in to this standard. The findings of the assessment are that noise levels closest to the by-pass are within recommended thresholds without mitigation measures. The proposed blockwork boundary walls will have a significant sound attenuation effect of between 25-30dB.

- The site was also assessed under the more stringent requirements of BS 8233:2014. The worst-case scenario was found to be 1dB over the standard however this was before attenuation measures were accounted for. The proposed boundary walls will more than compensate for this shortfall.
- The proposed boundary wall will be part brick, part timber fencing. This will provide a security feature and will complete the visuals of the area.
- No building line exists. The Planning Authority's requirement to omit one house at the entrance will be complied with.
- The relocation of the 38kv line will be a significant visual improvement.
- The proposed foul pumping station will be constructed in accordance with best practice and will not create an odour issue.
- The layout of the proposal was designed in accordance with the Planning Authority with large detached houses to the front respecting the pattern of one-off houses directly opposite and moving to higher densities throughout the site. This transition respects the wider area.
- There is no requirement for substantial works outside the site. Drawing no. 16-16-002 shows a gravity disposal of attenuated greenfield stormwater run-off to the adjacent storm sewer network. The drainage and infrastructure reports submitted with the application confirm that the attenuation pond has sufficient capacity to take discharge from the site.
- Attenuation within the site is also via SuDS drainage practices which is to ensure that drainage is equivalent to a greenfield. There can be no possible impact on the flood regime of the Claureen River.
- Previous Board refusals were before the construction of the by-pass, the construction of the attenuation pond and the usage of SuDS within housing estates. These decisions are not relevant to the subject appeal given that the pond has capacity and considering the FRA carried out for the proposed development.
- No evidence for the appellants claims of lack of capacity and absence of maintenance of the attenuation pond have been presented.

- The proposed development is below the threshold for an EIA and does not trigger a sub-threshold EIA.
- The proposed development is in an urban area with a 50kph speed limit. Impacts such as increased traffic, light etc are to be expected.
- The submission of the TII is generic and no evidence is given to support their claims. The transport section of the County Council was satisfied with the proposed development.
- The sightlines requirements referred to by the appellant have been superseded by DMURS, with which the proposed development has been judged to comply.
- The proposed development is linked to the town centre by a footpath. This is guided by the principles of DMURS and makes provision for connectivity to adjacent lands. Development contributions will facilitate improvements to pedestrian infrastructure within the town.
- The allegation of inadequate sewage provision is not borne out by the Ennis Municipal District Office report.
- Changing utility requirements frequently requires the movement of utility cables. Previous agreements do not prohibit further agreements being made.
- In conclusion, it is stated that the proposed development is fully compliant with development plan policy, with the pattern of development in the immediate and wider area. The proposed development will have no adverse impact on the drainage regime of the area and all environmental assessment requirements have been complied with. The Board is required to grant permission.
- The appeal response is accompanied by a letter referring to infrastructure. The additional information presented in the letter can be summarised as follows:
 - No storm water will be pumped from the site, only gravity fed.
 - The NRA in severing the lands from the Claureen River through CPO were obliged to provide for the natural or greenfield run-off from the lands as part of natural drainage patterns. The right to connect to the NRA by-pass infrastructure is supported by a CPO order served on the previous landowner.

- The infrastructure information submitted with the application confirms that the attenuation pond has capacity.
- Design calculations demonstrate that there will not be any flood impacts. The proposed development will take peak discharge and attenuate to greenfield runoff rates.
- The application site was considered within the design of the attenuation pond and wetlands scheme. The pond being a natural feature requires very little maintenance.

6.7. Planning Authority Responses

6.7.1. First Party Appeal

- The development contribution scheme does not expressly exclude the charging of a ‘special’ development contribution that would directly facilitate the development.
- The scheme states that that “in addition to the requirement of this scheme, Clare Co. County may require the payment of a special contribution in respect of a particular development where specific costs are not covered by this scheme....”
- The Planning Authority refer to section 7.12 of the development management guidelines facilitating the imposition of a special development contribution scheme.
- It is submitted that the costs incurred by conditions 23,24 and 25 are directly because of and are necessary to facilitate the proposed development and are properly attributable to it. the works to the public realm are essential to facilitate safe access / egress from the site to the neighbourhood facilities within walking distance of the site – school, shop and route to town centre.
- Section 7.12 of the development management guidelines refers to circumstances that might warrant the attachment of a special contribution condition such as where the costs are incurred directly because of or to facilitate the development in questions and are properly attributable to it.
- The special development contributions levied by conditions 23,24 and 25 include costs that the Council will directly incur to facilitate the development. The benefit from the particular infrastructure is solely for the proposed development and the

adjoining site. It is not widespread to the general area where general development contributions are spent based on the projected capital programme.

