



An
Bord
Pleanála

Inspector's Report

ABP-303757-19

Development	Demolish industrial building and construct house and floating pontoon boat berths, entrance, access road, ancillary services and pumping station for effluent.
Location	Marine Village, Ballina, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	18/600963
Applicant(s)	Sinead Gilmartin
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Sinead Gilmartin
Observer(s)	Carol Flynn Padraig Egan
Date of Site Inspection	14 th June 2019
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.19ha, is located on the east bank of the Shannon River within the town of Ballina in west Co. Tipperary. The site slopes downhill from east to west (a fall of approximately 7.0m). The slope at the eastern end is steep – with a flatter slope towards the river. There is an hardcore access road linking the access with the river frontage. The site contains 1 large, sheet metal-clad shed – the stated last use of which was for the repair of boats. There are a number of boats on trailers scattered throughout the site. The site is somewhat overgrown and unkempt. A concrete and hardcore slipway leads from the shed into the water. There are some rogue ash trees on the site; and one, mature oak tree on the northern boundary.
- 1.2. Access to the site is from the Marine [sic] Village Road – a residential cul de sac. The surface of this road is of poor quality. The 50kph speed restriction applies in this area. There is a narrow footpath on the site side of the access road – recently reconstructed. There is new public lighting in place along the road.
- 1.3. To the east, the site abuts Marine Village Road – the boundary with which is wire fencing and metal gates. To the southeast and south, the site abuts a line of single-storey and dormer houses – the boundary with which is a post and wire fence and a steep embankment. To the west, the site abuts the Shannon River and the entry to part of the adjoining Derg Marina (recently redeveloped). To the north, the site abuts a row of part-single and part-two-storey houses – the boundary with which is a mixture of old hedgerow, concrete block wall and fencing. The houses here are at a slightly higher level than the shed on the appeal site.

2.0 Proposed Development

- 2.1. Permission sought on 1st August 2018, for development comprising the following elements-
 - Demolition of existing industrial building (152m²) and removal of concrete slipway.
 - Construction of two-storey house (237m²).
 - Floating pontoon with berths for four boats.

- Pumping station to connect house to mains sewerage.
- Water supply from public mains.
- Surface water is indicated as being discharged to soakpit and watercourse.

2.2. The application is accompanied by the following documentation of note-

- Letter from Waterways Ireland (dated 2nd July 2017) – to state that the development does not impact on the Shannon Navigation.
- Details of ‘Klargester’ pumping system.
- Pre-enquiry response from Irish Water in relation to water connections.
- Letter from site owner, Brian F. Cullen, consenting to the making of the planning application.
- Method Statement for construction of house and pontoons – undated.
- Natura Impact Statement – dated 23rd July 2018 – including an Appropriate Assessment Screening Report and a Construction Environmental Management Plan (dated 20th July 2019).
- Overshadowing Analysis – dated 26th March 2018.
- Planning Review of proposed development (including colour photographs).
- Site Specific Flood Risk Assessment – dated 29th March 2018.

2.3. Unsolicited additional information was received from the applicant on 17th August 2018, relating to revision of the Flood Risk Assessment report.

2.4. Unsolicited additional information was received from the applicant on 5th December 2018, arguing against three potential reasons for refusal put forward by the PA.

3.0 **Planning Authority Decision**

By Order dated 24th January 2019, Tipperary County Council issued a Notification of decision to refuse planning permission for 3 reasons, which can be summarised as follows-

1. The site is part of an Opportunity Site for tourism, recreation and amenity as set out in the Ballina Settlement Plan, which forms part of the North Tipperary County Development Plan 2010-2016 (as varied). The site has a specific

zoning objective for Business, Enterprise, Open Space and Amenity. The residential use proposed would materially contravene this zoning objective.

