



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306108-19

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<b>Development</b>	8 Houses
<b>Location</b>	Yew Park, Virginia, Co. Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19252
<b>Applicant(s)</b>	Mithbro Developments Ltd
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Inland Fisheries Ireland.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> March 2020.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 0.28ha appeal site is situated in Virginia, County Cavan. It lies to the east of the town and to the north east of Yew Park an existing residential development. Access to the site is via the estate road from the N3, with the junction lying within the 50kph speed limit zone.
- 1.2. The rectangular site lies to the north east of an existing residential cul-de-sac. To the east of the site is a residential development that is incomplete. To the east of the Yew Park estate is an area of public open space and a childcare facility. A GAA ground and public playground lies to the south west of the site, on the southern side of the N3.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information, re-advertised in October 2019, comprises the construction of 8 dwellings (4 no. detached and 4 no. semi-detached) and connection to the public sewer, surface water sewer and watermain. The dwellings are orientated south west to face the existing cul-de-sac.
- 2.2. Included in the planning application is:
  - A design statement.
  - Letter from Irish Water stating that the proposed connection to water and wastewater services can be facilitated.
- 2.3. In response to concerns raised by Transport Infrastructure Ireland (TII) it is stated that access to the site is provided via an existing access onto the N3, which serves c.70 residential dwellings, and in a stretch of the public road where the speed limit post January 2020 will be 50kph. It is also stated that the requirement for a Road Safety Audit can be addressed by way of condition.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. On the 14<sup>th</sup> November 2019 the planning authority decided to grant permission for the development subject to 20 conditions, which include:

- C7 – Sets out requirements for connection to public water/wastewater network operated by Irish Water.
- C17 – Requires the developer to submit for agreement, proposals regarding the completion works to the existing surface water and foul sewerage system serving the existing housing estate and how it can accommodate the proposed development.
- C20 – Requires a Road Safety Audit to be carried out prior to the commencement of development with the developer responsible for the cost of any required works.

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

3.2.1. Planning Reports

- 19<sup>th</sup> August 2019 – Considers that the principle of the development is acceptable on site and that it can be serviced having regard to the modest scale of the development, correspondence from Irish Water and the decision by the Board to grant permission for another small scale residential development (5 no. dwellings) in the town (PA ref. 17/341 and ABP-300872-18). The report considers that an appropriate assessment is not required given the nature of the development, distance from European sites and precedents set by the Board under ABP-300872-18. It recommends further information:- design statement, revised layout, clarification regarding how the development meets public open space standards and concerns raised by TII.
- 14<sup>th</sup> November 2019 – States that the applicant has addressed the matters raised. Notes the submission made by IFI and refers to correspondence from Irish Water which states that the development can be facilitated. The report recommends granting permission for the development subject to conditions.

### 3.2.2. Other Technical Reports

- Area Engineer – No comments.
- Housing – Section 96 exemption granted (less than 9 houses).

### 3.3. Prescribed Bodies

- Transport Infrastructure Ireland (15<sup>th</sup> July 2019) – Development is at variance with official policy in relation to development on/affecting national roads (control of frontage development in transitional speed zones), impact on capacity and safe operation of the national road, need for traffic and transport assessment and road safety audit. Subsequent report (12<sup>th</sup> November 2019), no further observations.
- Irish Water (18<sup>th</sup> July 2019) – No objection.
- Inland Fisheries Ireland (IFI) (19<sup>th</sup> July 2019 and 25<sup>th</sup> October 2019) – Object to the development on the grounds that the Virginia WWTP is over capacity, the development will add to its loading and further reduce water quality in Lough Ramor (into which the WWTP discharges and which is at 'bad' status) contrary to the EU Water Framework Directive, the Surface Water Regulations 2009 and precedents set by the Board under PL2.248992 and ABP-303509-19. It is also stated that Lough Ramor contains brown trout and is a prominent coarse fishing lake with prominent stocks of bream, roach, eels and pike.

### 3.4. Third Party Observations

- None.