- The Ennis Municipal District Office report of 6th Feb 2018 sets out the nature and scope of the works, the expenditure involved, the basis for calculating it and how it is to be apportioned to the subject development. The report makes the following recommendations:
 - **Condition 23 street lighting:** 25 no. lighting standards and structural bases, 6 no. micro and mini pillars, 1000m of 125mm cable ducting and 1500m of 50mm cable ducting, 70 no. long radius bends, 1000m of electrical warning tape, power supply cables, connection to the ESB network, restoration of the footpath and possible crown topping of trees. To be divided based on number of houses.
 - **Condition no. 24** footpath: the footpath along the R474 leads to two schools, a shop, a GAA club. A footpath of 120m is required from Circular Road south side to Drumbiggle Road south side, a 192m footpath from the south side of Drumbiggle Road around the T junction with Cahircalla Road to the west side of Cahircalla road. This work will require land acquisition, 170m of double stone wall, street lighting ducting, possible rearrangement of Eir and broadband ducting and removal of a number of mature trees. The Ennis Municipal district have rechecked the lengths of the footpath and the estimate cost is €147,864 which is €780 per unit.
- In relation to **Condition 25** traffic calming the development contribution scheme excludes traffic calming measures which are not covered by NTA grants such as those proposed for the subject development.
- The road Design Office report of 6th Feb 2017 calculated an estimate cost of traffic calming and pedestrian facilities for the adjoin development P17-237. The proposed measures include a pedestrian crossing and traffic calming measures to counter the increase in traffic from the proposed development.

6.7.2. Response to Third Party Appeal of John Madden

- The applicant confirmed with micro drainage analysis that there is sufficient capacity within the N85 pipe network and storage lagoon for the attenuated greenfield run-off of 5l per second.
- Connection to the roadside drainage is facilitated by a road opening licence. Drawing no. 1616.300 shows the proposed storm water disposal proposals – a 150mm land drain connected to a new storm sewer which will convey storm run off to the new storm sewer. Condition no. 21 refers.
- The issues raised by the Road Design Office have been satisfactorily addressed by the applicant. Condition no. 25 refers.
- The Planning Authority addressed the issue of noise by implementing a buffer zone along the boundary with the N85 in the Clare County Development Plan.
- The Clare Local Authorities Noise Action Plan 2008-2013 published under the Environmental Noise Directive 2002/49/EC and Regulations (IS 140 of 2006) address noise impact from major transport sources. The strategic noise map for the N85 recorded noise levels for the subject site as 60-64LDen noise zone (db) during the day and 50-54dB during the night.
- The noise impact assessment submitted by the applicant showed a 57Db which is within the NRA / TII threshold. The proposed development is on the limit of compliance with the BS standard. The Planning Authority considered the proposed block wall adjoining house no.s 13 and 21 when considering the potential for adverse noise impact.
- The wastewater treatment plant at Clonroadmore was upgraded and there is capacity to serve the proposed housing.
- The Board is requested to uphold the decision of the Planning Authority to grant permission.

6.7.3. **Response to Third Party Appeal of Pat Rowan**

- The proposed development does not contravene the zoning objectives of the development plan. The proposed development complies with the buffer zone as no usable open space is proposed within the buffer.

- There is no objection to part of the private open space of dwellings being within the buffer zone as sufficient other private amenity space is proposed for those dwellings.
- The Board may impose a condition providing that no residential development can take place within the buffer zone.
- The omission of house no.s 13 and 21 may reduce the passive overlooking of the public open space.
- The reference to a need to omit house no.s 13 and 21 in the planning report of October 25th was an error.
- The encroachment of house nos. 38-42 into the buffer zone is considered to be marginal and not material.
- The farm sheds around which the buffer was drawn are no longer in existence (drawing no. BD-14_PL17). The buffer zone was imposed for noise rather than habitat protection. The noise contour line on strategic noise mapping runs parallel to the N85 and does not indent as the buffer zone does.
- The Planning Authority consider it reasonable to permit dwellings on this part of the site. Condition no. 6 of the decision to grant relates to noise limits
- The Planning Authority have accepted the applicants bona fides regarding ownership.
- The Planning Authority is satisfied with the overall layout and mix of house types. The proposed development represents a reasonable balance between protecting residential amenity and complying with density requirements. The removal of houses as suggested by the appellant would render the development non-compliant with the core strategy.
- The site to the east 'Abadair Investments' in increasing densities at the request of An Bord Pleánala.
- The Ennis Municipal District Area Office reports notes that the site would have naturally drained towards the north point of the site and to ground in the local hallows. The drainage designer of the N85 took account of runoff from adjoining lands, particularly at points where the N85 is in-cut below adjoining

lands such as the proposed site. The reports note that the N85 discharges to an attenuation pond and then into the Claureen River. The N85 storm water design is an enclosed stormwater pipeline that takes run-off from the road and the margins to an attenuation pond. A filter drain inside the footpath of the grass margin takes the run-off from the grass margin embankments. An additional filter drain running along the base of the embankment along the boundary of the proposed development will take surface and ground water from the elevated site. The Planning Authority have been unable to locate detailed design figures and data for the as-built Ennis by-pass however the micro-drainage analysis submitted by the applicant showed sufficient capacity. A connection to public drainage or sewer networks is subject to a road opening licence that will be assessed by the Roads Authority. The subject application has permission to connect to the Claureen River via the margin of the N85 relief road. The Council is satisfied that adequate capacity exists.

