



An
Bord
Pleanála

Inspector's Report

ABP-306680-20

Development	Construction of 51 houses, including ancillary site works.
Location	Ballynacragga Tld , Newmarket-on-Fergus , Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19102
Applicant(s)	Woodhaven Development Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Concerned Ballynacragga Residents
Observer(s)	None
Date of Site Inspection	22 nd July 2020
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site is located in the town of Newmarket-on-Fergus, Co. Clare on zoned lands to the northwest of the town. The site is 2.7Ha. in area.
- 1.2. The site is located to the north of Woodfield Heights housing development and accessed via the local road network serving the area. Residential development is located to the south and east of the site, agricultural lands to the west and there is a farmhouse and stables to the north.
- 1.3. The site is undulating in nature and locally elevated and is currently in agricultural use. The southern site boundary is shared with the existing rear gardens of Woodland Heights. This area currently consists of overgrown inaccessible scrub. The remaining site boundaries consist of mature hedgerows with an intermittent scatter of mature trees. There is a further significant area of scrub to the east and front of the site.

2.0 Proposed Development

- 2.1. The development comprises the construction of the following:
 - 41 no. two-storey and 10 no. one-storey dwelling houses
 - all ancillary site works and connection to public services
 - and a new stormwater sewer to overflow to Lough Gash.
- 2.2. Unsolicited further information was received on 15th march 2019 in the form a letter from Irish Water to the applicant setting out the need to separate the foul and storm sewer elements by laying a new storm water sewer and extending this as far as the Ennis road.
- 2.3. The planning authority requested further information on 9th April 2019 to include A Natura Impact Statement, Ecological Impact Assessment, additional information in relation to services, traffic, levels, residential amenity and legal interest. A response as received on 7th November 2019 and on the 21st November 2019 including revised public notices and tree survey.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to 29 conditions. The following conditions are of note:

Condition no. 2 stipulates:

No development shall commence on the site unless and until the development works for the new relocated outfall for the Newmarket -on-Fergus wastewater treatment plant are completed and the applicant has obtained a connection agreement from Irish Water to discharge treated effluent via this new outfall. Copies of this connection agreement shall be submitted to the Planning Authority prior to the commencement of the development.

Reason: : In the interest of public health and to ensure that there are no adverse effects on the integrity of the Lough Gash Special Area of Conservation.

Condition no. 3 refers to modifications to the layout of the development.

Condition no. 5 refers to Special Development Contribution towards the improvement of public footpaths on the LP-3158 and the LP -3159

Condition no. 7 refers to Development Bond

Condition no. 8 refers to cash deposit to secure the reinstatement of public roads which may be damaged by the development works

Condition no. 9 refers to details of boundary treatments to be agreed

Condition no. 10 refers to site specific cross-sections and site infrastructure details to be agreed.

Condition no. 12 refers to implementation of NIS mitigation measures

Condition no. 14 refers to Archaeologist

Condition no. 24 refers to no commercial overnight guest accommodation

Condition no. 26 requires the developer to take all precautions to avoid the spread of invasive plant species

Condition no. 29 refers to the finish floor levels of the dwellings

Planning Authority Reports

3.2. Planning Reports

Principle of proposed development is acceptable. Further information including the submission of an NIS noting the proximity to Lough Gash SAC. The Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, service connection feasibility in so far as the development may be premature by reference to the lack of hydraulic capacity in the existing sewerage network, surface water management, traffic, landscaping, levels and legal interest requested. Concerns is expressed regarding the impact on adjacent residential amenities and the visual integration of the proposed development.

It was concluded following receipt of further information and having regard to the location within the settlement of Newmarket on Fergus and the zoning objectives subject to a condition stipulating that no works to commence unless and until the outfall upgrade works to the Newmarket on Fergus wastewater treatment plant are completed and the applicant has obtained a connection agreement with Irish Water to connect to the upgraded treatment plant, It was recommended planning permission be granted subject to conditions.

