



An
Bord
Pleanála

Inspector's Report 301316-18.

Development	209 residential units.
Location	Gortnahomna More, Castlemartyr, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	17/4624.
Applicant	Solas Partnership.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Solar Partnership.
Observers	1. Jayne and Joseph Stack, 2. Sue Murphy.
Date of Site Inspection	22 nd June 2018.
Inspector	Mairead Kenny.

2.0 Site Location and Description

- 2.1. The site is located at the eastern edge of the village of Castlemartyr in East Cork. Castlemartyr is an estate village originally and the centre of the village retains a formal architectural character deriving from the town's origins. The commercial core comprising the short Main Street is a vibrant commercial area, which terminates at a bridge and a crossroads. Castlemartyr estate is at the western end of Main Street. The road to the south of the crossroad is now the main entry into Castlemartyr estate and passing by the entrance the public road leads to Shanagarry and other villages.
- 2.2. The road to the east of the crossroads together with Main Street itself is part of the main Cork to Waterford Road the N25. The site is positioned to the south of that section of road and in general to the south-east of the village. Development in this area comprises mainly two-storey terraced and semi-detached houses of different character and in general the housing is in small groupings.
- 2.3. The site itself is made up of five fields. At the time of inspection the northern field immediately adjacent the entrance from the N71 was in use by a building contractor who was engaged in the provision of a wide footpath between the site and the village centre. Completion of this footpath will result in there being a virtually continuous footpath between the site and the bridge at Main Street. The northern field comprises largely overgrown lands which includes an extensive area of immature willow woodland. The other four fields are under tillage at present. The southern fields are at significantly increased elevation compared with the roadside level and northern field. Field boundaries are presently marked with hedges, which I would describe as being of moderate quality and containing very few significant or noteworthy trees. The northern field adjoins residential development to the west and individually constructed houses to the east. The western boundary of two of the other fields are defined also by residential development including Castlemartyr Crescent and Bridgetown estate. Lands to the south and east are otherwise in agricultural use.
- 2.4. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

3.0 Proposed Development

- 3.1. Permission is sought for a development of 209 houses. This includes a range of terraced units, semi-detached units and detached housing as well as a crèche facility stated area of 508 m² with office first floor units, pedestrian linkages to existing estates, a multiuse games area (MUGA), a pitch, local play areas, various open-space landscaping, site works and entrances.
- 3.2. During the course of consideration of the application by the planning authority and in response to a request for further information the applicant submitted a revised scheme comprising only 30 no. houses.

In the applicant's cover letter accompanying the request for further information response the following are noted.

- The scale of the proposed development respects the grain of development and the pattern of existing adjoining residential estates as indicated on drawing 2017 – 01 – 1045. The subject site is well beyond the Main Street and the town centre and is within the grain of existing modern residential estates.
- In deference to the architectural character of the Main Street and to policy objective T – 01 the proposed dwellings at the entrance to the site are set back from the main road and are of a high quality design in a traditional manner in keeping with the village core.
- In accordance with policy objectives a pedestrian access along the frontage of the site towards Main Street is proposed along with key linkages to existing residential estates.
- Irish Water's letter enclosed confirms immediate water supply and wastewater capacity for a first phase of 30 units with full capacity available by 2021. Attached drawing shows the proposed phasing including a first phase of 30 houses and the proposed future development zones.
- Modifications undertaken to the layout include provision for reduced carriageway weights to 4.5 m as a speed reduction measure as requested, provision for simplifying site entrance to the crèche facility, provision for

relocation of the MUGA, back-to-back separation distances exceeding 22 m, footpath connections between the public road which are over 1.8 m wide, provision for revised turning heads as requested, provision for retention of elements of the hedgerows and reference to retention and supplemental planting of the perimeter hedgerows and confirmation that the existing billboard currently on site will be removed.

- A separate response is submitted by Hegson Design Consultancy Ltd in relation to traffic.
- A scattered location of 21 no. residential units for the benefit of Part V as requested is shown and the revised site layout makes provision for 3 no. two-bed units, 16 no. three-bed units and 2 no. four-bed units. The revised house type drawings with reduced floor areas are in accordance with the Quality Housing for Sustainable Communities Guidelines.
- Separate responses also provided in relation to archaeology, Appropriate Assessment and public lighting.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for the reasons summarised below:

- The proposed 209 houses at a location where there is limited capacity for development having regard to deficiencies in wastewater treatment facilities and public water supply would be contrary to the proper planning and sustainable development of the area. Infrastructural capacity for 30 units exists but given the observable negative effects of wastewater discharges from Castlemartyr on water quality and the potential of additional discharges from this development contributing to adverse effects on the integrity of the SAC, the proposed development would interfere with the achievement of the Conservation Objectives for the SAC and conflict with objective HE2 – 1 of the County Development Plan and the requirements of the Habitats Directive.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The report of the Acting Senior Planner includes the following comments:

- The phasing scheme presented comprising 6 x 30 houses and 1 x 29 house phases reasonably reflects the Local Area Plan vision for the scale of growth for the settlement.
- There is a similarity in terms of pattern and grain between the bulk of the proposed development and the existing housing development to the north and west.
- A letter from Irish Water dated January 2018 to the applicant states that the proposed upgrade of the wastewater treatment plant is on the Capital Investment Plan and scheduled to be complete by the end of 2021. Currently capacity is available only for 30 units. Water supply is available for 30 units.
- It is unclear from the submission of Irish Water if a planning application will be required for the wastewater treatment plant upgrade which is to be completed by 2021. The possible need to identify and develop new water sources creates a level of uncertainty which is significant. I would have concerns about granting 209 units and the scale of development is premature. There is capacity however for 30 units.
- Amendments to the layout include revisions to returning areas. Natural stone wall and entrance details are acceptable. The entrance to the crèche is revised. Sections of the internal roads are to be narrowed to 4.5 m. The MUGA is relocated out of the flood risk area.
- Site sections show the relationship of the neighbouring houses and in general 22 m separation distances are provided. Retention of elements of the existing hedgerow is provided in the revised layout and the billboard is to be removed.
- The report of TII was received after the RFI was issued. It refers to the development being at variance with the national guidelines on national roads and states that it is not demonstrated that there is adequate assessment of the impact on the N25 and R632. The Traffic and Transportation Section

which addresses the adequacy of the applicant submission including the TIA states that subject to a right turn lane the proposal is satisfactory. The speed limit review is expected to revise the 50 kph speed limit such that the entrance is within it. The revised submission shows the development integrated with the TII's plans for the N25 pavement upgrade. The TTS final report recommends permission subject to conditions including a special contribution towards footpath connectivity to the village core.