- The Planning Authority have no objection to the relocation of the proposed entrance subject to traffic, pedestrian and cycle safety and sightline considerations.

6.8. Observations

6.8.1. Transport Infrastructure Ireland:

- TII made an observation to the Planning Authority stating that insufficient information has been submitted to demonstrate that the proposed development will not negatively impact on the N85 drainage regime.
- Notwithstanding the response to further information, TII remains of the opinion that there is potential for the proposed development to negatively impact on the N85 drainage regime.
- TII does not support proposals for private development to discharge to national road infrastructure. This could impact the capacity and efficiency of the drainage regime for the national road network.

- TII will not be responsible for the costs of any future mitigation, repair or improvement required for the national road and drainage system arising from private development.

6.9. Further Responses

6.9.1. Planning Authority Response to Transport Infrastructure Ireland

- Drainage and Access to Attenuation Pond: Applicant confirmed capacity and right to connect. Condition no. 21 refers.
- Sightlines: Road Design is satisfied that the proposed development is DMURS compliant.
- Noise Impact: proposed development is within applicable thresholds and complies with Clare Local Authorities Noise Action Plan 2008. The Planning Authority considers that this issue has been adequately addressed and that mitigation measures are acceptable.
- Sewerage / Manholes: The waste water treatment plant at Clonroadmore was upgraded and has capacity to serve the proposed development.
- Easements: not relevant to the appeal.

6.9.2. Third Party John Madden Response to TII

- Clare County Council failed by not liaising with Transport Infrastructure Ireland regarding the proposed surface water drainage across the N85.
- Clare County Council do not have capability to maintain the national road network.
- The concerns of Transport Infrastructure Ireland were ignored by the Planning Authority.
- The Planning Authority should have confirmed that permission to connect to the attenuation pond existed.

6.9.3. Applicant Response to Transport Infrastructure Ireland

- The land which forms the subject site was part of a larger landholding that was subject to a CPO for the construction of the Ennis bypass. Conditions of the final

CPO included provision for Mr Barry, the former landowner to have access to the for surface water drainage to the wetland. The author of the TII observation to the Board was not aware of this agreement.

- An affidavit signed by Mr Barry refers to the CPO and all agreements that arose from the severing of his lands.
- The TII request for further information (dated 5 October 2017) was comprehensively addressed by the applicant, to the satisfaction of the Planning Authority.
- Right of access to infrastructure is not a planning matter. Section 34.13 of the Planning and Development Act refers.
- The response is accompanied by an affidavit signed by Mr P Barry, referring to the history of the lands, the CPO and the provision of infrastructure to facilitate the drainage of the lands.

7.0 Assessment

7.1. First Party Appeal

7.1.1. The First party has appealed the imposition of condition no.s 23, 24 and 25, stating that the works provided for under these conditions is covered under the general development contribution scheme applied in condition no. 22 and that the levying of further financial contributions is a duplication of this general levy.

7.1.2. The four conditions in question are repeated in Appendix 1 at the end of this report. They can however be summarised as follows:

- 22 – development contribution of €227,509 for the provision of public infrastructure and facilities in accordance with s48 development contribution scheme
- 23 – special development contribution of €36,498.67 for public lighting facilities which are necessary to facilitate the development of the site, in accordance with Section 48(2)(c)
- 24 – special development contribution of €34,965.62 for public footpaths to Cahircalla Road from Circular Road which are necessary to facilitate the development of the site, in accordance with section 48(2)(c)

- 25 – special development contribution of €10,133.97 for traffic calming measures which are necessary to facilitate the development of the site, in accordance with section 48(2)(c)

- 7.1.3. Section 48 of the Planning and Development Act 2000, as amended, states that a Planning Authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority that will be provided by or on behalf of the Planning Authority. Condition no. 22 is attached to the Planning Authority's decision to grant, in accordance with section 48(1). Condition no. 22 has not been appealed by the Applicant.
- 7.1.4. The applicant has submitted that the works referred to in condition no.s 23, 24 and 25, namely public lighting, footpaths and traffic calming measures must be considered improvement works that benefit the wider area, rather than specific costs for the benefit of the proposed development. They are according to the appeal, covered in the general development contribution scheme, as levied by condition no. 22. The argument is made that as the subject site is zoned for residential development, such costs are to be expected by the Planning Authority and were never mentioned in pre-planning discussions.
- 7.1.5. That the possibility of attaching special conditions under the development contribution scheme was not mentioned in the pre-planning consultations is not germane. The Planning Authority is not bound by the advice offered at a pre-planning consultation, nor is the advice offered stated to be exhaustive.
- 7.1.6. The first party submits that the land is zoned residential and therefore costs for public lighting, traffic calming measures and public footpaths are to be provided by the Planning Authority. I refer the Board to Section 48(2)(c) which states that in addition to the terms of a development contribution scheme, the Planning Authority may require the payment of a special contribution in respect of a particular development "where specific exceptional costs not covered by a scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development". It is considered that the Planning Authority has not made a case that the three classes of infrastructure referred to in condition no.s 23,24 and 25 are 'exceptional'. The provision of public footpaths, public lighting and

