



An  
Bord  
Pleanála

## Inspector's Report ABP-302828-18

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<b>Development</b>	10 Dwelling Houses (reduced to 9 no. Houses further to RFI revisions)
<b>Location</b>	Ard Coillte, Ballina County Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	17601357
<b>Applicant(s)</b>	McKeogh Brothers
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	McKeogh Brothers.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21st of February 2019
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site is located within an existing housing estate in Ballina town, Co. Tipperary along the banks of the River Shannon. It is situated on the eastern shore of Lough Derg across from its 'twin-town' of Killaloe on the west bank of the lake. The towns are joined by Killaloe Bridge.
- 1.2. Ard Coillte housing estate, is elevated above the River Shannon and overlooks Killaloe. Ard Coillte is accessed off Boher Road, with a single entrance serving the entire estate which consists of detached dwellings running from north to south towards a mature tree boundary.
- 1.3. The subject site is located at the southern extremity of the site. It is green area fronting a number of houses. The site is an unkept grassed area. There is a derelict structure located along the southern boundary of the green area. This ruin is outside of the site boundary. The ruin is Cloghaneena Castle (National Monument). The site has a slight gradient from north-west to south-east. It is bounded to the north by the access road and dwellings, and to the east by two dwellings and a short cul de sac.
- 1.4. The southern site boundary consists of mature trees, and it drops sharply to a tributary (Grange River) and a road and the rear of residential properties (Willowcliff).

## 2.0 Proposed Development

- 2.1. The proposed development is for 10No, revised to 9No. dwellings within the Ard Coillte housing development approved under planning reference 07/51/0573 and 08/51/0300 and extension of duration references 13/51/0027 and 13/51/0028.
- 2.2. The proposed development consists of 9No. detached two storey dwellings accessed from existing roads within Ard Coillte.

## 3.0 Planning Authority Decision

### 3.1. Decision

Tipperary County Council refused permission for the proposed development for three reasons:

1. The site is close to a tributary of the Lower River Shannon SAC. The applicant has failed to demonstrate the proposal would not have an adverse impact on the integrity of the SAC (2165) despite identifying mitigation measures associated with the WWTP. The measures proposed are not under the control of the applicant or the planning authority. Therefore, the proposal is considered to be contrary to Policy LH6: Natura 2000 sites and Protected Species of the North Tipperary County Development Plan 2010-2016.
2. The proposed development is premature by reference to the capacity of the Ballina WWTP and the necessary upgrade required to service the proposed development.
3. Policy DM1 (Development Standards) of the county development plan states developments must comply with the relevant standards identified in chapter 10. The application has failed to comply with table 10.2 and the planning authority is not satisfied with location of the visitor parking parallel to the landscaped open space and play area.

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

#### **3.2.1. Planning Reports**

**(07/02/2018)**

- The layout does not comply with zoning objectives. There are 4 No. houses within the open space zoning objective.
- It is overdevelopment of the site in the context of the Ard Coillte development.
- The public notice description is misleading. This is not final phase as there have been numerous applications. This development must stand on its own merits. The calculation of open space for the entire development has not been submitted. The play area and open space area has never been provided for the existing residences.
- Part of the site is beside a recorded monument Cloghaneena castle, and construction materials are being stored beside the monument.
- Further Information is recommended.

### **Further Information Request (09/02/2018)**

- NIS is required
- Open space provision for the entire development must be submitted
- An alternative foul sewer connection as there is no access to the existing sewer and it may be defective.
- Houses on the open space zoning materially contravene the development plan. A revised design is required. Storage of materials adjacent to a monument.

A response to the further information including revised public notices and an NIS was submitted to the planning authority on 6<sup>th</sup> of July 2018 and 3<sup>rd</sup> of August 2018.

### **(25/09/2018)**

- Ard Coillte is 95341sq.m., and the open space area is 24,365sq.m. which corresponds to 25% of the site. The calculations include adjoining lands zoned for open space which are not included within the overall permitted development. The lands will be accessible by the development. The play area will be provided within 2 years following completion of the current proposal.
- The developer has legal interest to access sewers on private property for maintenance. The existing sewer network has the capacity to accommodate the proposed development. An alternative sewer route may not be feasible.
- Irish Water has stated it can upgrade the WWTS to cater for the proposal. However the capacity issues have a direct correlation to the quality of Lough Derg.
- The overall proposal has been reduced from 10 to 9No. units with 3 garages omitted. 8No. visitor parking spaces are located outside of the site, parallel to the open space.
- The construction compound has been moved away from the national monument.
- **Refusal** is recommended.