- The presence of a significant amount of archaeological findings within the site following the undertaking of a geophysical survey and archaeological assessment is noted. Following consultation with the Council's archaeologist and the recommendation that the area of archaeological interest be retained, there is a requirement for an exclusion area of 40 m x 38 m towards the southern end of the site. This may have implications for layout but it is not within the first phase of housing.
- The proposals for compliance with Part V are not satisfactory according to the Housing Officer having regard to the distribution of the units and their sizes.
- The report of the Council's Ecologist notes that the wastewater treatment plant is significantly non-compliant with the ELVs set in the discharge licence, that discharge from the plant is stated to be having an observable negative impact on water quality status and on the Water Framework Directive status. There have been a number of incidents despite recent improvement works. There is concern that the development will further contribute to negative impacts on water quality.
- The Senior Planner notes that he has liaised with the ecologist including in relation to whether a development of 30 houses were considered for permission but the response was that the problem with the current discharge from the wastewater treatment plant and the addition of more housing connections will exacerbate impacts including the potential to achieve the Conservation Objectives of the SAC. Procedurally there is no scope to seek clarification or further information.

- [Refusal is recommended based on prematurity \(lack of adequate water services infrastructure\) and the potential for negative effects on the Ballymacoda SAC.](#)

4.2.2. Other Technical Reports

Traffic and Transportation Section (further information response report)

This indicates no objection to permission being granted for 30 dwellings subject to the entrance being as indicated on the revised drawings, provision of a lighted public footpath along the full length of the roadside boundary to the site, road safety audit and payment of a contribution of €60,000 towards the cost of footpath connectivity between the site and the village core.

Ecologist (further information response report)

This notes the original submission which contained a discrepancy between the submitted ecological appraisal report and the engineering reports. The former report indicated that wastewater was to be diverted to the Carrigtouhill WWTP. The request for further information included submission of a revised Habitats Directive Screening.

I have reviewed the AER (2016) for the Castlemartyr WWTP and water quality data for the Womanagh River. Water quality downstream of the plant is assessed to be moderate status only. Plant is significantly non-compliant with ELVs set in this discharge licence. Discharge is stated to be having an observable negative impact on water quality and WFD status.

Improvements have been carried out at the plant recently. Not clear if improvement works are sufficient to ensure that the plant could accept the additional loading and operate within its licence conditions. No information provided to give that assurance. A number of reported incidents since the recent improvement works were completed.

Womanagh River is the primary freshwater input into Ballymacoda Bay and the Natura site lies approximately 11 km downstream (hydraulic distance) from the discharge point of the Castlemartyr wastewater treatment plant. Protection of a high standard of water quality is necessary to ensure compatibility with the Conservation Objectives for some of the qualifying features for which the SAC is designated. In

particular benthic communities associated with marine habitats – estuaries (1130) and mud flats and sand flats not covered by sea water at low tide (1140).

Having regard to the existing water quality in the receiving system, the fact that the plant is not meeting its licence conditions and is stated to be having a negative impact on water quality, concerned that development proposed would further contribute to negative impacts on water quality and thereby on marine habitats for which the SAC is designated. Not satisfied that it has been demonstrated that any such impacts would not interfere with the achievement of the Conservation Objectives which have been set for the SAC, particularly habitat types 1130 and 1140. Premature until such time as issues with wastewater treatment plants are resolved. No option to further consider issues under this application.

Recommend refusal for reason of potential to contribute to adverse effects on the integrity of Ballymacoda Bay SAC and to interfere with the achievement of the Conservation Objectives. A grant of permission would be contrary to policy HE2-1 of the County Development Plan 2014 and requirements of Habitats Directive.

Archaeologist (further information response report)

Notes AIA submitted as further information. The geophysical survey results show no reasonably recognisable archaeological features but several anomalies were identified with a concentration Field 2 (T-U in the survey). These anomalies proved to be a cluster of 31 archaeological features centred on trenches 16 and 41, randomly dispersed over an area of approximately measuring 20m x 20m. There is potential for features in the wider area. The date of features is unclear but likely to be prehistoric. The report recommends an exclusion zone of 38 m x 40 m as shown in Drawing 10.

I concur with the proposed mitigation for archaeological monitoring giving the discovery of archaeological features, which can be conditioned.

Regarding preservation of archaeological features T-U the applicant has not as requested entered into discussions with the local authority regarding preservation of these features. The AIA report includes a vague mitigation option of 'preservation in situ' but if that is not possible to undertake full archaeological excavation. No justification has been provided for same nor is there any evidence that redesign was

even considered. If permission is granted this area should be excluded from development.

If permission is to be granted only for Phase 1 the archaeological features can be preserved in situ. Any future applications should be guided by the preservation in situ option and reflected in the design and layout.

My recommendation refers therefore to the preservation in situ of archaeological features T-U with an exclusion zone of 38 m x 40 m as outlined established and protected during phase 1 construction and that removal of topsoil is archaeologically monitored. A condition is drafted.

Engineering (further information response report)

No objection subject to conditions as per previous report.

Cork National Roads Office (original report)

No objection subject to conditions relating to right turn lane on N25 at developer's expense, 2m wide footpath to be provided along N25, contribution towards cost of upgrading traffic signals and towards provision of a pedestrian bridge across Kilha river to provide safe access to village for pedestrians.

Estates (further information response report)

Refer to Irish Water for comment. Treatment plant operating at capacity and requires significant upgrade works. The existing wastewater network along the N25 was displayed by Chieftain Construction (previous landowners) and the ownership of this pipe should be clarified prior to the applicant being given permission to connect. Further investigation also required all the pipework including flow and load surveys, CCTV etc.