2. Policy CEF 8 of the County Plan states that permission will not be granted unless the Justification Test is satisfied, as outlined in 'The Planning System and Flood Risk Guidelines for Planning Authorities', 2009. The site is liable to flooding.
3. The development, by reason of height, mass, scale and siting, would be overbearing and potentially overshadow an adjoining dwelling.

4.0 Planning History

16/600093: Relates to an application for planning permission by Brian Cullen for a house on this site – subsequently withdrawn.

17/601024: Permission refused for four reasons, to Sinead McNamara on 13th November 2017, for proposal to demolish existing industrial building and construction of a two-storey house and associated ancillary works.

5.0 Policy Context

5.1. Development Plan

The relevant document is the North Tipperary County Development Plan 2010-2016 (as varied). A variation, in December 2017, changed the zoning of the site. The subject site forms part of 'Opportunity Site 1' within the settlement of Ballina. The site is described as part of Derg Marina. Section 9.0 states- "This site is located on the shores of Lough Derg, north of the town centre. The site encompasses a derelict marina. The development of the site presents an important opportunity to enhance tourism facilities and water based recreational facilities in the town and in particular to increase berthage and boating facilities". The zoning is for 'Business and Enterprise / Open Space and Amenity'; although the appeal site falls within the 'Open Space and Amenity' zoned area. Appropriate Uses are indicated as 'Tourism Facilities, Water-Based Recreational Facilities and Public Amenities'. The Development Objectives for this Opportunity Site are-

1. To develop a high quality tourism and amenity based development, which maximises the potential of the site, enhances tourism facilities and related activities.
2. To provide for infrastructure supporting water and marine based activities, boat servicing, public berthage and access.
3. To provide a high quality development which respect [sic] the lakeside setting and enhances public views to and from the lake.
4. To ensure the ecological integrity of the Lough Derg SPA/SAC and proposed NHA is protected and enhanced.
5. To protect and enhance of [sic] underwater archaeological heritage of the site, with particular respect to Lady Landsdowne.

Policy CEF 8 of the County Plan states, in relation to Management of Flood Risk- “It is the policy of the Council to apply a sequential approach to the assessment of developments in areas of flood risk. Developments on lands identified as being at risk of flooding shall be subject to a Flood Risk Assessment in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities, (DEHLG 2009) and any amendment thereof, and shall include a Justification Test and have regard to non-vulnerable uses”.

5.2. Natural Heritage Designations

The site immediately abuts the River Shannon. There are no natural heritage designations within the site. The site immediately abuts the Lough Derg proposed Natural Heritage Area (pNHA) – site code 000011.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal from Sinead Gilmartin, received by An Bord Pleanála on 18th February 2019, can be summarised in bullet point format as follows-
 - The applicant purchased the site subject to planning permission, when it came up for sale in February 2017.

- The planning authority strongly indicated that permission would be granted when a planning application was previously lodged on this site – ref. 16/600093.
- The applicant made an application to Tipperary County Council for a house on this site on 19th September 2017.
 - Consent had been received from IW to connect to mains within Marine Village.
 - Appropriate assessment screening was undertaken.
 - Flood risk assessment was carried out.
 - The original house design was revised, the overall floor area was reduced, and ridge height reduced.
 - If the applicant had been asked to provide additional information, the reasons for refusal could have been overcome.
 - Notwithstanding, permission was refused on 13th November 2017.
- Rather than make an appeal to An Bord Pleanála, the applicant sought to remedy the reasons for refusal by making a fresh planning application to TCC – the application the subject of this current appeal.
- The planning authority at no time indicated that the principle of a house on this site was unacceptable.

6.1.2. The appeal is accompanied by a submission from HRA Planning, agent on behalf of the applicant, which can be summarised in bullet point format as follows-

- Unsolicited additional information was submitted to the PA to support the development. The Planner's Report had little regard to the information contained in the unsolicited additional information.
- Regeneration Site 1 (which excludes the appeal site) was recently redeveloped.
- The development of a brownfield site would enhance the area.
- The house has been positioned to respect the building line of the houses to the north.