### 3.2.2. Other Technical Reports

There appears to be none on the planning file.

### 3.3. Prescribed Bodies

The planning application was referred to:

OPW, Minster Culture, Heritage and Gaeltacht, An Taisce, Irish Water, and Heritage Council .

The following is a summary of the replies received.

#### ***Department for Culture, Heritage and Gaeltacht.***

It is unclear from the attached documents whether the existing sewerage facilities can accommodate the development. A full Appropriate Assessment is required as there is a tributary stream of the Lower R. Shannon SAC adjacent to the development.

#### ***Irish Water***

1. The existing sewer is laid to the rear of Houses 1-13 and it is inaccessible for maintenance. The section to the rear of house numbers 1-13 is defective, and alternative route for the sewer is required.
2. The applicant has not complied with the pre-connection application requirements
3. The information is insufficient to determine a recommendation for a connection.

Following receipt of further information request in July and August 2018, the details were referred to the prescribed bodies by the planning authority.

The Department of Culture, Heritage and the Gaeltacht prescribed conditions relating to archaeological testing on site.

Irish Water stated the applicant had been issued with a confirmation of feasibility for connection

### 3.4. **Third Party Observations**

An Bord Pleanála rejected planning permission on this particular section of the site stating it was suitable for development. Then the applicant reverted back to the original permission granted for the entire scheme under 07510573.

Under 17601357 house numbers P10 and P01 are refused because they are a danger to the tree line. They are an invasion of privacy of Willowcliff, the houses will be looking directly down on bedroom in Willowcliffe. Natural light would be reduced to existing houses. The tree line needs to be protected due to loss of 5No. trees during a storm. The trees are vulnerable.

## 4.0 **Planning History**

### **13/510027**

Extension of duration 18no houses, 4No, garages and all ancillary site works.

### **13/510028**

Extension of duration of as constructed site layout previously approved under permissions

### **09/510300**

Retention of as constructed layout granted under 19917 and 07510573.

### **07/510573**

Permission granted for 42No. houses, 6No. garages and all ancillary site works with access through Ard Coillte estate.

### **51/9917**

Permission for 103No, houses granted in 1999 and expired in 2006.

### **Enforcement Cases**

#### **UD-03-135**

Non compliance with planning application in relation to wayleaves and access to wastewater infrastructure

#### **TUD -16-087**

Non compliance with condition No. 6 regarding wayleaves.

## **5.0 Policy and Context**

### **5.1. Development Plan**

North Tipperary County Development Plan 2010-2016 (as varied to include Ballina Settlement Plan 2017)

There are 2No. zonings relating to the site.

The northern part of the site is zoned Existing Residential under the Ballina Settlement Plan which forms part of the North Tipperary County Development Plan 2010-2016 as varied.

The lower section of the site close to the mature tree lined boundary is zoned as Open Space.

### **7.2 Water Services**

The town is serviced by a waste water treatment plant and public sewer. The existing sewage treatment plant has limited capacity and as such upgrade works are required to support future growth over the lifetime of Plan. The up-grade of the waste-water treatment plant has been identified for investment under the Irish Water Capital Investment Plan, 2017, and the council will seek to work with Irish Water to secure this upgrade over the lifetime of the Plan.

### **5.2. Natural Heritage Designations**

The proposed development is located within 250metres of the Lower Shannon SAC. There is a tributary of the lower Shannon located adjacent to the site below the southern site boundary. The application is the subject of an NIS.

### **5.3. EIA Screening**

Having regard to the nature and scale of the proposed development and the location of the site, there is no real likelihood of significant effects on the environment arising

from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the appeal:

#### Reason No. 1

- Reasons 1 and 2 relate to limitations associated with the capacity of the Ballina Wastewater Treatment Plant (WWTP). Reason No. 1 specifically refers to potential impacts on the nearby Lower R. Shannon SAC, and the fact the required upgrade works are not under the control of the planning authority.
- The constraints of the Ballina WWTP are well documented but have not been used as a reason for refusal before.
- Irish Water oversee the WWTP since 2015 and have identified mitigating measures to upgrade the plant's capacity. During this time numerous housing applications have been granted planning permission.
- Number of applications with new connections to Ballina WWTP in last 4 years : 14

Of these applications 11 out of the 14 were granted permission; 1 out of the 14 was refused; 2 have yet to be decided and 4No. out of the 14 had an NIS requested. It should be noted 10 out of 11 grants of permission included a condition requiring a connection agreement with Irish Water before commencement.