Regarding drinking water refer to Irish Water for comment. Additional works required in relation to water source for the proposed development.

Regarding footpaths revised layout drawing 2017-01-1006 submitted is acceptable.

Turning heads outside house 24 Castle Crescent and 24 Castle News to be revised – acceptable as per drawing 2017 – 01 – 106 submitted.

No objection subject to conditions. (26 number).

Public lighting (further information response report)

Recommends further information in relation to detailed lighting stands, MUGA, pathway lighting and notes potential clashes between locations of light stands and trees and other details.

Housing Officer (further information response report)

The site is in an area of significant social housing demand and the proposal is to transfer 21 units in lieu of obligations under Part V. Satisfied that the Council has sufficient demands for these units.

Initial report raised concerns about the location and design of the houses.

Following the further information submitted not satisfied that the proposed social units are satisfactorily dispersed throughout the estate with a considerable percentage of the units proposed to be provided in a single cluster along the north-western boundary of the site. Clarification of further information required.

4.3. Prescribed Bodies

Transport infrastructure Ireland report dated 27th of February 2018 states that the position remains as set out in the letter of 15th of May 2017. That report referred to the development being at variance with official policy as outlined in the 2012 Guidelines. Would adversely affect the operation and safety of the national road network for reasons related to potential detrimental impact on junction between N25 and R632 and failure to take account of other significant developments and to propose valid mitigation for any impacts on this junction.

A submission by **Irish Water** to the applicant in response to the request for further information is on file. This confirms as follows.

Regarding waste water the upgrade work is on the Capital Investment Plan and scheduled to be completed by the end of 2021:

- The plant currently has capacity to cater for the first phase of 30 houses from the proposed development.
- The planned upgrade will increase capacity and on completion the remainder of the development can be connected.

Regarding water supply:

- Currently there is supply in the water network to cater for the first phase of 30 houses.
- To service the remainder of the development a combination of a find and fix project to reduce unaccounted for water in the network and possibly developing new water sources will be required.
- Should you wish to have such works progressed Irish Water will require you to provide a contribution of a relevant portion of the costs.

Inland Fisheries Ireland

IFI is not in principle opposed to the development but considers that the planning authority should be entirely satisfied that there is adequate spare capacity existing at the WWTP to cater for the additional loading from the development. IFI refers to a document of the Council which was presented in 2015 which refers to the plant being at capacity, that this is a significant problem, that the plant is in breach of regulations and will need to be upgraded.

Any further significant loading will inevitably increase the burden on the finite assimilative capacity of the receiving waters. The likelihood of a consequent deterioration of the chemical and ecological status of the Kilta River would be at odds with A5 of the 2009 Regulations. The 2015 Council document notes that the Kilta and Womanagh rivers are rated moderate and poor respectively.

The development may be premature.

An Taisce

This development should be assessed under Box 5.2 of the National Spatial Strategy including asset, carrying capacity, transport, economic development, character, community and integration test.

Health Service Executive

No objection subject to agreement on details prior to operation.

4.4. Third Party Observations

5 no. submissions were received by the planning authority, one in support of the proposal and the others opposed, mainly for reasons relating to the pedestrian connections through Castlemanor estate but also highlighting infrastructural deficits.

5.0 Planning History

Following a number of invalid or incomplete applications permission was granted to Chieftain Construction Ltd for residential development of 200 houses at this site. Planning reg. ref. 07/6114 refers. An appeal lodged was withdrawn (PL225246 refers).

6.0 Policy Context

6.1. National Planning Policy

The following is a list of section 28 Ministerial Guidelines which are considered of particular relevance to the proposed development. Specific aspects of these documents are referenced within the assessment section of this report.

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design manual)
- Quality Housing for Sustainable Communities Guidelines
- Design Manual for Urban Roads and Streets
- The Planning System and Flood Risk Management
- Framework and Principles for the Protection of the Archaeological Heritage
- Childcare Facilities – Guidelines for Planning Authorities.

6.2. Cork County Development Plan 2014

The plan is stated to bring in a new approach to housing density as set out in Chapter 3 resulting in requirements to amend the Electoral Area Local Area Plans to ensure consistency.

Castlemartyr falls within the Metropolitan area wherein certain areas are designated as Metropolitan Towns including nearby Midleton. Castlemartyr is noted as being a Key Village under the provisions of the East Cork Municipal District Local Area Plan.

The village of Castlemartyr is noted as being one of the 17 no. historic towns are identified in The Urban Archaeological Survey of County Cork.

Policy HOU 3-1 relates to sustainable residential communities. The Council in assessing applications will:

- Have regard to provisions on Sustainable Residential Development in Urban Areas
- Promote development which priorities walking, cycling and public transport use within individual developments and in the wider context
- Ensure that urban footpaths and public lighting are provided connecting all residential developments to the network of footpaths in an area.

Policy HOU 3-3 includes a requirement to secure the development of a mix of house types and sizes throughout the County as a whole to meet the needs of the likely future population and to require the submission of a Housing Mix statement.

The key national roads infrastructure projects includes N 25 (Carrigtwohill – Midleton – Youghal). The Route Protection Corridor is identified on the East Cork Municipal LAP map browser and is to the north of the village.

The western side of the village of Castlemartyr is designated as an Architectural Conservation Area – this is a considerable distance from the subject site.

A range of policies relate to archaeology including HE3-1 which is to safeguard sites and settings, features and objects of archaeological interest and secure preservation (in situ or in exceptional cases by record). To have regard to advice and to the Framework and Principles for the Protection of the Archaeological Heritage.

6.3. East Cork Municipal District Local Area Plan

Table 2.3 identifies the Key Village of Castlemartyr as a location with limited or no spare drinking water and wastewater treatment services capacity. The existing number of houses in 2015 is given as 658 with provision for an overall level of new development of 235 houses.

Key Villages are the largest of the village settlements. The aim is to establish key villages as the primary focus for rural areas and to facilitate population growth at a scale, layout and design that reflects the character of each village, where water services and waste water infrastructure are available. New development will be in proportion to the pattern and grain of existing development and will be well integrated with existing form.