## 4.0 Planning History

### 4.1. The following cases are relevant to the appeal site:

- PA ref. 03/1314 – Permission granted to Peter Cullen to erect 34 no. fully serviced two storey dwellings on the appeal site and land to the south west of it

- PA ref. 07/2337 – Permission granted to Peter Cullen to replace 11 no. dwellings previously granted under PA ref. 03/1314 with 12 no. two storey townhouses at the subject site.
- PA ref. 09/150 – Permission granted to Peter and Pat Cullen to erect Phase 5 of Yew Park comprising 12 no. fully serviced dwellings and all associated site works, on land to the north east of the appeal site. Permission extended under PA ref. 14/290.
- PA ref. 18/219 – Doontas Rowan Ltd applied for permission to alter the site layout of previously approved planning application to construct 12 no. dwellings (PA ref. 09/150). Application withdrawn.

4.2. The following precedent cases are referred to by the parties to the appeal:

- PL2.248992 (PA ref. 16/600) – Permission refused to retain/complete/alter 21 houses previously granted under PA ref. 04/2182 and 05/907 and the erection of 58 no. houses and creche at ‘The Drumlins’, Virginia, c. 500m to the north west of the appeal site. The Board considered that the development would be premature by reference to the existing deficiencies in the provision of sewerage facilities (Virginia WWTP), the bad ecological status of Lough Ramor and the obligations on public authorities required by the Surface Water Regulations.
- ABP-300872-18 (PA ref. 17/341) - Permission granted by the Board for a development of 5 no. houses at Sunnybank, Virginia, c.350m to the west of the appeal site. Permission was granted having regard to a number of factors including the modest scale of the development.
- ABP-303509-19 (PA ref.18/181) - Permission was refused by the Board for the construction and completion of 27 dwellings at ‘The Drumlin’s, Virginia, c.500m to the north west of the appeal site (the site formed part of the larger site under PL2.248992 above). Reasons for refusal included the inadequate capacity of the wastewater treatment plant to cater for the development, the bad ecological status of Lough Ramor, the obligations on public authorities required by the Surface Water Regulations and the risk of significant impacts on European sites.

## **5.0 Policy Context**

### **5.1. Cavan County Development Plan 2014 - 2020**

- 5.1.1. Virginia is designated as a Tier 2 'Large Town' in the Cavan County settlement hierarchy and Chapter 13 of the Plan provides a Development Plan for the Town. Under 'Infrastructure' it states that the Bailieborough Regional Water Supply Scheme that supplies the town and the Waste Water Treatment Plan are working at, and over capacity, respectively and that both issues must be addressed before further development can occur in the town. The matter is also addressed in section 4.5 (Water and Wastewater Services) and policies PIO70-72 seek to address these deficiencies. Policy PIO79 seeks to ensure that public wastewater infrastructure is in place with adequate capacity prior to developments being occupied.

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

- 5.2.1. Lough Ramor is located c. 600m to the south west of the site and is designated as a pNHA site code 000008. The Lough discharges into the River Blackwater which forms part of the designated area of the River Boyne and River Blackwater SPA and SAC (site codes 004232 and 002299 respectively).

### **5.3. EIA Screening**

- 5.3.1. The proposed development is a small housing development within an existing serviced urban area. Within this context, the proposed development is unlikely to give rise to significant environmental effects to warrant environmental impact assessment (sub-threshold project, Class 10(b)(i), Part 2, Schedule 5, Planning and Development Regulations, 2001 (as amended)).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. There is one third party appeal by Inland Fisheries Ireland (IFI). Grounds of appeal are:

- The EU Water Framework Directive requires the protection of the ecological status of river catchments and prevention of further deterioration.
- The Surface Water Regulations 2009 (article 5) requires that a public body shall not undertake its functions in a manner which causes or allows deterioration in the chemical or ecological status of a surface waterbody and that a surface water body shall be restored to or maintained at good status by the end of 2015.
- The development will be discharging into Virginia Wastewater Treatment Plant (WWTP). Lough Ramor is currently at bad status and should have been restored to at least good by the end of 2015.
- The 2018 Annual Environmental Report (AER) for the WWTP indicates a design capacity of 3,800 PE and a capacity of 343 (Irish Water website).
- From a meeting with Irish Water the appellant understands that the figures do not consider houses recently granted planning permission which may potentially leave Virginia WWTP overloaded by 3%+ or 131 PE (including the proposed development).
- In 2018 the WWTP was non-compliant with ELV limits due to stormwater overflows.
- The capital upgrade for the WWTP is schedule for completion in 2024.
- The County Development Plan states that the WWTP is over capacity and that this issue must be addressed before further development in the town can occur.
- The judgement in the European Court of Justice (Case C-461/13) held that member states are required, unless a derogation provided for by the WFD is granted, to refuse to authorise a project where it may cause a deterioration of the status of surface water, jeopardises attainment of good surface water status or of good ecological potential and good chemical status by the date laid down by the WFD.
- Precedents set by the Board, PL2.248992 and ABP-303509-19.
- There has been no screening for appropriate assessment or any ecological assessment.