traffic calming measures are general infrastructure classes, providing for under the development contribution scheme. The benefit that will accrue from those measures is more widespread than just the subject development site. I am satisfied that public infrastructure referred to in condition no.s 23,24 and 25 is neither specific nor exceptional. The provision of public footpaths, public lighting and traffic calming measures is provided for under the 'general classes of public infrastructure or facilities' as noted on page 3 of the Clare County development contribution scheme 2017 – 2023. Such infrastructure is correctly levied under condition no. 22 of the Planning Authority's decision.

- 7.1.7. I note that Page 13 of the states that "*in addition to the requirements of the scheme, Clare County Council may require the payment of a special contribution in respect of a particular development where specific costs are not covered by the scheme or incurred in respect of public infrastructure and facilities which benefitted the proposed development*". The word "exceptional" found in section 48(2)(c) of the Planning and Development Act is omitted. This however, does not remove the requirement of the scheme to comply with the primary legislation.
- 7.1.8. A further issue has been raised by the first party. They state that insufficient detail was provided by the Planning Authority in relation to the scope and extent of the works referred to in the conditions. The appeal states that a cost of €6,730 per lamp standard is uneconomical and that such infrastructure is provided for one-off dwellings on Circular Road. It states that instead of the 137m of footpath and 60m of wall required, only a stone wall is required and finally that the submitted TIA shows that no traffic calming measures are required.
- 7.1.9. The Planning Authority has submitted details of the specific costs of each of the three elements of public infrastructure it considers that the proposed development will benefit from. Section 48 requires a Planning Authority to set out the nature and extent of the public infrastructure and facilities which it proposes to provide having regard to the estimated cost of providing these classes of infrastructure.
- 7.1.10. The calculation sheet provided by the Ennis Municipal Office proposes public lighting on Circular Road, a footpath on circular road to Cahercalla road via Drumbiggle Road. I accept the First Party's submission that a map / drawing indicating the location of proposed public infrastructure would have allowed greater clarity for the

developer. For example, in the 'Ennis Municipal District Calculation Sheet' attached to the report of 6th Feb 2018 refers to public lighting on Circular Road. Part of the estimated cost for this is 'full width footpath restoration' at a cost of €31,500. It is not clear what section of footpath this covers. It is possible it may overlap with the 180m footpath proposed under the second set of calculations "Footpath Circular Road to Cahercalla Road via Drumbiggle Road" at a cost of €268,640. Without a drawing / plan providing location for the proposed lamp standards and that section of footpath that requires remediation, the developer and the Board cannot definitively declare that the cost has not been duplicated.

7.1.11. It appears that the Ennis office may have used the residential development proposed in a withdrawn planning application on the adjoining site as a basis for calculating the unit price per cost. The report refers to '190 units' at a cost of €850 per unit, whereas permission has been sought on the subject site for only 42 no. units. I note that the response of the Planning Authority to the appeal states that they have "rechecked the lengths of the footpaths" and that the estimate cost is now €147,864 or €780 per unit. As above, this calculation is based on 190 units, not the 42 no. the subject of the current appeal. Section 7.12 of the development management requires that the identified works must be apportioned to the particular development. I am not satisfied that the basis for the calculation of the condition is explained in the planning decision, as required by section 7.12 of the development management guidelines.

7.1.12. Should the Board decide to grant permission, it is recommended that condition no.s 23, 24 and 25 be omitted and that a general development contribution condition in accordance with the Clare County development contribution scheme 2017 – 2023 be attached.

7.2. **Third party Appeal**

7.2.1. The substantive issues raised in the third-party appeals are as follows:

- Principle of development
- Drainage
- Buffer Zone and Noise
- Other
- Appropriate Assessment

7.3. Principle of Development

- 7.3.1. The subject site, being within the settlement boundary of Ennis, is zoned for residential development. Subject, to all other planning considerations being satisfied, the proposed development is acceptable in principle.