- The footprint is within an area at low risk of flooding (Flood Zone C). The finished floor level is 33.0m.
- The house has a flat roof with maximum ridge-line height of 39.16m. Houses to the north have considerably higher ridge-line heights.
- The northern gable of the house is blank – so as to ensure no overlooking of the adjoining house to the north. There is a single-storey extension on the side of the house to the north – within 1.0m of the common boundary.
- The site forms part of Opportunity Site 1 of the Ballina Settlement Plan (2.6ha) – which largely comprises the Derg Marina. The appeal site is in separate ownership; and has been since the marina was developed on foot of permission ref P08511066 in 2008. This site has erroneously been included within Opportunity Site 1. The development objectives for the Opportunity Site can be achieved without the inclusion of this appeal site. Opportunity Site 1 has largely been redeveloped; and is to continue in use as a marina. The development does not materially contravene the objectives of the Development Plan.
- The provision of four berths would be in accordance with the zoning objective – “To provide, preserve and enhance open space and amenity uses”.
- The site is visually and physically separated from the Derg Marina site by an access channel to some of the marina berths.
- This land is likely to remain undeveloped, unless permission is granted for a house.
- The Board has previously granted permission for residential development on land zoned Special Control Area in the Castleconnell Local Area Plan – having regard to the brownfield nature of the site. This site was located on the Shannon River.
- Sinead McNamara and Sinead Gilmartin are the same person. The purchase of the site predated the change in the zoning. The site was originally zoned for mixed-use purposes. The zoning of the site changed, unbeknownst to the applicant.
- No part of the dwelling is located within Flood Zone B (one-in-one-thousand-year flood event). The first floor of the house is cantilevered out over Flood

Zone B. The ground floor of the house is located within Flood Zone C. The pontoon is located within Flood Zone A (one-in-one-hundred-year flood event). This is a flood-compatible use: and the Justification Test is not required for this element of the development. Flood risk was comprehensively dealt with by way of reports submitted with the application. The finished floor level of the house is 33.0m OD – which is 0.78m above the one-in-one-thousand-year flood event.

- The volume of excavation for the proposed berths is 313m³, which will provide for additional flood storage within the site.
- The development will not contravene the Flood Risk Management Guidelines.
- The established boundary treatments will be maintained. The design of the house is contemporary. The house will be located below the level of the Marine Village road. The house is positioned at the eastern extremity of the site – removed from the river. It is located in roughly the same position as the shed on the site.
- If the Board considers it necessary, the external staircase on the northern elevation of the house could be removed.
- The sunroom to the side of the existing house to the north would not appear to have the benefit of planning permission. Its construction could not be considered exempted development, as it is located to the side of the house. There remains a separation distance of 6m between the gables of the two houses – proposed and existing. The finished floor level of the house will be some 1.14m lower than the house to the north. A Shadow Analysis was submitted with the application: to indicate that there would be no excessive degree of overshadowing of the house to the north.

6.2. Planning Authority Response

The response of Tipperary County Council, received by An Bord Pleanála on 1st March 2019, indicates that the PA considers that all issues were addressed in its decision to refuse permission, and urges the Board to uphold the decision.

6.3. Observations

There are two observations from-

1. Carol Flynn, 22 Marine Village, Ballina – received by An Bord Pleanála on 11th March 2019.
2. Pdraig Egan, 21 Marine Village, Ballina – received by An Bord Pleanála on 19th March 2019.

The observers support the planning application for the following reasons-

- Now that redevelopment of the Derg Marina is nearing completion and upgrade of Marine Village Road is finally underway, the development of a house on this site should be supported, as it is the most appropriate form of development for this site.
- The development will help protect the residential amenities of the area.
- If permission is not granted, the site will remain an eyesore.
- Development will remove uncertainty as to the future uses of this site.
- Traffic movements to a residential development will be less than to any other type of development.
- The development will improve the appearance of the site and its entrance.