- Planning permission should be refused or any connection postponed until the planned upgrade of the WWTP has been commissioned.

## 6.2. Applicant Response

- No response.

## 6.3. Planning Authority Response

- Not the Board's decision to refuse permission under ABP-303509-19 for 27 houses. It is Irish Water's responsibility to advise whether there is sufficient capacity to accommodate such developments. In this case they have clearly stated that there is capacity for 8 no. houses at Yew Park.
- Appropriate assessment is not required for this development due to its nature distance from the nearest Natura 2000 site. Refer also to the Inspector's report in respect of PA ref. 17/345 (5 houses) (ABP-300872-18).

## 6.4. Observations/Further Responses

- None.

## 7.0 Assessment

- 7.1. Having regard to the information on file and my inspection of the appeal site, the key issues for this appeal relate to the matters raised by IFI, specifically the capacity of the wastewater treatment plant in Virginia to service the development and the risk to water quality in Lough Ramor and downstream European sites.
- 7.2. The proposed development is modest in scale and comprises a development of 8 houses. Effluent will discharge from the development to the Virginia WWTP. The WWTP is operated under licence from the EPA, no. D0255-01. It is stated in Irish Water's 2018 Annual Environmental Report (AER) on the operation of the plant, that the plant has a capacity of 3,800PE and a peak hydraulic load of 1,500m<sup>3</sup>/day. This compares to a weekly peak load of 3,457 PE, an annual maximum hydraulic load of 1,206m<sup>3</sup>/day and an average hydraulic load of 940m<sup>3</sup>/day. The report indicates that the plant has a small organic capacity of 343 PE.

7.3. The proposed development equates to a population equivalent of 15 or 0.4% of the capacity of the WWTP. Of itself, the development is therefore unlikely to add significantly to loading of the plant.

7.4. Notwithstanding this:

- The applicant refers to a number of planning permissions which have been granted which they understand are not included in the above loadings and which would result in the overloading of the system by 131 PE (+c.3%):
  - PA ref. 17/475 – Permission granted to extend planning permission previously granted for 105 houses, with a PE of 315. (The Planning Officer’s report, 14<sup>th</sup> November 2019, states that the extension granted under PA ref. 17/475 was for 20 houses).
  - PA ref. 18/118 - Permission granted to extend planning permission previously granted for 42 houses, with a PE of 118.
  - PA ref. 17/341 and ABP-300872-18 – Permission granted for 5 no. houses, with a PE of 15.

In the event that the permissions granted are implemented, I would accept, therefore, that the WWTP would be close to or above capacity.

- Irish Water’s AER 2018 reports that storm events resulted in exceedances of emission limit values for suspended solids and BOD (arising from storm water overflows). However, it is stated that discharge from the wastewater treatment plant does not have an observable impact on the Water Framework Directive status of the receiving water body (Lough Ramor) and that other potential causes of deterioration may include town effects, sewerage network, agriculture, licensed facilities and on-site waste water treatment systems. The report indicates that the upgrade of the WWTP is expected to be completed by March 2024.
- The EPA’s Boyne Catchment Assessment 2010-2018 lists Lough Ramor as a water body which is under significant pressure from a Waste Water Treatment Plan (Table 7, see attachments).
- An EPA monitoring report carried out in December 2019 of the WWTP (see attachments) also refers to the discharges from the Virginia agglomeration as one of the pressures putting Lough Ramor at risk of not meeting environmental

objectives required by the Water Framework Directive. Of note the report states *'While the AERs for 2017 and 2018 both indicate that the WWTP is not hydraulically overloaded, it was noted by Irish Water (IW) representatives that the WWTP does not have the capacity to deal with the peak hydraulic capacity referred to in the AERs. ....It was further noted that during heavy rainfall/storm conditions the WWTP does experience partial washout and that this included but was not limited to occasions where the BOD results were above the ELV .... The ability of the WWTP to treat waste water after such events can be reduced for a period until the necessary microorganisms in the mixed liquor are replenished and/or reseeded. The EPA is concerned that the monthly monitoring results is not reflecting the level of compliance at the WWTP'*.