7.4. Drainage

- 7.4.1. Central to the issue of storm water drainage of the subject site is the construction of the N85. The road runs through a landholding that was formerly in the ownership of Pat Barry. The CPO that facilitated the construction of the road, severed the landholding into two sections – to the east and west of the road. The plot on the east of the N85 is the subject site (see figure 8 on page 17 of the Infrastructure Provision Report submitted to the Planning Authority in response to the request for further information). The CPO maps and drawings have not been made available to the Board. The applicant states that Mr Barry's lands are referred to as plot 164 on the relevant drawings. Throughout the documentation submitted to the Board is a reference to an agreement between Mr Barry and the company constructing the road, regarding the disconnection of the eastern side of his lands from its natural drainage point at the Claureen River. It is the position of the applicant (who purchased the lands and all rights from Mr Barry) that the CPO agreement signed by Mr Barry provided that any future development on his lands could connect to the storm water drainage constructed under the N85. The applicant states that the drainage infrastructure was constructed with sufficient capacity to cater for residential development on Mr Barry's lands.
- 7.4.2. A 'Services Report' was submitted with the planning application, dealing with foul sewage, storm water, water supply and flooding. In terms of stormwater, section 7 of the report states that stormwater will be attenuated to greenfield run-off and then disposed of "to the existing roadside drainage as provided for under the terms of the compulsory purchase order contract for the by-pass". On site, SuDS would limit the discharge to greenfield levels, this would discharge through a pipe leaving the site and running north at the western side of the N85. The report states that as part of the construction of the N85 / Ennis By-pass the subject site was severed (maps 164a to 164g). Construction provision for plot 164 included a 225mm diameter storm sewer

on either side of the by-pass. A connection to this storm sewer was provided for in the CPO agreement. Storm water would then be conveyed to the wetlands area, ultimately discharging to the Claureen River. The report states that on the 29-05-03 this was agreed with the former landowner as accommodation works.

- 7.4.3. The application was also accompanied by a Drainage Assessment Report. The report states that the development will be underpinned by SuDS which will allow all run-off to attenuate in a constructed tank (see drawing no. CSSI6082-03). The tank shall allow for the removal of pollutants and the prevention of flooding. Capacity of the tank shall be based on a 1 in 100-year storm event – 184m³, including a climate change factor of 20%. Discharge shall be at the rate of 2l/sec/ha.
- 7.4.4. The report of the Municipal District of Ennis (23 May 2017) stated that the applicant should be requested to show permission for the connection to the N85 storm drain. The author of the report states that he examined the CPO file and the details provided by the applicant do not correspond to the details on the file. The report states that should the information not be forthcoming, that an alternate means of discharge should be presented.
- 7.4.5. In their response to the further information request (item 6), the applicant submitted a “N85 Infrastructure Provision Report”. The report states that the authors have examined the “as-constructed drawings and models provided to determine the provision made for the Woodhaven lands outlined in Figure One”. Figure 4 is stated to be an extract from drawing no. 5029 – as built drawing of N85 Drainage. The report states that the drawing shows the provision of a ditch type drain discharging to a 300mm pipe and headwall, which were constructed for the embankment and drainage run-off from the adjoining field. The collected drainage is conveyed to a pond (marked Pond R) on drawing no. 213851 Ennis Road / 5028. Figures 6 and 7 in the report are extracts from this drawing.
- 7.4.6. Section 6.0 of the report states that Pond R has an allowable discharge of 31l/s and that allowing for a greenfield runoff of 2l/s, this provides for a drained area of 15.5ha. The report states “the area within the fence defining the lands acquired by the NRA for the construction of the N85...measures 6.5ha providing for an additional area of riparian lands of 9.5ha of which includes the Woodhaven lands at 2.4ha”.

- 7.4.7. Page 17 of the report under a paragraph titled “Contract Provision”, states that the provision of the storm sewers takes account of future development of lands to the east and west of the N85. The report states “We asked and received copies of plans indicating the provision made”. According to the report a 225mm storm sewer is provided along the service road which in turn connects to the storm sewer eastern side of the by-pass at locations CPR10 at Ch1840m and CPR at Ch1600mm. Two crossings were required by Mr Barry at Ch 1650 and 1850m each accommodating three 150mm and one 300mm crossing.
- 7.4.8. Transport Infrastructure Ireland responded to this further information response and stated that insufficient information had been submitted to demonstrate that the proposed development would not negatively impact on the N85 drainage regime. They requested the Planning Authority to address the matter to the satisfaction of TII prior to any decision on the application.
- 7.4.9. The Planning Authority agreed that the response was inadequate and sought clarification of further information on the capacity of the N85 infrastructure to cope with additional demand and on the legal right to connect to this infrastructure. In response, the applicant submitted a letter stating that they acquired all legal interest and privileges of the former landowner. In response to the capacity issue the applicant stated that the ‘as-built’ drawings of the N85 were examined and that they could confirm that there is adequate spare capacity in both the pipe network and the storage lagoon. Micro drainage analysis was carried out which clearly demonstrates that the network can accommodate the allowable greenfield run-off of 5l/sec. The Planning Authority were satisfied with this response (see report of Ennis Municipal District dated 08 Dec 2017) and recommended that conditions apply.
- 7.4.10. The issue was raised by both third-party appellant who reiterated their concern that the issue not addressed satisfactorily. The appellants variously stated that the drainage solution was already at capacity, that the legal right to connect had not been demonstrated and that recent flood events were not at the average 1 in 100-year storm pattern used by the applicant in their calculations. Transport Infrastructure Ireland in an observation to the Board also raised the proposed drainage as a concern, stating that notwithstanding the applicant’s various responses, they remained of the opinion that there is potential to impact “on the capacity and efficiency of the drainage regime provided for the national road

network". TII stated that should any damage to the drainage system occur, they would not be responsible for remedy.