7.0 Assessment

The principal issues of this appeal relate to zoning, flooding and residential amenity.

7.1. General Comment

The application form submitted with the application indicates that the applicant is not the owner of the site, and there is a letter from the site owner, consenting to the making of the planning application on his lands. The applicant states that the zoning of the site was altered in December 2017, without her knowledge, during her dealings with the PA. The zoning of the site is a matter for the elected representatives of Tipperary County Council, and any proposal to change the zoning is a matter more appropriately the business of the elected representatives. The applicant refers to a case in Castleconnell, Co. Limerick, where the Board granted

permission for a residential development. I do not propose to comment on this permission, as each case should be dealt with on its merits. I note that the application form erroneously indicates that the proposed development requires preparation of an Environmental Impact Statement [sic].

7.2. Development Plan Considerations

7.2.1. The relevant document is the North Tipperary County Development Plan 2010-2016 (as varied). The site is zoned 'Open Space and Amenity' within the Ballina Settlement Plan – which was varied in December 2017. The subject site forms part of 'Opportunity Site 1' within the settlement of Ballina. Section 9.0 of the Plan states- "This site is located on the shores of Lough Derg, north of the town centre. The site encompasses a derelict marina. The development of the site presents an important opportunity to enhance tourism facilities and water based recreational facilities in the town and in particular to increase berthage and boating facilities". The site is described as part of Derg Marina – although the applicant argues that the site is in separate ownership, and that the Derg Marina site has recently been redeveloped; and that the objectives for 'Opportunity Site 1' have largely been met. The zoning for 'Opportunity Site 1' is for 'Business and Enterprise / Open Space and Amenity' – although the appeal site falls within the 'Open Space and Amenity' zoned area. Appropriate Uses are indicated as 'Tourism Facilities, Water-Based Recreational Facilities and Public Amenities'. The development of a house on this site would not comply with the zoning objectives, notwithstanding the argument put forward by the applicant that the provision of four boat berths would help achieve the objectives. The Development Objectives for this Opportunity Site are-

1. To develop a high quality tourism and amenity based development, which maximises the potential of the site, enhances tourism facilities and related activities.
2. To provide for infrastructure supporting water and marine based activities, boat servicing, public berthage and access.
3. To provide a high quality development which respect [sic] the lakeside setting and enhances public views to and from the lake.
4. To ensure the ecological integrity of the Lough Derg SPA/SAC and proposed NHA is protected and enhanced.

5. To protect and enhance of [sic] underwater archaeological heritage of the site, with particular respect to Lady Landsdowne.

7.2.2. The proposed development would not result in achieving the first two of these development objectives. Whilst these objectives may not be achieved on the site in its present use, the proposed development would severely curtail the possibility of their being achieved in the future. I did note that, on the date of site visit, there were a number of boats stored on trailers throughout the site. It was not possible to inspect the interior of the shed on the site. In the absence of a change in the zoning of this site, the proposed development would materially contravene the zoning objective, and permission should be refused for this reason.

7.3. **Layout & Design**

7.3.1. I would see no difficulty, in principle, with the demolition of the shed on this site. The site is flanked by residential properties to north and south. The site is a large one in the context of what is being sought – a two-storey house of 237m². A flat-roofed house has been proposed, in order to limit the impact on adjoining houses – particularly in terms of over-shadowing and impact on views of the adjacent river. The design is unexceptional. The house is partly cantilevered at first floor level out over the ground between the house and the river. The house is constructed into an embankment on the site – and, as a result, will have no windows on the eastern side at ground floor level. The application was accompanied by an ‘Overshadowing Analysis’. The house has been set back approximately 5m from the northern boundary. The finished floor level of the proposed house is somewhat below the finished floor level of the house to the north. An extension has been constructed to the side of the house to the north, which results in this house being closer to the common boundary than the proposed house would be. I would be satisfied that there will be no significant overshadowing of the adjoining site to the north. There are no windows proposed in the northern elevation of the house, and so there will be no overlooking. The applicant has suggested that an external staircase on the northern elevation could be omitted, if the Board thinks this is necessary. I would see no necessity for the omission of this feature, in terms of protection of residential amenity. The dormer house to the southeast of the proposed house is located in close proximity to the common boundary but is located at a substantially higher level. The amenity of this house will not be significantly impacted by the proposed house. I

note that the occupant of this house has submitted an observation to An Bord Pleanála, in support of the development.