3.3. Other Technical Reports

Environmental Assessment officer – Report dated 22nd January 2020 states that Environmental Assessment officer is satisfied with how the applicant has addressed the capacity issues which exist at the Newmarket on Fergus plant through the removal of stormwater/surface water input. It is noted that a new discharge location for the WWTP is on the Irish Water Capital Investment Programme 2017-2021 and that the new outfall for and review of the Newmarket on Fergus Wastewater Treatment Plant is included in Irish Water draft Capital Investment Plan 2020-2024. The project is at a feasibility study stage with the expectation to get approval to go to detail design stage over the forthcoming months. It is set out that in the documentation submitted that discharge from the development to Lough Gash via the WWTP will not be possible and that an alternative discharge which will be the subject of appropriate assessment at Plan level by Irish Water will need to be sourced prior to the commencement of development on site.

Having regard to the above and subject to implementation of mitigation measures included in the NIS the report concludes that the proposed development will not have the potential to result in likely significant effect on the surrounding European Sites and in particular Lough Cash SAC.

Retention of existing trees and additional tree planting required to ensure there is no loss of commuting and foraging routes for bat species.

Water Services – Report dated 21st January 2020 notes the WWTP is on the Irish Water Capital Investment Programme 2017-2021 at feasibility study stage.

Housing Department – Final report (email dated 13th January 2020) notes Part V has been agreed.

Chief Fire Officer – No objection

Taking in Charge Team – Report dated 8th March 2019 and 7th November 2019 notes a number of issues regarding roads layouts, footpaths, sewer design, levels and separation distances from adjoining houses. Compliance with public lighting standards required.

Roads Design – Final report dated 13th December 2019 includes a schedule of conditions.

Shannon Municipal District Engineer – Report dated 22nd January 2020 sets out Special Contribution Calculations.

3.4. Prescribed Bodies

EPA – Email correspondence dated 22nd January 2020 noting that the Condition 3.7.1 of the WWDL for Newmarket on Fergus agglomeration states that “the existing discharges from the agglomeration, directly to groundwater, shall cease as soon as possible and no later than 31st December 2019. Prior to commencement of an alternative discharge the licensee shall apply for a review of this Certificate of this Licence”

The discharge has still not ceased and the request to review the WWDL has not been lodged with the EPA.

Irish Aviation Authority- (Report dated 7th March 2019) -No observations

Department of Culture, Heritage and the Gaeltacht – report dated 20th March 2019 recommended screening for appropriate assessment and appropriate assessment, if necessary, bat survey. Archaeological Impact Assessment to be condition in the event of a grant of planning permission .

Irish Water – Final Report dated 6th December 2019 sets out that the development is conditional on the applicant creating additional capacity by removing stormwater, surface water inputs from the existing combined sewer drainage network to make capacity available to facilitate the development. The applicant shall extend the proposed stormwater drainage network along the link roads from the R458 to the Kilnasooloagh road, picking up all road gullies and all stormwater, surface water inputs to the sewer along the R458 in order to create capacity to facilitate this development.

3.5. Third Party Observations

Eight no. submission was made to Clare County Council on receipt of the planning application. A further two submissions were made following the request for significant Further Information. The following is a summary of the issues raised:

- Ownership
- Surface water flooding
- Extent of ground works and site preparation works significant
- Concerns regarding impact on Lough Gash and local Ecology. Inadequate consideration given to Bat species.
- Traffic concerns. Considers Traffic Impact Assessment required.
- Proximity to and implications for adjoining dwellings
- Existing vacancy in Newmarket on Fergus noted
- Sewerage capacity, increased loading and impact on Lough Gash
- Adverse impact on adjoining equestrian enterprise and adjoining residential amenity
- Design not in keeping with the vernacular
- Light spillage

- Noise pollution
- Query regarding density of development
- Capacity of local school to accommodate increased demand
- Water supply
- Landscaping and boundary treatment
- The development is premature
- Stormwater connection to Lough Gash is outside red line boundary
- Considers subthreshold EIAR required.

4.0 Planning History

Site

CCC Reg. Ref. 16/461 – Permission refused to Extend the Appropriate Period of P08/481 for 53 residential units. The reason for refusal relates to changes to the development objectives specifically objective CDP 21.5 'Compliance with zoning'

CCC Reg. Ref. 08/484 – Permission granted for 66 residential units.