Regarding Castlemartyr the normal recommended scale of any individual housing scheme will be 30 houses. Where it can be demonstrated that the overall scheme layout reinforces the existing character of the village and the scheme is laid out, phased and delivered, so as not to reflect a residential housing estate more suited to a larger settlement individual schemes in excess of the recommended scale may be considered.

Development within areas at risk of flooding will need to comply with objective IN-01 of this plan. That requires that all proposals for development within the areas identified as being at risk of flooding will need to comply with objectives WS 6-1 and WS 6-2 of the CDP 2014 and with the Flood Guidelines. In particular a site specific flood risk assessment will be required as described in WS 6-2.

Protection and enhancement of biodiversity resources within the receiving environment of the village is encouraged.

Specific provisions relating to Castlemartyr include amenity projects which are focused on the town centre core area.

6.4. Natural Heritage Designations

The nearest Natura sites are the Ballymacoda SAC and SPA.

7.0 The Appeal

7.1. Grounds of Appeal

The main points of the first party appeal are:

- The history of the policy relating to 235 / 30 units was made when the previous permission was in place. It is contended that it was meant to refer to backland sites, not to this site.
- The Ecologist relies on out of date information (2016 AER) and inaccurate information relating to the water status.
- The statement by Limosa Environmental refers to the confirmation that the plant has capacity to cater for 30 houses and without this we would not have had confidence to screen out potential negative effects. The written statement from Irish Water was taken to mean that the plant could connect the proposed houses without affecting the achievement of environmental licence requirements. Implicit in this was the assumption that the WWTP is now working within capacity and is therefore now meeting the standards required by the European Community's Environmental Objectives (Surface Water) Regulations 2009 and the Urban Wastewater Treatment Regulations 2001, as amended. It seems therefore that there is a lack of confidence in the determination of Irish water to allow connection of the proposed houses. In this regard only Irish Water can provide the required evidence to support their decision.
- A letter dated 21st of March from Irish Water, Senior Design Engineer reconfirms the availability of capacity and future capacity and reconfirms that the water network will be able to service the proposed development.
- The senior planner fails to acknowledge that the applicant specifically requested a 10 year permission and that wastewater treatment could be properly provided. We dispute the comments by the senior planner that there is a level of uncertainty regarding the wastewater treatment plant. Irish Water have been very clear in their submissions that a plan is in place to provide water services to the application site. This clear statement of fact is dismissed

in favour of the Council's Ecologist's report, which is blindly accepted. The area engineer and estates engineering reports recommended permission be granted.

- The planning authority is obliged to implement its plan for this area and this is the only opportunity to develop 235 houses as envisaged.
- In conclusion, there will be no effect on the Natura Site, the reason is without basis and is perverse, the decision should be reversed and permission granted.

7.2. Planning Authority Response

No detailed response received.

7.3. Observations

7.3.1. Jayne and Joseph Stack (52 Castlemanor Crescent)

The main points of the observation are:

- we are resident in Castlemartyr Crescent for 16 years and have worked to ensure that the estate is a safe, secure and happy place to live
- the previous permission in 2008 did not have access to our estate and the effects of the pedestrian links will be detrimental
- Castlemartyr was marketed and sold as a cul-de-sac and previously a developer was refused pedestrian access through the estate to Bridgetown
- the cul-de-sacs are important for emergency access
- the development of 209 units would result in major concerns over antisocial behaviour, noise, dog fouling and litter including use as shortcuts for people coming home late at night from pubs resulting in noise and other issues
- the safety of our estate would be affected and community spirit will be lost.

7.3.2. Ms Sue Murphy (1 Bridgetown Crescent)

The main points of the observation are:

- Public water supply is inadequate.

- Wastewater and sewage insufficient as evident from the report of the Council which is quoted in the submission of IFI, which refers to the significant nature of the problem, the breach of the regulations and the delay in providing necessary upgrades.
- The development would exacerbate the very significant congestion in the village, which is catered for by a national road and where the regional roads are very congested.
- Parking overspill in the area will be exacerbated.
- The conclusion of the TIA that there will be an insignificant traffic impact and that this can be mitigated is grossly unrealistic.
- The decision of the planning authority is noted. Due to the inadequate infrastructure in the area permission should be refused.

8.0 Assessment

I consider that the main issues in this appeal may be considered under the following headings:

- Principle and phasing
- Water and wastewater infrastructure
- Flood Risk Assessment
- Roads, traffic and permeability
- Open space, density and housing mix
- Archaeology
- Ecology – general
- Appropriate Assessment
- Other issues.

8.1. Principle and phasing

The site zoning and the location within an urban area establishes the general principle of development of this site. Furthermore, permission was previously granted at this site for a large-scale residential development. The local planning policy, however raises issues to do with the scale of the scheme proposed and the overall capacity of Castlemartyr.

The village was previously assigned an overall scale of new development of 235 residential units, subject to no development being over 30 units. The planning authority notes that the intention of adopting the 30 house threshold was to spread the development and ensure that no one landowner/developer could take up the overall 235 unit capacity and thus ensuring incremental growth in the village also. However, the limited growth in the village in the interim was referenced as a mitigation for the current proposal of 209 houses. Taking into account the general pattern of the development proposed, which would have reflected the housing in situ at adjacent lands and other matters the conclusion of the planning authority was that the proposal would conform to the then prevailing policy.

In the interim a new plan has been adopted. The East Cork Municipal District Local Area Plan 2017 provides for similar provisions relating to the scale of each development and for an overall scale of new development of 235 houses.

The application is for a 10 year permission. There are other available zoned lands throughout the village. I find it difficult to conclude that the proposed development does not contravene the provisions of the Local Area Plan in relation to the scale of development which is permissible, including the 30 unit guide and the overall number of units. The East Cork MD LAP makes it clear that the 'new growth' figure is not a target or a limit. It is indicative of the number of additional dwellings which could reasonably be accommodated within a settlement over the lifetime of the Plan. The Board may wish to consider whether it is appropriate that all growth which can be reasonably be accommodated in the village would be centre on a single site. I am not convinced that it would be in accordance with the proper planning and sustainable development of this area to grant permission at this site for a 10 year period in the circumstances. I note that the appeal grounds contend that the policy

does not relate to this site but to backland sites, which I reject on the basis of the comments in the planner's report.