- 7.3.2. There is a fine mature oak tree on this site. It is indicated on drawings submitted – immediately to the northwest of the shed on the site. Drawings submitted indicate that it is to be retained. In the event that permission was granted for a house on this site, a condition should be attached to protect the canopy and root spread of this tree during the construction of the house and excavation for the boat berths.
- 7.3.3. Drawings submitted with the application indicate a right-of-way from Marine Village Road down onto the river bank beneath the houses to the south of the site – no.s 22 downwards. This right-of-way is indicated on the proposed site layout plan. It is not clear from drawings if this is a public right-of-way. I note that the access to this right-of way from Marine Village Road is currently gated and locked. There is correspondence on the file in relation to Unauthorised Development in relation to erection of a gate and fencing and closing off of a right-of-way: with the PA stating that there is insufficient evidence to determine the existence of a public right-of-way.
- 7.3.4. The floating pontoons will provide mooring for four boats. This will necessitate excavation of approximately 313m³ of spoil. The provision of boat berths for houses with frontage on the river is common in this area – houses to the north having same, and the Derg Marina being located immediately to the southwest.
- 7.3.5. It is proposed to utilise the existing vehicular access to the site from Marine Village Road. There is ample on-site parking proposed.
- 7.3.6. I note that the application to Tipperary County Council, and the appeal to the Board, are accompanied by a number of submissions of support from neighbours, for a residential development on this site. There is a letter of objection to the proposed development, addressed to the PA, from the occupants of no. 23 – the house immediately to the north of the appeal site.

7.4. **Water**

7.4.1. Water Supply

It is proposed to connect to the public water supply in Marine Village Road. Drawings submitted do not indicate the location of the watermain or the proposed connection. The application was accompanied by correspondence between the

applicant and Irish Water in relation to connections to the watermain and the foul sewer. There is no report from IW on the file and neither is there any report from the relevant section of the PA.

7.4.2. Foul Drainage

It is proposed to connect to the public foul sewer in Marine Village Road. Drawings submitted do not indicate the location of the sewer or the proposed connection. Details of the necessary pumping unit have been submitted with the application. There is no report from IW on the file and neither is there any report from the relevant section of the PA.

7.4.3. Surface Water

Surface water is to be discharged to a soakway located immediately to the west of the proposed house. There is no report on file from the relevant section of the PA, as to the adequacy of this arrangement.

7.4.4. Flooding

The application was accompanied by a Site Specific Flood Risk Assessment. Unsolicited additional information (received on 17th August 2018) made revisions to this original assessment – particularly in relation to contours and the extent of flooding on the site. The finished floor level of the proposed house is at 33.0m OD. This is stated to be 0.78m above the one-in-one-thousand-year flood event. The footprint of the house is stated to be in Flood Zone C – but immediately adjacent to lands within Flood Zone B (between the house and the river). The appeal documentation explains that the first floor of the house is cantilevered out over Flood Zone B, but that the ground floor remains within Flood Zone C. The second reason for refusal related to the necessity for a Justification Test – as required by Policy CEF 8 of the County Development Plan – in order to comply with the Flood Risk Guidelines for Planning Authorities 2009, document. I would be satisfied that the proposed house is not located within either Flood Zones A or B, and that the house would not be at risk of flooding. It is acknowledged that the pontoon berths would be located within Flood Zone A, but as this is a water-compatible use, there is no need for a Justification Test, in relation to flooding. This would appear to be reasonable.