5.0 Policy Context

5.1. National Policy

- 5.1.1. The government published the **National Planning Framework** in February 2018. Objective 3c is to deliver at least 50% of new houses in the city/suburbs of Dublin, Cork, Galway, Limerick and Waterford. Objective 11 is to favour development that can encourage more people to live or work in existing settlements. Objective 27 is to prioritise walking and cycling accessibility to existing and proposed development. Objective 33 is to prioritise the provision of new homes that can support sustainable development. Objective 35 is to increase residential density in settlements.
- 5.1.2. The **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas** were issued by the minister under section 28 in May 2009. Section 1.9 recites general principles of sustainable development and residential design, including the need to prioritise walking, cycling and public transport over the use of cars, and to provide residents with quality of life in terms of

amenity, safety and convenience. Section 5.11 states that densities for housing development on outer suburban greenfield sites between 35 and 50 units/ha will be encouraged, and those below 30 units/ha will be discouraged. A design manual accompanies the guidelines which lays out 12 principles for urban residential design.

- 5.1.3. The minister issued **Guidelines for Planning Authorities on Urban Development and Building Heights (December 2018)**. Section 3.6 states that development in suburban locations should include an effective mix of 2, 3 and 4 storey development.
- 5.1.4. The minister and the minister for transport issued **the Design Manual for Urban Roads and Streets (DMURS) in 2013**. Section 1.2 sets out a policy that street layouts should be interconnected to encourage walking and cycling and offer easy access to public transport. Section 3.2 identifies types of street. Arterial streets are major routes, link streets provide links to arterial streets or between neighbourhoods, while local streets provide access within communities. Section 3.3.2 recommends that block sizes in new areas should not be excessively large, with dimensions of 60-80m being optimal and 100m reasonable in suburban areas. However maximum block dimensions should not exceed 120m. Section 4.4.1 states that the standard lane width on link and arterial streets should be 3.25m, while carriageway width on local streets should be 5-5.5m or 4.8m where a shared surface is proposed.
- 5.1.5. Development Management Guidelines for Planning Authorities , 2007.

5.2. Development Plan

- 5.2.1. The operative development plan is the Clare County Development Plan, 2017-2023. According to the plan for Newmarket-on -Fergus incorporated in Volume 3, the site location is subject to the zoning objective “LDR1” low density residential.:
- 5.2.2. LDR1 North of Woodfield Heights-This site is considered appropriate for a low density housing scheme, with access taken from the existing cul-de-sac road to the south. Layout and design of any proposal shall ensure that the existing residential amenities to the south and east are protected.
- 5.2.3. The plan notes that while the wastewater treatment plant has been upgraded and has capacity to cater for future development, the treated effluent is discharged to Lough Gash. Monitoring of the treated effluent discharge and receiving waters to assess the impact on ground water in the area is ongoing. This monitoring will be

undertaken for an extended period, and depending on the outcome, further upgrade works and /or relocation of the existing outfall may be required and any such works could impact on the capacity of the plant to cater for future development.

Objective 3.9 :Monitoring and Implementation of Settlement Strategy. It is an objective of the Development Plan:

- a) To achieve the delivery of strategic, plan-led, co-ordinated and balanced development of the settlements throughout the County;
- b) To carefully monitor the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Settlement Hierarchy and Strategy, including the population targets for the Count.

Objective 3.10: Planned Growth of Settlements.

It is an objective of the Development Plan:

- a) To ensure that the sequential approach is applied to the assessment of proposals for development in towns and villages and to ensure that new developments are of a scale and character that is appropriate to the area in which they are located;
- b) To restrict single and/or multiple largescale developments that would lead to the rapid completion of any settlement within its development boundary, in excess of its capacity to absorb development in terms of physical infrastructure (water, wastewater, surface water, lighting, footpaths, access etc.) and social infrastructure (schools, community facilities etc.).