- 10 of the 11 grants of permissions that were issued over 4 years included a condition requiring a connection with Irish Water before development commenced, which is normal practice. The condition is as follows:



*No development shall commence on site until such time as the developer has obtained a connection agreement from Irish Water from provision of water services necessary to service proposed development.*

*Reason: In the interests of public health and for the wellbeing of the occupants of the development.*

- How is the environmental risk of the current proposal any different to the other residential and commercial development been granted permission in Ballina?
- Within the scope of the applicant, the applicants can agree with Irish Water to make a contribution to advance the upgrade works if required.
- In February 2018 Irish water wrote to the applicant stating subject to a valid connection agreement being put in place, the proposed connection to the Irish Water network can be facilitated. The letter also stated the WWTP is currently at capacity and requires an upgrade. It states there is an investment plan for the upgrade in place but the completion date is a number of years away. Part of the works can be brought forward to provide some additional capacity; if the applicant wishes to progress the project based on contributing costs towards Irish Water you are advised to consult with Irish Water.
- In October 2018, Irish Water wrote to the applicant confirming the completion date for the Ballina WWTP upgrade works is 2023, however sufficient works allow of the connection to be completed earlier.
- In February 2018 a full Appropriate Assessment in the form of a Natura Impact Statement (NIS) was submitted. The subject site is reasonably close to the Lower River Shannon SAC (less than 500metres) but it does not have a direct boundary with it. Why was this development considered to have a greater environmental impact than other similar permitted schemes in Ballina.

## **Reason No. 2**

As stated 10 out of 11 other applicants were granted permission over past 4 years since Irish water took over the Ballina WWTP. It is requested the permission be granted with a condition that a connection agreement must be in place with Irish Water similar to the other permissions.

### **Reason No. 3**

A revised Drawing has been submitted in relation to the visitor parking requirements. There are 3No. additional visitor parking spaces included.

#### **6.2. Planning Authority Response**

An NIS was requested as part of the planning application process. It failed to adequately demonstrate the adequate capacity to cater for the development proposal at the WWTP.

The other planning application site referred to in the appeal were not close to the tributary of the Lower Shannon SAC. The NIS relies on a mitigation measure for nutrient reduction improvement works as part of the Ballina WWTP and the licencing of same. The required completion date for the works is December 2019.

The planning authority cannot permit a development which is dependent on future works not within the control of the developer or the local authority to deliver.

The planning authority cannot attach a condition that has an unknown timeframe. The monetary contribution for the works required is not a matter for the planning authority.

Irish water has serious concerns regarding the existing sewer laid within private properties, and there is no legal access to same for maintenance. The sewer may be defective. There are concerns about granting permission into a defective sewer.

## 7.0 Assessment

7.1 The appeal is considered under the following headings:

- Principle of the Proposed Development
- Waste Water Treatment
- Visitor Carparking
- Appropriate Assessment

## 7.2 The Principle of the Proposed Development

The proposed development did form part of a larger residential scheme for 103No. dwellings granted under planning reference 07/510573, and reduced to 43No. dwellings under a revised permission in 2009. The scheme was substantially built and left incomplete following the economic crash. The public notices describe the proposed development as the final phase of the overall development, and the bulk of the planning authority's assessment of the case evolved around the entire housing scheme and the planning permission associated with Ard Coillte.

The proposal will integrate into the existing Ard Coillte housing scheme in terms of infrastructure and layout.

The original scheme was submitted for planning permission on 8<sup>th</sup> of December 2017 and included 10No. dwellings and 4No. detached garages. The original proposal was reduced in scale to 9No. dwellings in order to exclude a dwelling which was positioned within the designated open space zoning along the southern boundary of the site. The remaining 9No. dwellings are within the residential zoning objective of the Ballina Settlement Plan, which was adopted as a variation of the county development plan in 2017. The proposed layout is similar in scale and design to the existing housing estate, and the land to the south and west of the subject site is to be reserved as open space.