- 7.4.11. Both the Applicant and the Planning Authority responded to the Observation. The Planning Authority restated their opinion that they were satisfied with the applicant's proposal and that condition no. 21 of the decision referred. The applicant stated that their 2016 purchase of the site from Mr Barry included "all rights and appurtenances". These rights included the right of access to the attenuation tank at Claireen. The applicant stated that the claims of lack of capacity had not been supported and that the affidavit signed by Mr Barry showed that the construction of the N85 drainage regime took into account future storm water from the subject site.
- 7.4.12. I note that the Board refused planning permission for a residential development on the lands to the north-east of the site on two occasions (PL03.214836 in 2006 and joint application PL58.221408 & PL03.221409 in 2008) on the grounds of drainage. The applicant states that these decisions were made by the Board before the construction of the by-pass and therefore are not relevant to the subject proposal. This would appear not to be the case as the applicant acknowledges that the attenuation tank for the N85 was constructed in 2005, the Planning Inspector in his 2007 planning report refers to the road nearing completion and the two Boards decisions were made in 2006 and 2008. The claim that the infrastructure did not exist therefore does not stand up.
- 7.4.13. It is clear that the issue of storm water disposal from the site has been thoroughly discussed. To the satisfaction of the Planning Authority but not the appellants or the Transport Infrastructure Ireland. In relation to the information submitted by the applicant in support of his proposal to connect to the national road network drainage regime, the Board will note that the scanned in copies of the drawings of the 'as-built' N85 are not legible and are not to scale. Nor are the figure extracts from the drawings. It is not possible therefore to corroborate the information stated by applicant. Whilst I retain a concern that the right to connect to the N85 storm drainage system for the N85 has not been demonstrated, I am satisfied that the micro drainage analysis carried out by the Applicant is adequate and sufficient for purpose. The final agreement between the developer and the parties responsible for providing access to the infrastructure is not a matter for the Board to adjudicate. Capacity has been demonstrated and for the purposes of the appeal before the

Board that is sufficient. All matters beyond the decision of the Board are legal agreements between the two parties.

7.5. Buffer Zone and Noise

- 7.5.1. A buffer zone of approx. 12m wide runs along the western boundary of the site, adjoining the N85. The development plan states that such areas are “intended to provide a buffer of undeveloped land for the conservation of biodiversity, visual amenity or green space”. Section 2.5.25 of the Ennis plan in referring to the specific zoning objective on the subject site states that “the buffer area between the N85 and the Residential zoning must be maintained and will not be considered as part of usable open space in the development”
- 7.5.2. As can be seen on the appended zoning map, both the buffer zone and the R5 residential zoning have a triangular indentation along the western boundary, towards the northern corner of the site. Page 8 of the applicant’s design statement states that they consider the indentation of the buffer zone to be a ‘mapping error’. The design statement states that the area was formerly a farm shed and notes that the fencing along the western boundary follows a straight line, with no triangular indentation. It states that the boundary of the buffer zone should follow the line of the fence. The statement refers to the case *Tennyson & Others v Corporation of Dun Laoghaire 1991* which found that the boundary fence of a site provides a natural boundary and therefore is the most appropriate zoning boundary. One of the appellants does not agree, stating that it is not within the remit of the applicant to change development plan boundaries and the time to do that was during the draft development plan process. The appellant objects to the inclusion of garden areas within the buffer zone.
- 7.5.3. For their part, the Planning Authority stated that they had no objection to private open space being located within the buffer zone but that if the Board saw fit, they could omit any residential development within the zone. The proposed development (see drawing no. BD-14-PL17A) shows the 0.39ha buffer zone, a pedestrian and cycle path, a turning circle, part of the internal road and part of the front and rear gardens of house no.s 42,21 and 13 within the buffer zone. While the development

plan policy on buffer zones does not preclude the inclusion of such development within the buffer zone, the intent of the zone is to provide a noise buffer from the adjoining N85. This is acknowledged by the applicant in their response to the Board regarding the third-party appeals.