On balance however and in view of the fact that the planning authority has no objection in principle and that the policy is not strictly worded, I would not recommend that permission be refused for this reason. I accept the statements made in the appeal relating the significance of the phasing of the development in this respect.

In conclusion I consider that development of the overall housing scheme would not contravene the provisions of the development plan and that the development is acceptable in principle in terms of planning policy. The development before the Board is the revised 30 unit scheme. Nevertheless in the event of a refusal of permission it may be appropriate to set out the Board's opinion relating to the overall scheme and whether it complies with the LAP.

8.2. Water and wastewater infrastructure

In common with many of the other key villages governed by the East Cork MD LAP, there are capacity issues in terms of water and wastewater which may constrain development in the village. The availability of services appears to have been the primary reason for the revision in the scale of the development from 209 houses to 30 houses as presented in the further information.

There is adequate availability of water to serve Phase 1. This is clear from the letter dated 21st March to the applicant from the Senior Design Engineer of Irish Water who is responsible for connections. His statement is unambiguous in relation to the availability of water for the first 30 houses. I accept this as confirming that there is no water supply barrier to a grant of permission for phase 1.

To meet the needs of the overall 209 unit scheme it is indicated by Irish Water that there will be a need to combination of a find and fix project, to reduce new unaccounted for water in the network, and possibly developing new water sources will be required. A financial payment from the applicant is referenced also in this regard. I consider that there is a lack of clarity regarding the timescale or costs involved in providing a suitable water supply for the later phases of the development.

Regarding the capacity of the wastewater treatment plant to cater for an additional 30 houses, Irish Water states that the capacity exists in the plant at present. The appeal statement includes reference to the payment made by the applicant to Irish Water towards conducting of Flow and Load Studies on the existing water systems. It is with the results of that study that the favourable report was made by Irish Water. There has in recent times been some work to the existing wastewater treatment plant.

I note that the appellant refers to the Ecologists report which is substantially the basis for the recommendation by the Senior Planner to refuse permission for the proposed development. The appeal includes an annotated copy of her report which describes her review of the Annual Environmental Report of 2016 as based on 'out of date' data and refers to her comment that the plant is not meeting its discharge licence as 'heresay'.

I have considered the information available on the EPA website which includes the 2017 AER prepared by Irish Water. It clearly states that the final effluent from the Primary Discharge Point was non-compliant with the Emission Limit Values in 2017. The ELVs for BOD, COD and TSS were exceeded. The receiving waters do not meet the EQS required. The AER states the non-compliance is due to the treatment plant operating at design capacity. On the positive side however it is also indicated that the downstream WFD status is 'good'. The discharge is stated to have no observable negative impact on the water quality or on the WFD status. The expected completion date of the upgrade to the WWTP according to the licence information is 2024 (as opposed to 2021).

I consider that it is relevant to take into account the 'good' status of the water and the very limited additional housing. On the other hand the wastewater treatment plant to which the development would be connected is not meeting its licence conditions. On balance I consider that there is some merit in the proposal to grant permission for 30 houses on the basis that there may be considered to be sufficient capacity in the water and wastewater services having regard to the Irish Water statement.

I conclude that there may be a marginal case in favour of concluding that the development of Phase 1 (only) would be acceptable in terms of the adequacy of water and wastewater services.

The Board's conclusions in relation to Appropriate Assessment are connected to this matter but that is a separate issue, which is considered later.

8.3. Flood Risk Assessment

The requirement of WS 6-1 of the development plan is to avoid development in areas at risk of flooding and where development in floodplains cannot be avoided to take a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk. Where there is a high probability of flooding i.e. in zone A it is an objective to avoid development other than 'water compatible development' as described in section 3 of the Guidelines. Objective WS 6-2 is to ensure that all proposals for development falling within flood zones A or B are consistent with the guidelines. To achieve this proposals for development identified as being at risk from flooding will need to be supported by a site-specific flood risk assessment.

The site is identified as falling partly within Flood Zone A. The identified flood line in the LAP has been taken into account in the site layout, which specifically avoids the Flood Zone A area in the positioning of houses. Thus the development, which is within the Flood Zone A lands comprises the entrance and main estate road, a kick about pitch and other open space, including parts of private gardens and part of a car park associated with the proposed crèche.

The applicant has presented a site-specific flood risk assessment. This however is not detailed and relies in part on the approach that the site is not identified as being at risk of flood under the OPW maps and that the data indicates that the site did not flood in 2009.¹ The risk of fluvial flooding is considered unlikely due to the height of the proposed works over the riverbed and the nature of the existing topography of the streets. Regarding the potential for pluvial flooding it is considered that if road gullies are properly maintained the risk of pluvial flooding at the site would be reduced.

I have examined the information on floodinfo.ie, which is the most up to date source. This mapping does not show even a low probability of flooding within the site.

¹ The lowest point on the subject site is 10.35 m OD. The maximum flood level reached in November 2009 was 9.75 m OD. The source of any flooding would be from the Womanagh River to the West. 3 no. houses located close to the bridge were flooded.

There are no objections on the basis of flooding presented by the Estates Engineer or the Area Engineer and no local objections to development of the site for this reason.

I refer the Board to the indicative mapping available as part of the East Cork MD LAP. This is stated to create flood zones that are fit for use in applying the Guidelines at a strategic level, for the County Development Plan and Local Area Plans, and to help inform screening for site specific flood risk assessment of individual planning applications. The information on the Council's Map Browser is stated to include updated flood zone mapping and the information presented is stated to take account of information available from the National CFRAM. The site is shown to flood. This information is not compatible with the FRA submission or the mapinfo.ie website.

The development is classified as 'highly vulnerable development' and would be subject to a Justification Test. Regarding the justification test the applicant indicates that the site is zoned, that the development will not increase flood risk at any location as it will not block or reduce any flood water flow or reduce any flood storage and surface water run-off from the site will be controlled to the run-off rate pre-existing the development. It is concluded that that works if not permitted at this location would result in residentially zoned land not being utilised. The application would support the Council's policy to encourage development in a planned way in utilising zoned land.