Objective 8.24 :Water Services

It is an objective of the Development Plan:

- a) To work closely with Irish Water to identify and facilitate the timely delivery of the water services required to realise the development objectives of this Plan;
- b) To facilitate the provision of integrated and sustainable water services through effective consultation with Irish Water on the layout and design of water services in relation to the selection and planning of development areas and the preparation of master plans;

- c) To ensure that adequate water services will be available to service development prior to the granting of planning permission and to require developers to consult Irish Water regarding available capacity prior to applying for planning permission;
- d) To ensure that development proposals comply with the standards and requirements of Irish Water in relation to water and waste water infrastructure to facilitate the proposed development.

Objective 8.27 : Waste Water Treatment and Disposal

Includes objectives:

- a) To advocate the provision, by Irish Water, of adequate waste water services and capacity to accommodate the target population and employment potential of County Clare in accordance with the statutory obligations set out in EU and national policy;
- b) To support Irish Water in the promotion of effective management of trade discharges to sewers in order to maximise the capacity of the existing sewer networks and minimise detrimental impacts on sewage treatment works;

Other relevant Development Plan policies and objectives:

- Section 3.2.2 – Settlement Hierarchy
- CDP 4.2 - Facilitate development in accordance with the Settlement Strategy
- CDP4.7 – Housing Mix
- Section 4.3.9 Housing and Accommodation for older people
- Section 4.3.10 – Housing for People with Disabilities
- CDP 4.15 – Green Infrastructure in Residential Development
- CDP 8.8 – Design Manual for Urban Roads and Streets (DMURS)
- CDP 15.8 Sites, Features and Objects of Archaeological Interest
- Section 19.3 Land Use Zoning

5.3. Natural Heritage Designations

The site is not located within or directly adjacent to any Natura 2000 sites. The site is located 0.26km north of Lough Gash Turlough SAC (site code 000051), 2.5km east of the Lower River Shannon SAC (site code 002165) and 2.5km east of the River Shannon and River Fergus Estuaries SPA (site code 004077)

5.4. EIA Screening

On the issue of Environmental Impact Assessment screening I note that the relevant class for consideration is class 10(iv) “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”. Having regard to the size of the development site (2.7Ha) and scale of the development it is sub threshold and the proposal does not require mandatory Environmental Impact Assessment. Having regard to the nature and scale of the proposed development, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is set out that the development is a **material contravention** of the Clare County Development Plan 2017-2023 in which that site is zoned for low density development defined in the CDP as 10 units per hectare. CDP 19.3 requires development “proposals to comply with the zoning of the subject site in the settlement plan and local area plans”. Section 19.4 of the CDP defines Low Density Development as “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”. It is set out that the PA assessment did not

adequately address the above noting the requirements of the Development Management Guidelines, 2007.

- It is also set out that the development is a material contravention of the CDP as expressed on Chapter 8 - Physical Infrastructure Environment and Energy noting Section 8.4 Water and Wastewater Services and the existing restraints on wastewater services in Newmarket on Fergus. The development materially contravenes Objective CDP 8.24 and 8.27 in so far as the applicant or the planning authority have no control over when Irish Water will address issues with the discharge.
- Newmarket on Fergus is categorised as a small town in the CDP. In this regard it is argued that that **scale of the development** does not conform to the relevant sections of chapter 3 of the development plan relating to urban and rural development strategy namely Objective 3.4, Objective 3.9 and Objective 3.10 and CDP 4.2 to facilitate development in accordance with the Settlement Strategy of the development plan.
- It is argued that the development is **premature** and condition no. 2 unenforceable. It is set out that the issue at hand is that the effluent from the municipal WWTP is unlawfully discharging to Lough Gash, a recognised SAC, with connectivity to other European Sites and resolving this is a matter beyond the control of the planning authority. A new destination for the effluent has yet to be identified, construction and lands acquired, planning permission, funding, construction and licencing achieved. It is further set out that Section 7.16.1 of the Development Management Guidelines states that “Development which is premature because of existing deficiencies in water supply, sewerage facilities and/or road network may be refused without incurring a compensation liability provided that the criteria set out in the Fourth Schedule of the Planning Act are met”.
- It is set out that in accordance with Par. 7.3.4 of the Development Management Guidelines conditions are required to be specific and conditions No. 3, 9, 10 and 10 are not specific requiring matters to be agreed. Section 7.9 sets out that such conditions should be avoided in cases where the matters involved are of a fundamental nature or such that third parties could

be affected, and the use of such conditions should be minimised. Most of the issues subject to **prior-to -commencement agreement conditions** were raised at further information stage and not answered properly to the satisfaction of the planning authority.