There is a ruin located within the open space area, which is outside of the site boundary area. It is a recorded monument Cloghneena Castle TN 025-015

(conditions relating to the ruin form part of the original permission 07/510573), and the Department of Culture, Heritage and the Gaeltacht made two submissions on the planning file regarding the ruin, with recommendations for conditions to be attached to any grant of permission.

The proposed development is in keeping with current zoning objectives for the area. In terms of design and scale, the large detached dwellings are in keeping with the overall design of Ard Coillte.

The further information requested by the planning authority on the 9<sup>th</sup> of February 2018, indicated Tipperary Co. Co. had 4No. concerns regarding the proposed development:

- (i) The open space and play area has not been provided for Ard Coillte, and a timeframe must be provided for the delivery of 15% site area for open space.
- (ii) The existing sewer serving Ard Coillte runs to the rear of a number of dwellings, and with no access/ legal right of way for maintenance, the information relating to the section of sewer indicates the main sewer may be defective. An alternative sewer connection is required that can be taken in charge by the relevant body.
- (iii) Revised design to exclude any new development on the area zoned as open space
- (iv) Archaeological monitoring of Cloghneena Castle is required.

The partial further information received on 6<sup>th</sup> of July 2018 included clarification of the issue relating to the open space area, which is 25% of the Ard Coillte site area. Revised drawings and site notices for 9No. dwellings, and an Archaeological report associated with the adjoining Cloghneena Castle ruin, and a Natura Impact Statement were submitted. The Board should note the Natura Impact Statement was not requested as part of the further information request, it was a request from the department of Culture, Heritage and the Gaeltacht in its submission dated 18<sup>th</sup> of January 2018. The content of the Natura Impact Statement formed the basis for the decision to refuse, which is detailed below.

### 7.3 Waste Water Treatment

The site is within 250metres of the Lower River Shannon SAC (Site No. 2165). There is a tributary of the R. Shannon, i.e. Grange River than runs below the site along the southern axis of Ard Coillte. The Department of Culture, Heritage and the Gaeltacht stated in its submission on the 18<sup>th</sup> of January 2018 that a full Appropriate Assessment of the proposal was required.

Irish Water made a submission during the initial stages of the application requiring further information:

- (a) The main sewer to Ard Coillte is laid to the rear of house numbers 1-13, and to the rear and side of No. 14. There is no legal right to access for maintenance. Information to date indicates the particular section of sewer is defective. The addition of further developments to the sewer could result in problems in the future. Irish Water requested an alternative route for the sewer.
- (b) The applicant had applied for a connection to the main sewer from Irish Water, the applicant had to meet specific requirements which has not been complied with at the date of the decision.

The applicant states it has legal right to access any section of sewers in private property for maintenance or repair. The applicant is awaiting wording of further legal agreements from Tipperary Co. Co. on the issue. There are no issues of blockages of the existing sewer and no evidence to suggest additional houses will cause a problem to the sewer. The applicants indicated that it is not feasible to build a new sewer to serve the proposed development, and the existing sewer network has adequate capacity to cater for the proposed development additional flow, with no blockages.

Irish Water confirmed on 20<sup>th</sup> of September 2018 the applicant had engaged with them a pre-connection consent had been issued confirming feasibility for connection. Irish Water confirmed that WWTP is at capacity and will require an

upgrade. It is recommended a contribution be payable towards interim upgrading works to cater for the additional load from the proposed development, as the overall upgrading works are not scheduled for completion until 2023.

The issue of the capacity at the wastewater treatment plant is the crux of the appeal because of the first and second reasons for refusal. The proposed development had been previously granted permission, however the developer could not complete the housing estate within the appropriate period due to constraints associated with the economy. Since the previous planning applications, the responsibility of the wastewater treatment system has been taken in charge by Irish Water since 2015.