I consider that the development proposed generally avoids lands which are at risk of flooding and that it is broadly acceptable in that respect. However, in the event that the northern end of the site has been determined to be subject to flood probability then I would query whether the proposed development requires any modifications to ensure access routes are clear and that there is no danger to the public or to property. This could be resolved by condition to require that the road as well as the houses are above the known flood level. Rear gardens are shown as being within Zone A.

However, it is not clear to me that the site has ever flooded or has even a low probability of flooding in the future. I consider that it is unfortunate that there is no explicit statement in the internal reports of the planning authority to explain the

designation of the site as including lands within Flood Zone A under the LAP or comments on any up to date information regarding flood risk at the site.

I find that I am unable to draw any firm conclusions in relation to the risk of flooding of the northern part of the site. In the event that the site is not at risk of flooding I would query whether the layout proposed in phase 1 is appropriate. In either scenario namely whether part of the site may flood or not there is some deficiency of information in my opinion.

In the event that the Board is disposed to granting permission I consider that it may be appropriate to seek clarification from the planning authority on this matter.

8.4. Roads, traffic and permeability

I consider that the site which is to be located within the 50kph speed limits and at a location where major upgrades to the pedestrian connectivity to the town centre are nearing completion is in general suitable from the point of view of roads and traffic. There are no objections to the development from the relevant officials of the planning authority but there is local opposition to the planned pedestrian connections in the later phases to Castlemanor to the west.

Regarding the interaction of the proposed development with the N25, the right turning lane proposed in the further information response together with the provision of the 2m wide footpath along the frontage of the subject site both constitute significant features, which will aid the flow of traffic along the national road and will provide a safe connection for pedestrians with the town centre and with the nearby school. The applicant's submission by way of further information also confirms that this design is compatible and consistent with the TII pavement upgrade requirements and that adequate site distance (90 m) is provided in both directions at the proposed access.

Regarding the construction of footpaths to the village centre, which were substantially complete at the time of my inspection, the applicant has indicated a willingness in the response to further information to make a financial contribution towards that work. This is relevant to the planning conditions which may be attached if permission is granted. I consider that the development is acceptable in terms of the proposals along the national road including the entrance arrangements.

Regarding the undertaking of a road safety audit for the new access arrangement the applicant's submission by way of further information response is that the audit should be undertaken in connection with that for the pavement upgrade scheme. The applicant states that this is the most practical and logical way to progress the overall scheme both from best engineering design and safety audit point of view. I consider that this should be addressed by condition.

Regarding the proposed connection of the later phases of the development to the housing to the west and the objections of the residents I note that the paths would link the new and existing communities, providing for the sharing of community facilities at the site and for easy and safe access to the primary school and town centre for future occupants. The principle of permeable layouts and provision for pedestrians and cyclists in particular is enshrined in all levels of planning policy. I consider that this aspect of the proposed development is in accordance with the proper planning and sustainable development of the area.

The comments of TII, which has objected to the proposed development refer to the 2012 Spatial Planning Guidelines. These Guidelines would not be relevant in the circumstance of a 50kph speed limit as they specifically refer to areas outside the 50 / 60kph zones in urban areas.

I conclude that the development is acceptable in terms of roads, traffic and pedestrian proposals and that it would not interfere with the national road network.

8.5. Open space, density and housing mix

Open Space, Landscaping and Layout

There is an even distribution of open space throughout the proposed development with a larger area concentrated in the area to the north, which is within the defined Flood Zone A. The long and linear nature of the open spaces ensures that there is a high level of general surveillance of these areas. The landscaping proposals are broadly outlined in the application documentation. The functionality of the open space will depend in part on the ground levels and other aspects of the detailed layout, which can be addressed by agreement with the planning authority of a more detailed landscaping plan. A few aspects of the proposal warrant particular comment.

In the event of significant delay between construction of phases 1 and 2 and the remainder of the scheme, the long elongated nature of Phase 1 and its location between agricultural lands would constitute an incongruous development. Further, I am not convinced that it would comprise an attractive place for residents. In my opinion it would be appropriate (subject to no flood risk) that Phase 1 be of more standard and concentrated typology and located close to the main road. If Phase 1 is permitted a condition relating to levelling and seeding of any disturbed lands and removal of construction materials would be appropriate.

The treatment of the open space in the vicinity of the area of archaeological interest should be subject of detailed design formulated with input from an archaeologist in view of the potential conflicts with preservation and achievement of an integrated open space on a sloping site. The detail of the entrance gate and boundary features has been modified and the elaborate structures which were proposed original were replaced with a simpler more appropriate treatment. There is good provision throughout of active play areas including playgrounds kick about pitch and MUGA. The planning authority operates a 'points system' for assessment of compliance with its recreation and amenity policy and the proposed development scores comfortably in excess of the requirements.

In terms of the amenity value of trees in general I would comment that there are very few mature trees which would warrant protection. From inspection I consider that the applicant's proposals are largely compatible with tree protection. Removal of the horse chestnut tree which would otherwise be located in the rear garden of no. Castle Lawn is acceptable in my opinion. I am not convinced that the retention of sections of hedgerows within the open space areas is viable in the long term but there may be a way to suitably incorporate them under a detailed landscaping scheme.

I am satisfied that the proposed development is acceptable in terms of the provision of public open space and landscaping.

The proposals for private open space likewise are satisfactory. The rear gardens associated with all of the houses are of ample size and the fact that the streets mainly follow the contours by their north-south orientation minimises concerns relating to steeply sloping rear gardens.

The separation between the proposed and existing houses is in general satisfactory. The proposed houses at Castle Lawn will be marginally elevated relative to the existing houses at Joseph Morrissey Place but due to their orientation and the separation distances I do not consider that there would be any significant overlooking.

The inter-relationship between the proposed houses and Castlemanor estate is acceptable in terms of layout and orientation and existing vegetation will be retained and supplemented. As part of a final landscaping plan it would be appropriate to secure greater clarity regarding the rear boundary treatment of gardens to ensure no conflict between the proposed 2m rear boundary walls and the retention of hedgerows. In such circumstances installation of a concrete panel fence instances may be appropriate.

