



An
Bord
Pleanála

Inspector's Report ABP-306252-19 EIA Direction

Development:	Construction of 25 no. residential units and associated site works and services.
Location:	Doonaun, Tulla. Co. Clare.
Planning Authority:	Clare Co. Council.
Case Type:	EIA Direction
Date of Site Inspection:	31 st January, 2020.
Inspector:	Breda Gannon.

1.0 Introduction

- 1.1. Under the provisions of Article 120(3)(b) of the Planning and Development Regulations 2001, as amended, Doonaun residents and Mr Joseph Floyd are seeking a determination from An Bord Pleanála, as to whether or not the proposal to construct 25 no. residential units and associated development would be likely to give rise to significant effects on the environment, and thereby require the preparation of an Environmental Impact Assessment Report (EIAR). Clare County Council are of the opinion that the works do not require an EIAR and has initiated the process set out in Part XI of the Planning and Development Act 2000, as amended and Part 8 of the Planning and Development Regulations, 2001, as amended.

2.0 Site Location and Description

- 2.1. The site, which has a stated area of 1.28 hectares, lies on the outskirts of Tulla Co. Clare. It comprises an area of undeveloped ground to the northwest of the town centre, located at the junction of the R462 and a local road. The site is bounded by ribbon development to the north and there are 3 no. dwellings adjacent to the southern boundary. To the southeast lies O'Reilly Park, a scheme of primarily terraced and semi-detached dwellings. The area is primarily residential in character, with mixed uses becoming more prominent towards the town centre.
- 2.2. The site slopes gradually from west to east. The northern and western sections comprise disturbed ground with spoil material associated with the previous use of the site as a construction depot. This gradually gives way to grassland and scrub vegetation with hedgerows and treelines defining the northern and eastern boundaries. There are also some mature trees in the centre of the site. The roadside boundary is formed by a concrete fence and vehicular access is provided towards the north western corner of the site frontage.

3.0 Proposed Development

- 3.1. The proposal is to construct 25 no. residential units and ancillary works. The houses would be arranged around a central area of open space and pedestrian linkages would be provided to both the road network and adjacent housing development. The

development would necessitate alterations to ground levels. An on-site sewage pumping station would be provided with a rising main connection to the main sewer. Surface water management would include attenuation and discharge to the surface water network. A water supply would be provided from the existing mains supply.

4.0 Request for Direction and Submitted Documents

4.1. By letter dated 18th December 2019, a request was submitted on behalf of Doonaun residents seeking a determination by the Board as to whether EIA would be required for the proposed development. Further correspondence was received by e-mail dated January 7th, 2020. Correspondence was also received from Mr Joseph Floyd on December 23rd, 2019 . The following summarises the content of these submissions.

1. Doonaun residents

- An open well is clearly marked on the OS maps but is not acknowledged in any assessment or report to date. The likely impact on the open well has not been assessed.
- A watercourse runs through the site and this is not acknowledged in any assessment or report to date. The likely impact on the watercourse has not been assessed.
- An area of wetland exists to the east of the site. Its presence and importance has not been acknowledged and the likely impact of the development on the area has not been assessed.
- The residents are concerned that the development will interfere with an open well and watercourses within the site creating a risk of flooding and water pollution.
- Construction of the proposal involves the clear felling of a large number of mature ash trees. The Ecological Impact report states that while no bat activity was recorded on 27/8/19, mature ash trees are likely to be used by a bat population of local importance, namely Lesser Horseshoe Bat. This would destroy a natural habitat within the site with damage to native wild life, plant life and birds which has not been assessed.

- Considers that the omission of this significant and relevant information results in a fundamentally flawed EIA screening process.
- The likely impacts and consequences are particularly worthy of consideration in the context of another current application to build an additional 59 no. houses within the immediate vicinity of the site (Reg Ref No's P19/765 and P19/778).

2. Joseph Floyd

- The development will cause environmental damage on a major scale. Ground levels are low in this location and the site is the only area for flood water to exit from the wider area. The proposed development adjacent to the recently constructed running track (11 acres) would put extreme pressure on an already fragile water system which include turloughs and natural swallow holes.
- The proposed development if permitted will ensure that 8 no. existing houses adjacent to the development will not be able to gain access to the main sewer line. Due to the displacement of flood water, their tanks are backing up during extreme rainfall.