7.5.4. The Clare Local Authorities Noise Action Plan 2008- 2013 addresses noise impacts from major transport sources. The plan notes that while no limits exist for environmental noise in Ireland, the EPA recommends that proposed onset levels for assessment of noise mitigation measures for noise due to road traffic are 70dB, Lden and 57dB, Lnight. Map3 of the Noise Action Plan shows the buffer zone of the subject site in the noise zone 60-64dB during the day and 50-54dB during the night. In relation to protection measures for development, section 7.3.2 of the plan states “Where developments are planned adjacent to major roads, to incorporate acoustical planning into the development design e.g. designing the development so that the access road is adjacent to the major road noise source. It may also involve the use of buffer zones and/or noise barriers and traffic calming measures”. As noted above, the proposed development a pedestrian and cycle path, a turning circle, part of the internal road and part of the front and rear gardens of house no.s 42,21 and 13 within the buffer zone. Reference was made by the applicant during the application to further acoustic benefits arising from the boundary wall at points A-B, B-C, C-D and D-E. When asked at further information stage to demonstrate the acoustic capabilities of the wall, the applicant responded (letter dated 10 November 2017) stating that the main purpose of the walls is to screen the traffic on the roundabout from any light dazzle from the roadway serving houses 9-13. This contradicts the information presented in section 2.3 of the applicant’s response to the Board which states that the construction of a 225mm block wall would have a sound reduction effect of 25-30dB given its location above the source of traffic. The applicant states that this would be a “significant sounds attenuation effect”. No information has been presented to support this conclusion.

7.5.5. It is considered that house no.s 42, 21 and 13 are unacceptably close to the noise buffer and should be omitted from the proposed scheme. I note that in their planning report, the Planning Authority states that omission of house no.s 13 and 21 would reduce passive surveillance. I do not accept this argument. House no. 13 only overlooks the open space to the front which the Planning Authority have

acknowledged is not usable open space. No element of passive surveillance accrues from house no. 13. House no. 21 is proposed along the exact same plane as house no. 20. The omission of house no. 21 would have no impact on the passive surveillance offered by house nos. 19 and 20. Depending on the scale and extent of the hedge planting proposed along the front and side boundaries of no. 21, it would remove ground floor passive surveillance of the open space. I am satisfied that the omission of house no.s 42,21 and 13 would have no effect on the passive surveillance and therefore the usability of the proposed open space. Should the Board decide to grant permission, a condition requiring the omission of house no.s 13,21 and 42 should be attached.

7.6. **Other**

- 7.6.1. **ESB Line:** The ESB have indicated their willingness to alter the overhead line (letter dated 08/02/2017 and accompanying drawing no. PG567-D020-070-001-000). I see no difficulty with the proposal.

7.7. **Appropriate Assessment**

- 7.7.1. The application was accompanied by an Ecological Survey, as required by the R5 zoning on most of the site. The report notes that the site is not hydrologically connected to any of the designated sites within 3km, that no evidence of bats or protected plant species were found on site. Some bat roosting opportunities occur along the hedgerow. The conclusion and recommendations of the report are that the existing hedgerow and stone wall along the northern boundary be retained with limited lighting, that additional planting of native species be carried out and that habitat loss of dry meadows and grassy verges be compensated into the overall landscape planting scheme.
- 7.7.2. The subject site is located 1.6km east of the Pouladatig Cave SAC (site code 000037), 1.6km south-west of the Lower River Shannon SAC (site code 002165) and 1.7km north of the Newhall and Edenvale Complex SAC (site code 002091).
- 7.7.3. The qualifying interests for both the Pouladatig Cave SAC and the Newhall and Edenvale Complex SAC are caves (8310) and the lesser horseshow bat (1303). The generic conservation objective for both the caves and the horseshoe bat on both sites is "To maintain or restore the favourable conservation condition of the Annex I

habitat(s) and/or the Annex II species for which the SAC has been selected.” The qualifying interests for the Lower River Shannon SAC are all water based, as follows:

- 1029 Freshwater Pearl Mussel *Margaritifera margaritifera*
- 1095 Sea Lamprey *Petromyzon marinus*
- 1096 Brook Lamprey *Lampetra planeri*
- 1099 River Lamprey *Lampetra fluviatilis*
- 1106 Atlantic Salmon *Salmo salar* (only in fresh water)
- 1110 Sandbanks which are slightly covered by sea water all the time
- 1130 Estuaries
- 1140 Mudflats and sandflats not covered by seawater at low tide
- 1150 *Coastal lagoons
- 1160 Large shallow inlets and bays
- 1170 Reefs
- 1220 Perennial vegetation of stony banks
- 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts
- 1310 *Salicornia* and other annuals colonizing mud and sand
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- 1349 Bottlenose Dolphin *Tursiops truncatus*
- 1355 Otter *Lutra lutra*
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
- 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion*
- vegetation
- 6410 *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- 91E0 *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).

7.7.4. There are site specific conservation objectives for each of the qualifying interests of the Lower River Shannon SAC, which is described by the NPWS as a very large site that overlaps with a number of other designated sites.