7.5. Appropriate Assessment

7.5.1. General Comment

The application was accompanied by a Natura Impact Statement. The site is a brownfield one – with a boat shed which was stated to have been last used for repair and storage of boats. In addition, there is a concrete/hard-core jetty into the river. The site is located neither within nor immediately adjacent to any European Site. I propose to carry out a Stage 1 screening for appropriate assessment, using six steps as follows-

7.5.2. Step 1 – *Identify European Sites which could potentially be affected by the house and boat berths (source-pathway-receptor model)*

The closest European sites are as follows-

- Lower River Shannon SAC (Site code 002165) – some 830m due southeast of the appeal site.
- Lough Derg (Shannon) SPA (Site code 004058) – some 570m due north of the appeal site

The site is in hydrological connectivity with these European sites. However, as the SPA is upstream of the site, and the appeal site itself is located within a line of houses to north and south, I would be satisfied that this European site could be excluded from consideration. However, the SAC is located downstream of the site and needs to be included in any consideration of impacts on European sites.

7.5.3. Step 2 – *Identify the Conservation Objectives of the relevant site(s)*

The qualifying interests of the Lower River Shannon SAC are as follows-

- Sandbanks which are slightly covered by sea water all the time.
- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Coastal lagoons [Priority habitat].
- Large shallow inlets and bays.
- Reefs.
- Perennial vegetation of stony banks.

- Vegetated sea cliffs of the Atlantic and Baltic coasts.
- *Salicornia* and other annuals colonising mud and sand.
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).
- Mediterranean salt meadows (*Juncetalia maritimi*).
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and Callitriche-Batrachion vegetation.
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*).
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [Priority habitat].
- *Margaritifera margaritifera* (Freshwater Pearl Mussel).
- *Petromyzon marinus* (Sea Lamprey).
- *Lampetra planeri* (Brook Lamprey).
- *Lampetra fluviatilis* (River Lamprey).
- *Salmo salar* (Salmon).
- *Tursiops truncatus* (Common Bottlenose Dolphin).
- *Lutra lutra* (Otter).

The Conservation objectives for the 68,300ha site (of which 87.5% is marine area within the Shannon Estuary), are to maintain the favourable conservation condition of Brook lamprey, River lamprey, Estuaries, Sandbanks which are slightly covered by sea water all the time, Mudflats and sandflats not covered by seawater at low tide, Large shallow inlets and bays, Reefs, Perennial vegetation of stony banks, Vegetated sea cliffs of the Atlantic and Baltic coasts, *Salicornia* and other annuals colonising mud and sand, Bottlenose dolphin, Water courses of plain to montane levels, and Molina meadows; and to restore the favourable conservation condition of Sea lamprey, Atlantic salt meadows, Atlantic salmon, Otter, Mediterranean salt meadows, Freshwater pearl mussel, Alluvial forests, and Coastal lagoons.

7.5.4. Step 3 – Identify the potential- a) likely, and b) significant, effects of the project with reference to the site's Conservation Objectives, in light of best scientific knowledge

Potential impacts identified are-

- Impairment of surface water quality during the construction phase – particularly of the boat berths.

The separation of the site from the European site (SAC), is considered the principal buffer (0.95km by watercourse). It is proposed to excavate 313m³ of the river bank to allow for construction of the floating boat berths. There will be no operational phase impacts on the SAC. Surface water is to be discharged to a soakway, and foul waste is to be pumped to the public mains.

7.5.5. Step 4 – *As above, but considering in-combination effects with other plans or projects*

There are no other identified plans which could have an in-combination effect, on the SAC. Developments in the area in the past ten years are indicated as being minor.

7.5.6. Step 5 – *Identify any measures in place to reduce/lessen likely significant impacts on European sites*

A Construction Environmental Management Plan has been submitted with the application. All foul effluent will be pumped to the mains network for the town. Surface water will be discharged to a soakway.