4.2. On foot of a request from the Board dated 23rd December 2019, a copy of the Part 8 application was received from Clare County Council on January 9th, 2020. It includes the following documents:

- Copy of site notice and newspaper notice.
- Copy of location map and drawings.
- Civil and Structural Engineering Report.
- Architects Design Statement.
- Environmental Impact Assessment Screening Report.
- Ecological Impact Assessment report.
- Article 6(3) Appropriate Screening Report.

4.3. On January 22nd, 2020, the Board received further correspondence from Clare Co. Council which includes a response to the submission made on behalf of Doonaun

Residents and Mr Joseph Floyd. The response was supported by a copy of the Civil & Structural Engineering Report and Archaeological Assessment Report.

5.0 Policy Context

- 5.1. Under the provisions of the **Clare County Council Development Plan 2017-2023** the site is zoned 'Low Residential Density'

This zoning refers to the use of lands to accommodate a low density pattern of residential development, primarily detached family dwellings. The underlying priority shall be to ensure that the character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed developments must also be appropriate in scale and nature to the areas in which they are located'.

5.2. Natural Heritage Designations

The closest Natura 2000 site is Newgrove House SAC (Site Code 002157) located 4km to the west of the site. The SAC is of special conservation interest for Lesser Horseshoe Bat who hibernate in an underground cellar of the former house. The site is identified by the NPWS as a site of international importance for the species.

6.0 Legislation and Guidelines

6.1. Planning and Development Act 2000 (as amended)

Section 172(1) states that an EIA shall be carried out in respect of certain applications for consent for proposed development. This includes applications for 'sub threshold' development, namely those which are of a Class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, but do not exceed the relevant quantity, area or other limit specified and the competent authority determines that the proposed development would be likely to have significant effects on the environment.

Section 172(1A) specifies that the above is relevant to development that may be carried out by the local authority under Part X.

6.2. **Planning and Development Regulations 2001 (as amended)**

6.2.1. **Article 120(3)(b)** states that any person at any time before the expiration of 4 weeks beginning on the date of publication of the notice may apply to the Board for a screening determination as to whether a development proposed to be carried out by a local authority would be likely to have significant effects on the environment.

6.2.2. **Article 120(3)(c)** indicates that such applications for screening determination shall state the reasons for the forming of the view that the development would be likely to have significant effects on the environment and shall indicate the class in Schedule 5 within which the development is considered to fall.

6.2.3. **Schedule 5** of the Regulations sets out the classes of development where EIA is required.

Part 1 – Sets out the development classes which are subject to mandatory EIA.

Part 2 –Sets out development classes subject to EIA where they exceed a certain threshold in terms of scale or where the development would give rise to significant effects on the environment.

6.2.4. **Schedule 7** – Sets out the criteria for determining whether a development would or would not be likely to have significant effects on the environment, under three headings-

1. Characteristics of the proposed development.
2. Location of the proposed development.
3. Types and characteristics of potential impacts.

6.3. **Schedule 7A** - relates to information to be provided by the applicant or developer for the screening of sub-threshold development for the purposes of EIA. The requirement for the submission of this information in the case of requests to the Board for a determination under Article 120(3) of the Regulations arises on foot of revisions to Article 120(3) introduced by the EU (Planning and Development) (Environmental Impact Assessment) Regulations, 2018. The changes to Article 120(3) introduced by these regulations came into effect on 1st September 2018.

7.0 Assessment

The proposal is to development a scheme of 25 no. houses and associated site works and services at Tulla. Co Clare. The question for determination by the Board is whether the proposed development requires environmental impact assessment to be carried out. An Environmental Impact Assessment Screening Report supports the planning authority's submission, which will be referred to where relevant in this assessment.

The following matters are considered relevant in the assessment of the requirement for the submission of an EIAR in this case.

- Assessment of project type/class of development under Schedule 5 of the Regulations relevant to the proposed development.
- Assessment of relevant thresholds under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.
- Assessment of proposal under the criteria set out Schedule 7 of the Planning and Development Regulations 2001, as amended/Annex 111 of the EIA Directive 2014/52/EU.

7.1. Relevant project types/class of development

The referrers' have not indicated the class in Schedule 5 of the Planning and Development Regulations, 2001, as amended, within which the proposed development is considered to fall.

The project type is infrastructure comprising the construction of dwelling units and also urban development due to the location of the site in a developed area and on zoned lands within the identified development boundary of Tulla as set out in the Clare County Council Development Plan. The relevant classes of development applicable to the proposed project which is the subject of this referral are as follows:

- Class 10(b)(i) of Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001, as amended (Construction of dwelling units)
- Class 10(b)(iv) of Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001, as amended (Urban development).