7.7.5. Given the comprehensively discussed lack a source-pathway receptor from the subject site to the nearest water body and the nature of the receiving environment namely recolonising bare ground in agricultural pasture, it is reasonable to conclude that on the basis of the information on the 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 Pouladatig Cave SAC (site code 000037), the Lower River Shannon SAC (site code 002165), the Newhall and Edenvale Complex SAC (site code 002091) or any other European site, in view of the site's Conservation Objectives, that a Stage 2 Appropriate Assessment (and submission of a NIS) is not required.

8.0 Recommendation

8.1.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Clare County Development Plan 2017-2023 and all other matters arising. I recommend permission be GRANTED subject to the following conditions:

9.0 Reasons and Considerations

9.1.1. Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the Planning Authority on the 25th day of September 2017, and the 10th November 2017, and such plans and particulars submitted to An Bord Pleanála on the 6th February 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of

development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. House no.s 13, 21 and 42 shall be omitted. The plots of these houses shall be incorporated into the proposed open space. A revised plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of works on site.

Reason: To comply with the objectives of the Clare Local Authorities Noise Action Plan 2013

3. The internal noise levels, when measured at the [] windows of the proposed development, shall not exceed:

- (a) 35 dB(A) LAeq during the period 0700 to 2300 hours, and
- (b) 30 dB(A) LAeq at any other time.

A scheme of noise mitigation measures, in order to achieve these levels, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed measures shall be implemented before the proposed dwellings are made available for occupation.

Reason: In the interest of residential amenity.

- 4 Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black, or dark grey in colour only (including ridge tiles).

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface and storm water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Provision shall be made by the developer for electrical connections outside all the proposed houses and apartments, to facilitate electrical charging of vehicles.

Reason: In the interest of visual and residential amenity.

7. Site development and building works shall be carried only out between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 13.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To safeguard the amenities of property in the vicinity.

8. The hedgerow identified for retention shall be protected during construction in accordance with the tree protection measures outlined in the submitted plans and particulars. All service pipes shall be so routed as to avoid the root spreads of the trees identified for retention.

Reason: To safeguard the use of the stone wall and hedgerow as potential bat roosting sites.

9. All boundary treatments shall be in accordance with those indicated in submitted documentation.

Reason: In the interests of residential and visual amenity, and to ensure the provision by the developer of durable boundary treatment.

10. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works for taking in charge by the local authority.

Reason: In the interest of amenity and of traffic and pedestrian safety, and to facilitate the eventual taking in charge of the development, following its completion, by the local authority.

11. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All lighting, as approved by the planning authority, shall be provided prior to the making available for occupation of any house.

Reason: In the interest of amenity and public safety.

12. The areas of public open space shown on the lodged plans shall be reserved for such use, and shall be maintained by the developer as such until taken in charge by the local authority. These areas shall be landscaped in accordance with the landscaping scheme in the plans and particulars submitted. The landscaping scheme shall be implemented before any of the dwellings are made available for occupation.

Reason: To ensure the satisfactory development of the public open space areas and their continued use for this purpose.

13. Proposals for an estate name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interest of urban legibility, and to ensure the use of locally appropriate place names for new residential areas.

14. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Gillian Kane
Planning Inspector

25 April 2018

Appendix 1

Condition no. 22 of the Planning Authority's decision to grant is as follows:

“Prior to the commencement of development, the developer shall pay a contribution of €227,509 to Clare County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority, that is provided for or intended to be provided by or on behalf of the authority in accordance with the terms of the development contribution scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development. At the time of payment, the contribution shall be subject to any applicable adjustment in accordance with the relevant provisions of the Planning Authority's development contribution scheme in place at the time of payment. Any contributions owing post commencement of development will be subject to interest penalties.

Reason: It is considered appropriate that the development should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the Planning and Development Act 2000 as amended, and that the level of contribution payable should be adjusted at a rate specified in that scheme”

Condition no. 23 states:

“Before development commences a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the improvements of public lighting facilities which are necessary to facilitate the development of the site. The contribution payable will be based on the rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and in accordance with the terms of the Council's Development Contribution Scheme. The amount is currently €36,498.67.

Reason: In the interests of the proper planning and sustainable development of the area and in accordance with Section 48(2)(c) of the Planning and Development Act 2000 as amended.”

Condition no. 24 states:

“Before development commences a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the improvements of the public footpaths to Cahercalla Road from Circular Road which are necessary to facilitate the development of the site. The contribution payable will be based on the rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and in accordance with the terms of the Council’s Development Contribution Scheme. The amount is currently €34,965.62.

Reason: In the interests of the proper planning and sustainable development of the area and in accordance with Section 48(2)(c) of the Planning and Development Act 2000 as amended”

Condition no. 25 states:

“Before development commences a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the improvements of traffic calming measures on Circular Road which are necessary to facilitate the development of the site. The contribution payable will be based on the rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and in accordance with the terms of the Council’s Development Contribution Scheme. The amount is currently €10,133.97.

Reason: In the interests of the proper planning and sustainable development of the area and in accordance with Section 48(2)(c) of the Planning and Development Act 2000 as amended.”