7.5.7. Step 6 – *Determine whether likely significant effects, either individually or in combination with other plans or projects, on European sites, can reasonably be discounted, on the basis of objective scientific information*

Having regard to the proposal to excavate some 313m³ of river bank to provide for the boat berths, there was concern that release of sediment during the construction phase could have an impact on the downstream SAC – particularly species dependent on water quality. For this reason, a Natura Impact Statement was prepared. In line with the precautionary principle, I would be satisfied that this was the correct means of proceeding.

7.5.8. Mitigation measures put forward within the NIS include the following-

- Construction of 600mm high bund on the western and southern boundaries of the construction area – to act as a barrier to the flow of contaminants into the river (during construction of the house). A sump will be fitted inside the bund – on the northern boundary of the site (for settlement of silt).

- Maintenance of a 5m wide buffer between the river and the construction site for the house.
- Management of stockpiles within the bund.
- Appropriate storage of hydrocarbons during the construction phase.
- Sheet-piling used for surrounding the excavated area for the boat berths. Water within the sheet-piling area will be allowed to settle for one week. After a week for settlement, a 300mm layer of clean broken stone will be placed within the excavated area, with a further settlement period of one week. Temporary sheet-piling is then removed on completion of excavation for boat berths.
- All machinery used on site will be thoroughly cleaned before introduction to the site, to ensure that no invasive species are imported.
- Adherence to best construction practices, as outlined in the Construction Environmental Management Plan (CEMP) which is included as Appendix 2 of the NIS. Within this document there are number of mitigation measures listed for demolition of the shed on the site, and construction of the house and the pontoon berths.

7.5.9. Having regard to the mitigation measures to be put in place during the construction phase, particularly in relation to the excavation required to create the boat berths, I would consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order 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 European site no. 002165, or any other European site, in view of the site's Conservation Objectives.

7.6. Other Issues

7.6.1. Financial Contribution

As planning permission for this development was refused, there is no record of what development contribution would be applied to a development of this nature. If the Board is minded to grant planning permission, it would be appropriate to attach a condition requiring payment of a development contribution in accordance with the Development Contribution Scheme in force for the county.

7.6.2. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

7.6.3. Archaeology

The Sites and Monuments Record of the OPW does not indicate any site within this site. The site is a brownfield one – on which there has been disturbance for construction of a shed and concrete slipway into the river. It proposed to excavate lands immediately adjacent to the river bank, which may have an impact on underwater archaeology. Underwater archaeology is specifically referenced in the Development Objectives for ‘Opportunity Site 1’ – Item 5 – ‘To protect and enhance of [sic] underwater archaeological heritage of the site, with particular respect to Lady Landsdowne’. It is assumed that this reference is to a craft rather than a person, but it is not clear just where within ‘Opportunity Site 1’ it is located.

7.6.4. Ecology

The site is a brownfield one. It immediately abuts the Lough Derg pNHA. The Stage 1 Appropriate Assessment Screening document indicates the habitats on the site. The proposed development will not encroach on the pNHA. The Construction Environmental Management Plan outlines the measures to be undertaken to prevent environmental degradation of the water body – particularly in relation to the construction of the boat berths. I would be satisfied that, if these mitigation measures are observed, the proposed development will not have any significant impact on the pNHA.

8.0 **Recommendation**

I recommend that permission be refused for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

1. The proposed development would materially contravene the Settlement Plans section of the North Tipperary County Development Plan (as varied), for Ballina, which indicates that the site is zoned for 'Open Space and Amenity' use, within 'Opportunity Site 1' - (Derg Marina). The proposed development, notwithstanding that it forms only a small part of the overall 2.6ha site, would not facilitate the realisation of the listed Development Objectives for 'Opportunity Site 1' (in particular items 1 & 2), and would, therefore, be contrary to the proper planning and sustainable development of the area.

**Michael Dillon,
Planning Inspectorate.**

17th June 2019.