7.2. Relevant threshold under Class 10(b)(i) and Class 10 (b)(iv) of Part 2 of Schedule 5 of the Planning and Regulations, as amended.

The threshold cited under Class 10(b)(i) in the Regulations is the *'construction of more than 500 dwellings*. The proposal involves the construction of 25 dwellings. The proposed development is therefore listed in Part 2 of the Fifth Schedule and is of a class but is sub-threshold for the purposes of mandatory EIA, comprising fewer than 500 dwellings.

The threshold cited under Class 10(b)(iv) in the Regulations is *'urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built up area and 20 hectares elsewhere'*. The proposed development would be accommodated on a site of 1.28 ha. Therefore, while the proposed development is of a class listed in Part 2 it is sub-threshold for mandatory EIA.

An assessment as to whether the project would be subject to EIA having regard to the criteria set out Schedule 7 of the Planning and Development Regulations 2001, as amended, is set out below.

7.3. Assessment of the development under the criteria set out in Schedule 7 of the Regulations

Schedule 7 lists the criteria for determining whether a development would or would not be likely to have significant on the environment under the following headings:

- Characteristics of proposed development
- Location of proposed development
- Types and characteristics of potential impacts

7.3.1. Characteristics of proposed development

Size and scale of proposed development

The proposal is for a small scheme of dwelling units which is significantly below the thresholds set out in Part 2 of the Fifth Schedule of the Regulations. It comprises an infill development in an urban location on zoned lands which will be connected to existing infrastructure. It would provide a transition between the higher density development associated with O'Reilly Park to the southeast and the low density

ribbon development along the adjoining road network. The proposal would not be at variance with the established pattern of development in the area.

Having regard to the nature and limited scale of the proposed development, which is significantly below the thresholds set out in Part 2 of the Fifth Schedule of the Regulations, I do not consider that a requirement for EIA arises.

Potential for cumulative impacts with other existing and /or approved projects

The planning submission states that the results of a planning search conducted for the townland of Doonaun indicates that there were 4 no. applications within the last 5 years, one of which related to a Montessori school and the others were minor residential developments. The AA Screening Report provides a more comprehensive list of recent applications in the vicinity of the site. There is no indication that there are any larger scale developments or infrastructural projects which would be likely to act in combination with the proposed development to result in significant effects on the environment.

The referrers' draw attention to 2 no. current applications which it is stated would give rise to potential significant effects. These include

- Reg Ref No 19/765 – is an application for 37 houses in the townlands of Bunavory and Tulla to the west. A request for further information remains outstanding.
- Reg Ref No 19/776 - is for a mixed-use development located at the junction of Chapel Street /Tulla Road and proposes 17 residential units. A response to further information has recently been submitted.

Both of these applications are on zoned land where residential uses are considered acceptable. Both developments propose to connect to the public sewer and public mains water supply and accordingly cumulative impacts are not considered likely. The question raised regarding the type of pumping station that should be provided (local/regional) is a matter for Irish Water.

Should the construction of these projects occur simultaneously with the proposed development, there is potential for cumulative impacts to arise including noise, dust, traffic and visual impacts within this part of the urban area. However, it is considered

that these impacts would not be significant due to their temporary and short-term nature and not of a magnitude that would generate the need for EIA.

Nature of any associated demolition works, use of natural resources, production of waste, pollution and nuisances

There are no existing structures on the site that require demolition. The nature and scale of the development, which comprises a small housing scheme and associated facilities, would not result in a significant use of natural resources. Existing public services will be utilised to service the proposed development. A water supply will be obtained by providing an extension off the existing public mains at the front of the site. Stormwater will be discharged via an attenuation tank to the existing storm water sewer incorporating SuDS. Foul effluent from the development will be discharged via a pumping station and rising main with discharge to the foul sewer network at O'Reilly Park to the southeast.

Where waste arises it will be segregated to facilitate recycling and re-use. Licensed contractors will be used to deal with such waste. It is proposed that excavated materials will be re-used on the site where possible.

The potential for pollution and nuisance would be limited by the nature of the proposed development. The construction phase may cause disturbance/nuisance to local residents arising from traffic, noise and dust but this will be of a temporary nature and short lived. The pumping station may give rise to impacts during the operational stage (odour, noise and vibration). Its location and design would be subject to agreement with Irish Water, which would reduce the potential for such nuisances. No other significant impacts are predicted during the operational stage of the development.