I consider that the proposals for private open space are satisfactory.

Regarding the overall layout of the site I refer to this matter above under the Roads section of this report. The layout is generally acceptable as it meets the requirements of open space, separation between properties and results in a coherent development of small clusters of housing. I have concerns about the front loading of open space to the north in response to flooding, as discussed under the Flood Risk section of this report. In terms of the residential amenity of the proposed development and the layout of the estate as a result of the provision of two connections between the proposed development and Castlemanor I consider that the proposal is acceptable.

I conclude that the development is acceptable in terms of the provision of private and public open space and landscaping and that the layout of the housing scheme is generally acceptable.

Density and Housing Mix

The proposed 209 units on a site of stated area of 13.5 hectares equates to a density of under 16 units per hectare which is very much at the lower end of the 12-25 units recommended under the development plan policy. The site may be constrained by flood risk but as discussed above there is a lack of clarity about that matter. In the event that the site is not prone to flooding an alternative layout encompassing a higher density may be appropriate.

The density of the proposed development is within the limits set under the development plan and therefore I conclude that it is acceptable.

Regarding proposals for compliance with Part V, the applicant in response to the request for additional information undertook significant revisions to the scheme proposed. The identified residential units which are to be made available are stated to comprise 21 no. houses scattered throughout the estate. In fact the houses are all located in the western end of the development and in phases 4, 5 and 7.

The house type is considered to comply with the relevant guidance. The Housing Officer of the Council did not comment on the type of units (following revision) but I note that they are relatively mixed and include 3 no. two-bedroom houses and 2 no. four-bedroom units, the rest being three-bedroom houses. Concern had earlier been expressed that the units were too large. I consider that the proposed housing types appears suitable in terms of compliance with Part V.

The specific further information request issued in relation to the distribution of houses was that they would be located throughout the estate. I agree with the concerns of the Housing Officer of the planning authority in relation to the concentration of the units to the west of the site. Further, I consider that the phasing of delivery is entirely inappropriate – for instance 14 no. are to be constructed in the last phase of the development.

House types C1 (included in phases 1 and 2) and G1 (included in Part V proposals in phases 4 and 5) are not dissimilar in terms of size. In the event of a grant of permission for 30 units (phase 1) I consider that a Part V condition should be attached.

8.6. Archaeology

The Archaeological Impact Assessment report incorporates the results of geophysical survey and targeted test-trenching. This shows that the site is of relatively high archaeological interest.

The survey and excavations identify an area in Field 2 (at the south-east of the site) where there is a cluster of pit features, which characteristically suggest a prehistoric origin. These are believed to be similar to pits excavated at nearby development sites, which Neolithic artefacts were discovered. These features are located in the

vicinity of the MUGA in Phase 3. Notwithstanding the targeted and supplementary trench testing undertaken, the full extent of the archaeological site is not known and an exclusion zone 38m by 40m has been established.

The recommendation in relation to these pits is that full preservation in situ be undertaken if possible. That recommendation is in line with the Framework and Principles for the Protection of the Archaeological Heritage. In view of the development it is reasonable that preservation in situ be pursued, which would require an amendment to the layout and the inclusion of the area of archaeological interest within an open space.

In the event that permission is to be granted for later phases of the development, or in the event of further applications, a revised layout should be secured to allow for preservation in situ of the pit features. The Board may also wish to consider its powers to attach conditions relating to the overall site if permission is granted for phase 1. I note in this regard that the AIA refers to the prevention of further deterioration by agricultural practice. Any such condition would not strictly be related to the subject development however and therefore not in accordance with the Development Management Guidelines.

Finally, the AIA refers to the likelihood of a requirement for archaeological monitoring and that the developer should be prepared to address this. The Board can address this matter by condition in the event of a grant of permission.

Subject to the above I am satisfied that the development would be acceptable in terms of its archaeological impact.

8.7. Ecology – general

The ecological report of Limosa Environmental notes that the immature woodlands together with the treelines and hedgerows would be considered to be of moderate local value. I note that the ecologist points to the limitations of the duration of the survey which did not comprise an ideal time for identification of plants in particular. However the ground survey was supplemented with research of available sources and in the context of the site specific issues I consider that the survey and the resulting report are sufficient.

Regarding the potential effect on the nearby pNHA Claharinka Pond, which is a few hundred metres to the east, I agree with the conclusions of the applicant's submissions, which were adopted by the planning authority. The site is of interest for its flora and it appears to be a partly groundwater dependent habitat. There is no apparent surface water connection between the site and the pNHA. I am satisfied that there is no likelihood of significant impact on the pNHA as a result of the proposed development. If the Flood Zone A is confirmed then that may call into question the possibility of seasonal stream in the site and in turn it may require further assessment of any potential impact on the pNHA.

The main area of interest on the site itself is the immature woodlands to the north of the site which is dominated by willow. Site boundary hedgerows are not without interest but they contain few significant trees. No rare or protected flora, birds, bats or mammals were identified but there is designated to be some potential for these species particularly in the northern field. The preliminary ecological evaluation of the study area is that the habitats would be valued as moderate local value.

Potential for impacts on fauna and avifauna which are addressed in the report can be addressed by the mitigation measures presented. Such impacts would include possible spread of invasive species. These matters can be addressed by condition if necessary.

I conclude that the development is acceptable in terms of general ecological impacts.

8.8. **Appropriate Assessment**

The nearest Natura sites are the Ballymacoda SAC and SPA, which are stated to be 11km downstream of the discharge point of the wastewater treatment plant at Castlemartyr. This is part of the estuary of the Womanagh River. The discharge from the wastewater treatment plant at Castlemartyr is to the Kilta River, which is a tributary of the Womanagh. It is clear therefore that the site of the proposed development is hydrologically connected to the Natura sites.

I agree with the consideration of the applicant and the planning authority that the two Natura sites which require consideration for Stage 1 AA are:

- Ballymacoda (Clonpriest and Pillmore) Special Area of Conservation (Site Code 000077) and

- Ballymacoda SPA.