According to the appeal, since Irish Water took over the Ballina WWTP there have been 14No. applications for connections to the plant, 11No. have been granted, 2No. undecided and 1No. refused (current appeal). The condition attached to the permitted developments is as follows:

*No development shall commence on site until such time as the developer has obtained a Connection Agreement from Irish Water for the provision of water services necessary to service the proposed development.*

*Reason: In the interests of public health and for the well being of the occupants of the development.*

The planning authority stated the other permissions granted were not close to the tributary of the Lower Shannon SAC. However, in my opinion, the issue of the refusal relates to the capacity at the Ballina Waste Water Treatment Plant, and not proximity to the SAC. The submitted NIS outlined that the proposed development will not impact on the tributary, Grange River.

The Board should note the letter from Irish Water dated 22<sup>nd</sup> of October 2018 stating, that the proposed connection can be facilitated. There are upgrade works required to increase the capacity of the wastewater treatment plant. The applicant must consult with Irish Water to determine when the exact date connection is possible. Prior to any connection the applicant must provide a statement from the planning

authority to Irish Water stating the sewerage infrastructure on site owned by the applicant is compliant with planning. In my opinion, such matters are beyond the remit of the Board to assess, however, there is the outstanding issue of the sewer serving the Ard Coillte and the proposed site traversing a number of private houses within the scheme. The issue of compliance with planning permission is a matter for the planning authority and the applicant. The most relevant point is Irish Water has clearly indicated sufficient works to the treatment plant can be made to cater for the proposed development in advance of the full upgrade at the WWTP. I consider this overturns the first two reasons for refusal and the Board is in a position to grant the development subject to a condition that the applicant requires written approval from Irish Water for a commencement date.

#### **7.4 Visitor Parking**

The third reason for refusal stated the proposed development did not meet with the relevant standards identified in Chapter 10 in particular Table 10.2 which sets out carparking and visitor carparking standards. The site layout drawing submitted on appeal, includes 4No. carparking spaces at the end of the two short cul de sacs which will provide access to 7No. dwellings within the proposed development. I consider the revised layout to be acceptable and in keeping with the development plan carparking standards. Each of the nine dwellings has carparking within their respective curtilages. The Board should overturn reason No. 3 of the refusal, which I consider was not justification for refusing the development in the first instance.

#### **7.5 Appropriate Assessment**

##### **7.5.1 *Compliance with article 6(3) of the EU Habitats Directive***

Article 6(3) requires that any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The authority must be satisfied that the proposal will not adversely affect the integrity of the European Site.

### 7.5.2 Stage 1 AA Screening Report

An initial AA Screening Report identified the subject site is within 250m of the **Lower River Shannon SAC (Site No. 002165)**. The proposed development is not directly connected to the management of any Natura 2000 site. Lower River Shannon SAC (2165) site is vast and extends throughout counties Clare, Cork Kerry, Limerick and Tipperary.

The planning authority's screening of the project concluded that more detailed information was required in the form of an Natura Impact Statement to assess the potential impact of the proposed development on the existing Ballina treatment system which discharges to a tributary of the Lower River Shannon SAC, which runs below the level of the site within 100metres of the southern site boundary.

Having regard to the nature and scale of the proposed development, and the separation distance of the application site from a European site, the close proximity to a tributary that is directly connected to the European site, and given the information presented in the application, it is my opinion the proposed development has the potential to affect the River Shannon SAC having regard to the relevant conservation objectives of the site and that a progression to Stage 2 Appropriate Assessment is required.

### 7.5.3 Natura Impact Statement

The overall conservation objectives for the Lower River Shannon SAC are to maintain and restore the favourable conservation conditions of the Annex I habitats and or Annex II species for which the SAC has been selected. The Natura 2000 site stretches 120km from Killaloe to Kerry head. The submitted NIS assessed the potential impacts relative to the Conservation Objectives for Lower River Shannon SAC during the construction and operational phases. The NIS concluded that there would be no adverse effects on the integrity of the designated site.

The Qualifying Interests of the **Lower River Shannon SAC (Site No. 002165)** are 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*).

7.5.4 The proposed site is a damp calcereous grassland located within an existing housing estate. The Grange River glen is to the south of the site and the River Shannon is to the west.

- **Juvenile salmonids** were noted in the Grange River during a site assessment for the Natura Impact Statement accompanying the planning application.
- The closest downstream records of protected fauna are from O'Brensbridge where otters listed on Annex II and IV, and these were recorded 7.5km from the site.

- There are also records of bats along Grange River.