The proposal would be typical of any other small-scale urban project with limited potential for significant effects and the requirement for EIA.

Risk of major accidents and/or disasters including those caused by climate change

Having regard to the location, nature, scale and characteristics of the proposed development, consisting of a small-scale residential scheme, it is considered that there is a negligible risk of major accident and/or disasters.

Risk to human health

The proposed development due to its nature, location and characteristics does not give rise to any significant risk to human health. There are concerns raised by the referrers' regarding the potential pollution of an open well and a watercourse on the site, with impacts on water quality. The submission from Clare Co. Council states that the site surveys indicate that there is no watercourse within, or, proximate to the site. The OS map for the area shows a watercourse to the south but not within or adjacent to the site boundary. It also shows a well within the site and close to the southern boundary. No information is provided on the origin of the watercourse and the map shows a series of similar type features in the wider area.

There is an onus on Clare County Council to ensure that the development is constructed in an appropriate manner and to ensure that there are no impacts on ground/surface water quality. This may necessitate sealing a well and/or culverting a watercourse should they be exposed on the site, using standard best practice methodologies and environmental controls. Having regard to the nature and scale of the proposal, significant impacts are not likely to arise that would warrant the requirement for EIA. The risk to human health from water contamination, air pollution, noise etc is considered to be negligible.

7.3.2. Location of proposed development

Existing and approved land use

The site is currently vacant but is zoned for residential purposes. The proposal will complement the existing pattern of development in the area and not result in any significant adverse impacts on land use.

Relative abundance, availability, quality and regenerative capacity of natural resources

The site is currently undeveloped and not in active use. Its undisturbed state provides potential habitat for flora and fauna within the built environment of the town. The site will be cleared to make way for the development. While there would be some loss of wildlife value associated with the loss of habitat, this would be compensated to a degree by the retention of existing trees and the provision of additional planting. There would be minimal use of natural resources associated with the development of the site or its ongoing use for residential purposes.

The absorption capacity of the existing environment

While the site is currently undeveloped it lies within the urban environment and is surrounded by residential property. It is remote from sensitive areas including riparian areas, mountain and forest areas, coastal areas and the marine environment, nature reserves/parks etc. It is not located within or proximate to a Natura 2000 site and no linkages with these sites has been established. The existing built environment has the capacity to absorb the proposed development.

The referrers refer to a wetland area to the east of the site. The *Map of Irish Wetlands* (updated December 1st, 2019) does not indicate the presence of any significant wetland feature either in the vicinity of the site, or proximate to the town. The site has been screened for appropriate assessment and this concludes that the proposed development is not likely to have a significant impact on any European site.

The referrers state that the site is an escape route for flood waters. The site is not identified as at risk from flooding. I note from the Strategic Flood Risk Assessment prepared in conjunction with the development plan that pluvial flooding is the only flood source identified for Tulla and that the landuse zoning are considered appropriate.

On the basis of the foregoing, it would appear that the existing environment has the capacity to absorb the proposed development and that significant environmental impacts are not likely to arise.

7.3.3. Type and Characteristics of the Potential Impact

Nature, magnitude and extent of the impact

The extent of the impact in terms of *geographical area* and the size of the *population* likely to be impacted is very limited. The proposal involves the development of a 1.28 ha site within the town. During construction there will be impacts on the local population and the environment arising from construction traffic, noise and dust. These impacts will be of short duration and limited by good construction practice.

There will be *visual impacts* arising from the development of the site for residential purposes. These are largely positive associated with the removal of an eyesore and the development of a prominent corner site. Existing mature trees will be retained

and additional planting will be provided which will enhance the visual amenities of the area. The proposal will not impact on any protected views identified in the development plan.

In terms of *biodiversity*, the proposal will result in the permanent loss of existing habitats which are of low ecological importance (spoil and recolonising bare ground, scrub and grassland habitat). The site does not support any Annex 1 habitat or rare or protected species of flora. The birds identified on the site are widespread at a local/national level. No mammals were recorded during the site visit. The removal of the grassland is likely to displace mammalian species that may use the site, but these impacts are not likely to be significant having regard to the availability of areas of similar habitat close by. The development will not impact on the integrity of any European site or qualifying interests.