- 7.5. Having regard to the above it is evident, that the WWTP at Virginia is sub-standard and cannot adequately cater for flows from the existing agglomeration during storm events. As stated, the proposed development is modest in scale, and of itself would not add significantly to existing loading. However, I am mindful that public bodies have obligations under the Water Framework Directive and Surface Water Regulations to prevent further deterioration of waters and to restore good status and the proposed development, if granted, may be followed by applications for other small scale residential development which may collectively add to the loading of the Virginia plant and increase the risk of pollution in storm events.
- 7.6. Irish Water's AER for Virginia WWTP states that the upgrade of the plant forms part of the Capital Investment Programme 2017 to 2021, with works at 'Gate 2 stage' i.e. 'planning permission application, main contractor tendering and contract award', with an expected completion date of March 2024 i.e. some c.4 years from now.
- 7.7. Taking all of these matters into account, I consider that there are two options before the Board, to refuse permission for the development on the grounds that it is premature pending the upgrading of the WWTP or to grant permission which includes a condition requiring that no dwellings be occupied until the WWTP has been upgraded. However, having regard to the timescale for the upgrading of the treatment works, the risk of slippage and the duration of the permission, I would recommend that permission for the development is refused on the grounds of prematurity.

7.8. Condition no. 17 of the planning authority's grant of permission requires the applicant to submit details regarding completion of the existing surface water and foul sewerage scheme serving the existing housing estate and how it can accommodate the proposed development. No other parties raise this as an issue and I would infer from this, therefore, that the planning authority has no in principle objection to the connection to the existing estate infrastructure and that this is a matter of detail that can be addressed by condition.

## 8.0 Appropriate Assessment

8.1. Effluent from the proposed development will flow into Virginia WWTP which discharges into Lough Ramor. Lough Ramor outflows into the River Blackwater which, c. 5km downstream of the development is designated as a Special Area of Conservation SAC and Special Protection Area (SPA). Conservation interests of the European sites are:

European Site	Conservation Interest
River Boyne and River Blackwater SAC (code 002299)	Alkaline fens [7230] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i> ) [91E0] Lampetra fluviatilis (River Lamprey) [1099] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355]
River Boyne and River Blackwater SPA (code 004232)	Kingfisher ( <i>Alcedo atthis</i> ) [A229]

8.2. Conservation objectives of the European sites are to maintain or restore the favourable conservation condition of the Annex I habitats and /or Annex II species and of the bird species listed as Special Conservation Interest.

8.3. From the information on file it is evident that the development would add to loading in the Virginia WWTP. However, the proposed development comprises 8 no. dwellings, with a PE of 15 i.e. 0.4% of the capacity of the WWTP. Having regard to this very modest contribution to overall flows through the plant, I do not consider that

it would be likely to have a significant effect individually on water quality in downstream European sites.

- 8.4. However, as discussed earlier in this report, having regard to the sub-standard nature of the WWTP and other permitted development in the town, there is a risk that in combination would arise, particularly under storm events. Therefore, 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 Nos. 002299 and 004232, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

## 9.0 Recommendation

- 9.1. I recommend that the Board refuse permission for the development on the grounds that it is premature pending the upgrade of the Virginian WWTP.

## 10.0 Reasons and Considerations

The site of the proposed development is in the River Boyne catchment and the development would be connected to the Virginia Wastewater Treatment Plant, which in turn discharges into Lough Ramor.

Having regard to:

- (a) the existing constraints at the Virginia Wastewater Treatment Plant,
- (d) the extent of other developments granted planning permission, but yet to be constructed and which would be dependent on the said Wastewater Treatment Plant,
- (e) the existing biological status of the Lough Ramor which has been classed by the Environmental Protection Agency as of poor status,
- (g) article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009, which requires that a public authority, in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water, and

(h) article 28(2) of the said Regulations, which states that a surface water body whose status is determined to be less than good shall be restored to at least good status not later than the end of 2015,

it is considered that the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities and the period within which this constraint may reasonably be expected to cease and would be prejudicial to public health.

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Deidre MacGabhann

Planning Inspector

2<sup>nd</sup> April 2020