The NIS states that standard methods to protect watercourses from siltation or pollution will be incorporated into the construction methods on the proposed site during the construction period. As the site is positioned on a higher level to Grange River, and there is a mature tree lined boundary and an embankment between the site and the river, I am satisfied the developer can put in place construction management methods as prescribed in the NIS to ensure there is no impact on the Grange River during the construction period.

#### 7.5.5 Potential Impacts on the Natura 2000 site from the proposed modest housing scheme could arise from:

- Negative impacts on water quality due to siltation or chemical pollution during construction
- Negative effects on water quality arising from domestic wastewater discharges
- In combination with other projects

#### ***Construction Phase***

As stated above, the construction works will take place on the site at a higher level than the Grange River terrace. The works will involve significant earthworks, poured concrete and various fuels and other compounds. The existing treeline and vegetation structures on the steep terrace between the site the river will act as a buffer and filtration.

I am satisfied given the natural features between the appeal site and river, the full implementation of the mitigation measures outlined in the NIS, adherence to best practice will ensure the existing water quality and habitat is protected, with no adverse effects on the Qualifying Interests species are anticipated.

#### ***Operational Phase***

The main topic of the appeal is the Ballina Waste Water Treatment Plant which is operating under a Wastewater Discharge Licence (Licence No. D0189-01) issued by the EPA in 2015. The WWTP is currently exceeding its organic loading capacity. In 2016 there was a 30% organic capacity in the WWTP yet in 2017 the plant had exceeded its capacity. Despite the overloading, effluent monitoring in 2016 and

2017 showed that discharges were compliant with the Emission Limit Values set out in the waste water discharge licence. Water quality monitoring upstream and downstream of the WWTP shows that water quality of the Grange River does not meet Environmental Quality Standards for Good Status specified in Schedule 5 of the European Communities Environmental Objectives Status Regulations 2009 for BOD, N and P. The NIS states that as the water quality is already negatively affected by the WWTP, and the additional load from the proposed nine dwellings may lead to negative effects in combination with the existing load.

The length of the Grange River to be affected is extremely short, there is approximately 110metres between the WWTP and the confluence of Grange River with the R. Shannon and Lough Derg. **The length of river could only support a very small fraction of salmon, lamprey and otter dependent on the Lower River Shannon SAC.** The NIS concluded that any impacts on the qualifying interests of the SAC that may occur in the Grange River would be too small to affect the integrity of the Natura 2000 site. It also states that the Water Framework Directive status in 2015 found the lower section of Lough Derg, where the River Grange flows into, to be good. Agricultural and other discharges are considered to be moderate threats to the SAC, the combination of the proposed development with the impacts would be considered minuscule, the risk of in-combination effects which existing pressures on the conservation status of the Lower River Shannon SAC requires mitigation measures.

The mitigation measures proposed state the Water Discharge licence for Ballina WWTP was issued subject to a number of conditions, which includes a programme for reduced nutrient works and the required completion date is 31<sup>st</sup> of December 2019.

**Conclusion** : It can be reasonably concluded on the basis of the current and scientific analysis of the water quality of Grange River, when the Ballina WWTP operates under the terms of the licencing conditions the downstream water quality will be protected with no adverse effects on the Qualifying Interest species anticipated.

#### 7.5.6 ***In combination effects:***

The file references a number of similar residential development developments in the town granted in recent years in close proximity to the subject site.

Having regard to the nature and scale of the proposed development, it is considered it does not have the potential for in-combination effects after mitigation measures are applied, to undermine the integrity of the European Site.

#### **7.5.7 Appropriate Assessment Conclusion**

I consider it reasonable to conclude on the basis of the information on the file which I considered to be adequate to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European Site Number 002165 or any other European site in view of the site's Conservation Objectives.

### **8.0 Recommendation**

8.1. I recommend planning permission be granted for the proposed development subject to the following conditions.

### **9.0 Reasons and Considerations**

Having regard to:

- the residential zoning objective for the site in the varied North Tipperary County Development Plan,
- the planning history of the site,
- the scale, design, and layout of the proposed development,
- the mitigation measures set out in the Natura Impact Statement,

and subject to compliance with the conditions set out below, it is considered the proposed development would not adversely affect the character and setting of the adjoining National Monument, would not seriously injure the residential amenities of

adjoining properties or give rise to water pollution, and would be in accordance with the proper planning and sustainable development of the area.