The submissions refer to the potential displacement of bats, which may forage in the area due to the proximity of Newgrove House SAC (Site Code 002157). The SAC is located c 3.7km to the west and is selected for Lesser Horeshoe Bats. According to the site synopsis the bats hibernate in the underground cellars of the former house. It also states that there is suitable foraging habitat in the area around the hibernation site which is important as the bats are often active in hibernacula in autumn and spring.

The Conservation Objectives for the site states as follows:

'Lesser horseshoe bats normally forage in woodland/scrub within 2.5km of their roosts. This species follows commuting routes from its roost to its foraging grounds and will not cross open ground. Consequently, linear features such as hedgerows, treelines and stone walls provide vital connectivity for this species within 2.5km around each roost'.

A map is included (Map 2) which shows a 2.5 km zone around the roost and identifies potential foraging grounds. The site of the proposed development is outside the core foraging roost and no ecological linkages have been established. The trees along the site's northern boundary are not considered to have bat potential. While the trees along the southern boundary are assessed as having moderate potential no bats or roosts were recorded on the site. Furthermore, the records produced from the National Bat Database of Ireland indicates that no bats

were recorded within 1km of the site. It is proposed to retain existing mature trees which will mitigate significant adverse impacts on other bat species that may use the site.

The proposal will result in some limited impacts on *land and soils* but this is considered to be negligible having regard to the limited size of the site and the proposal to reuse excavated soils on the site. Subject to best practice construction methodologies and environmental controls, there is no significant risk to ground or surface *water quality*. No watercourses were identified within the site.

There is potential for impacts on *air and climate* and *noise and vibration* may occur during the construction stage with impacts on the local population. However, having regard to the limited scale of the development and the temporary nature of the works these impacts will be short term and capable of effective mitigation.

No potential impacts on *cultural heritage* have been identified. The site is located on the outskirts of the built-up area and is not proximate to any protected structures. The nearest recorded monument is located c 300m from the site. The Archaeological Assessment Report acknowledges the potential for as yet undiscovered archaeological deposits and recommends archaeological test trenching to mitigate potential impacts.

Arising from these limited impacts, the nature and scale of the development and its relationship with the surrounding land uses, it is not considered that the proposal would have significant impact on *material assets* in the locality. It is unclear how the proposed development would limit potential future connections to the public sewer as asserted in the submissions. The response from Clare Co Council indicates that any applications for connection would be dealt with by Irish Water.

There is potential for *interactions* between various environmental factors, notably between land and biodiversity, population and human health and air and climate and noise and vibration. Subject to the identified mitigation measures significant interactions are not considered likely, or such that would give rise to significant additional environmental impacts.

Probability, intensity and complexity of impacts

The development of the site will result in the loss of a small area of habitat. Having regard to the limited scale of the proposal, the nature of the environmental impacts are not complex or intense.

Expected onset, duration, frequency and reversibility of the impact

Having regard to the residential nature of the development, it is expected that the impacts will be on-going, long term and only reversible if the housing scheme is removed and the site is reinstated.

Transboundary nature of impact

There will be no transboundary impacts associated with the proposed development.

Cumulative

The site is zoned for residential purposes in the development plan. The adopted plan has been subject to Strategic Environmental Impact and it concludes that the adopted development scenario is the optimal solution having regard to environmental and planning effects. I am not aware of any other existing or permitted projects that would be likely to give rise to cumulative effects.

Note: - The planning authority's response of 23rd January 2020, addresses the anomalies referred to in the referrers submissions.

7.4. **Recommendation**

Having regard to the above assessment, I consider that the proposed development of 25 no. residential units and all associated site development works would not be likely to have significant effects on the environment. I therefore recommend that Clare County Council be advised that the preparation and submission of an environmental impact assessment report is not required.

8.0 **Reasons and Considerations**

Having regard to the following:

- (a) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended

- (b) The nature and scale of the proposed development which is significantly under the threshold in respect of Class 10(b)(i) (Infrastructure-Dwelling Units) and Class 10 b (iv) (Infrastructure-Urban development) of the Planning and Development Regulations 2001 (as amended),
- (c) The location of the site on lands that are zoned for residential use under the provisions of the Clare County Council Development Plan and the results of the strategic environmental assessment of this Plan undertaken in accordance with the SEA Directive (2001/42/EC)
- (d) the limited nature and scale of the proposed development
- (e) The location of the site in a built-up area served by public infrastructure and the existing pattern of development in the vicinity and the existing pattern of development in the vicinity.
- (f) The submission of the planning authority

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.

Breda Gannon
Senior Planning Inspector

10th February 2020