The potential for significant impacts is related to the wastewater treatment plant to which the proposed development would be connected and the potential impact of any additional discharge on the qualifying interests.

The effect of the discharge from the plant is discussed above and from the perspective of compliance with the Water Framework Directive it appears from the available evidence and in particular the public information on the EPA website that in 2017 the 'good' status of the water downstream of the plant was retained.

The discharge licence conditions as reported for that year are however not being met.

The two primary submission by the applicant which is of relevance and to which the planning authority referred is the amended final report which includes an Appropriate Assessment screening assessment prepared by the Limosa Ecological and Environmental Consultancy dated January 2018. The report of the Council's Ecologist is also relevant.

Based on the available information I consider that the proposed development might affect the benthic communities associated with marine habitats which require high quality water.

Therefore the qualifying interests which I consider are most relevant for Appropriate Assessment are

- Estuaries (1130)
- Mud flats and sand flats not covered by sea water at low tide (1140).

Protection of a high standard of water quality is necessary for these habitats. The requirement for water quality standards may be in excess of 'good' status.

The statements of Irish Water in relation to the capacity of the Castlemartyr wastewater treatment plant to cater for the additional houses are significant but in terms of the high burden of proof set under the Habitats Directive this is insufficient in my opinion.

I note in addition that the information provided on behalf of the applicant refers to an understanding that the licence terms would be met. The information is not available to me to confirm that is the situation.

I agree with the conclusions of the planning authority that the case is not demonstrated to the level required under the Habitats Directive. I do not consider that a finding of no significant effects on the SAC can be made in this instance. I consider that a Natura Impact Statement should be submitted.

In conclusion, having regard to the nature and scale of the proposed development, to the hydrological connection to European sites, to the nature of the qualifying interests and conservation objectives of the European sites and to the available information, it is my opinion that it cannot be determined that the proposed development alone or in combination with other permitted plans and projects, is not likely to have significant effects on any European site having regard to the conservation objectives of the relevant sites.

In the absence of a Natura Impact Statement I do not consider that permission can be granted.

8.9. Other issues

The [prescribed bodies referred to by the planning authority include an extensive list. However there was no referral to the](#) Minister for Communications, Climate Action and Environment. [I do not consider that the board is legally obliged to make a referral to the prescribed body in the situation where the planning authority has not undertaken that course of action, notwithstanding the fact that it is the Board's practice to do so. My initial reflection was that that option should be pursued. However, following consideration of the range of issues which I considered relevant to the making of my recommendation and which I consider would influence the Board in its final decision, I did not foresee a situation whereby the comments of the prescribed body are required. In that regard I also refer the Board to the fact that the appeal grounds has not been accompanied by material which supplements the information available to the planning authority at the time and I note also the report and recommendation of the Council's ecologist.](#)

The third party objections to the development indicate that the estate naming as proposed would be confusing. In the event of a grant of permission this matter should be reserved for agreement with the planning authority.

Regarding the concern that the development proposed would devalue the houses at Castlemanor I consider that there is no evidence to this effect and I am unaware of the Board drawing any such conclusion in relation to similar types of development and their impact on property. Secondly I note that the development is in compliance with the national and local guidance documentation and as such I find it difficult to concur with the position stated by local residents. Similarly, I note concerns relating to emergency access, litter, anti-social behaviour and change in the character of the existing residential areas and it is my opinion that these are not likely to be material. The benefits of increased permeability and resulting safe pedestrian access outweighs any of these concerns in my opinion. However, I do consider it appropriate to refer to this matter again and to draw the attention of the Board to the petition on file.

Regards to the Development Management Guidelines and the circumstances under which a development should be considered to be premature, my opinion is that the overall proposal fulfils the circumstances envisaged. The Guidelines state that prematurity arises where there are proposal to remedy a deficiency. I note that the decision of the planning authority does not specifically refer to prematurity but that the recommendation of the Acting Senior Planner did recommend refusal based on prematurity.

9.0 Conclusions and Recommendation

My main conclusions are as follows:

- The development proposed in terms of its density, layout and open space, including pedestrian connections and works at the N25 are generally acceptable
- There is a lack of clarity in relation to the flood risk, which has greatly influenced the site layout. If there is no identified flood risk related to the northern field an alternative layout involving more houses at this location should be secured.

- If the flood risk is as identified under the LAP then modification to the layout should be secured particularly in relation to rear gardens of houses within Flood Zone A.
- If the Flood Zone A is confirmed then that may call into question the possibility of seasonal stream in the site and in turn it may require further assessment of any potential impact on the pNHA.
- The long elongated nature of Phase 1 is incongruous and un-satisfactory in terms of providing for the needs of future residents for the duration pending completion of the upgraded WWTP, which will allow for further phases.
- Both proposals for Part V and the potential interactions between archaeology and landscaping may require alterations of the later phases.
- The development overall (209 units) may be considered to be premature.
- The development of 30 houses may be deemed acceptable in terms of wastewater treatment subject to there being no adverse effects on the integrity of the Ballymacoda SAC in view of the site's Conservation Objectives. However, that is not proven and needs to be considered under a Natura Impact Statement.

There are a number of fundamental matters arising in the above and therefore my recommendation is that permission should be refused. It may be appropriate in the event of a refusal of permission to set out in the Board's Direction why it opted not request further information.

10.0 Reasons and Considerations

1. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European Site Ballymacoda (Clonpriest and Pillmore) Special Area of Conservation, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

2. The Board considered that the proposed location of rear gardens of houses partly within the Flood Zone A is unacceptable and that in the absence of further details including in relation to emergency routes, the development might pose a risk to public health.

Having regard to the information available including the Flood Risk Assessment report submitted, the Board considers that there is a lack of clarity regarding the flood risk at the northern end of the site.

In particular the Board is not satisfied with the basis for the designation of part of the site as being with Flood Zone A and whether this information is compiled from the most up to date studies.

Therefore, the Board is not satisfied that the layout of the northern end of the site, which is heavily dominated by open space in response to the Flood Zone A is appropriate.

Mairead Kenny
Planning Inspector

1st July 2018