## 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 on the 6<sup>th</sup> of July 2018 and to the Board on 24<sup>th</sup> of October 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. No development of the proposed dwelling houses shall commence until the upgrading works at the Ballina Wastewater Treatment Plant to facilitate the development are completed, and the developer has obtained a Connection Agreement from Irish Water to connect into the upgraded Waste Water Treatment Plant.

**Reason:** To ensure there are no adverse effects on the integrity of the Lower River Shannon SAC.

3. The dwelling houses shall be constructed and completed using the same palette of materials, colours and textiles as the existing adjoining dwellings within the housing scheme unless otherwise agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

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

**Reason:** In the interest of public health.

5. All rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

**Reason:** In the interest of residential and visual amenity.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interest of visual and residential amenity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of public safety and residential amenity.

8. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800

and 1400 hours on Saturdays and not at all on Sundays, Bank or 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:** In order to safeguard the residential amenities of property in the vicinity.

9. 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.

10. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001–2013, or any statutory provision modifying or replacing them, no room in the proposed houses shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

**Reason:** In order to prevent overdevelopment of the site in the interest of residential amenity and traffic safety and convenience.

11. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, water mains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The security amount to be lodged shall be agreed with the planning authority in writing prior to the commencement of the proposed development. security as may be accepted in writing by the planning authority.

**Reason:** To ensure the satisfactory completion of the development.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

13. The open space area to the west and south of the propose development shall be provided in accordance with the plans and particulars submitted as part of the further information submitted on 6<sup>th</sup> of July 2018. The open space area and play area shall be provided within twelve months of the completion of the proposed development.

**Reason:** In the interests of clarity.

14. The applicant is required to engage the services of a suitability qualified, licenced archaeologist to carry out a programme for Archaeological Test Excavation as a condition of the planning permission. Archaeological testing



shall be carried out in advance of the construction works commencing on-site, and the applicant shall allow an adequate timeframe for the completion of same in the absence of the works commencing. No sub-surface work shall be undertaken in the absence of the of the archaeologist without his/her express consent. Please allow 5-6 weeks to facilitate the processing of archaeological licence. This assessment shall include:

- (a) The archaeologist shall then inspect the proposed development site (PDS) and detail the historical and archaeological background of the site, and review all cartographic sources and aerial photographs for the area;
- (b) The archaeologist shall then excavate the test trenches at locations chosen by the archaeologist, having consulted the site plans in liaison with the Licencing Section of the department. Excavation is to take place to the uppermost archaeological horizons only, where they survive. Where archaeologist material is shown to be present, the archaeologist shall stop works pending further advise from the department. Please note tat all features/ archaeological surfaces within the test trenches are to be hand cleaned and clearly visible for photographic use.
- (c) Having completed the work, the archaeologist shall advise on and establish an appropriate buffer zone around TN025-015 – Castle minimum 25m buffer area and shall then submit a written report to the Local authority and to the department outlining the results of the test excavations. The report shall comment on the degree to which the extent, location and levels of all proposed foundations, service trenches and other sub-surface works required for the development will affect the archaeological remains. This should be illustrated with appropriate plans and sections, etc.
- (d) Where archaeological material is shown to be present, further mitigatory measures will be required, theses may include redesign to allow for

preservation in situ, excavation and/or monitoring. The Department will advise the Local Authority with regard to these matters.

(e) In addition, the applicant shall submit for agreement, proposals for the protection, conservation and presentation of the TN025-015 within the overall development proposals to the department and the Local Authority, with particular reference to the use of the area around the monument as a designated green area and potential playground. Clarification in relation to same shall be submitted for review in advance of construction works commencing on site.

**Reason:** To ensure the continued preservation of places, caves, sites, features or other objects of arkeological interest.

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.

16. The developer shall pay to Irish Water a financial contribution in respect of the necessary works required to upgrade the Ballina Waste Water Treatment Plant in order to facilitate the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as the Irish Water may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the amount payable shall be agreed between Irish Water and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine an equitable sum payable for the required works.

**Reason:** To ensure an equitable contribution is paid by the developer towards public infrastructure serving the proposed development.

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Caryn Coogan  
Planning Inspector

16<sup>th</sup> of April 2019