- Appellants were not afforded the opportunity to see **Part V** agreement reached.
- **Condition no. 24** refers to no commercial overnight guest accommodation. It is set out that this can be carried out as Exempted Development and offers no comfort to the appellants
- **Condition no. 26** requires the developer to take all precautions to avoid the spread of non-invasive plant species. This condition is unenforceable as it is up to the planning authority to determine if there any invasive species on the site and condition accordingly ensuring no development commences until such species have been eliminated in an appropriate manner.
- The proposal to split the flow and extract the **storm water flow** and divert it to a new pipe for direct discharge to Lough Gash is ill founded and has **not been properly considered.**
- The **NIS and screening assessment** failed to recognise that the WWTP discharges to Lough Gash, a direct discharge to groundwater unlawful under the European Directive. The licence recognises this must be rectified by 31/12/2019. It has not been rectified and therefore the application inter alia is premature. Query raised regarding subthreshold EIA.
- The final **feasibility of Irish Water connection** questionable in so far as it is Irish Water operating the WWTP making the unlawful discharge.
- The issue of the existing sewer passing through **private property** is a matter of on-going concern. Any resolution of this matter will require a new sewer, either combined or separated, being installed along the R458 along the public road removing the existing sewer from private property. Concern is expressed that in the absence of appropriate consideration and assessment that this proposal could direct untreated foul wastewater directly to the Lough Gash swallow hole.

- Referencing Volume 3b of the CDP with respect to the settlement of Newmarket on Fergus which recognises that upgrade works and/or relocation of the outfall may be required which could impact on the capacity of the plant to cater for future development. Development should have regard to impacts on *Lesser Horseshoe Bat*, Lough Gash SAC and the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA and noting the site zoning for low density residential, the decision contravenes the CDP on several grounds.
- It is noted also that the preplanning record only made available after the decision was made. This is contrary to Par. 2.9 of the Development Management Guidelines and prejudiced the appellants in their previous submissions.

6.2 Applicant Response

- The validity of the appeal is queried in so far as the appellants – “Concerned Ballynacragga Residents” is not a name that exists in law and there is no indication given in the appeal about the names and addresses of the parties for whom the agent (Mr. Duffy) acts for. It is set out that the appeal does not comply with Section 127 of the Planning and Development Act 2000 (as amended).

Density

- It is set out that the Sustainable Residential Development in Urban Area, May 2009 guidelines recommend a minimum density of 20/35 units per hectare for outer edge of town locations. It is further stated that the development plan establishes that individual planning applications on low density /residentially zoned lands will be considered on their own merits. The density taking account of condition no. 3 of the planning authority’s recommendation is 16.3 units per hectare. In response the applicant proposes amendments to the site layout plan and the dealation of condition no. 3 of the planning authority. density on serviced lands. A revised site layout plan accompanied the appeal submission.

Material Contravention

- It is set out that development is not a material contravention of CDP 8.24 as the applicant at all times liaised with Irish Water in respect of provision of the development and agreed with Irish Water that they would divert surface water to an alternative outfall in order to ensure there are no capacity issues.

Premature

- It is set out that the wastewater treatment plant for Newmarket on Fergus has been in operation for more than 50 years and upgraded in 2015, in public ownership and operated by Irish Water. Noting the EPA condition on the licence that the outfall to ground water would cease by 31/12/2019 is not at present being fully complied with it is set out that this is a matter for the EPA and it is also a matter for the EPA to decide if they wish to serve notice of compliance on Irish Water. It is set out that this matter is in the process of being addressed and the expansion of the town cannot proceed whilst this matter is being resolved. The fact that there is evidence of an outstanding licence issue between the EPA and Irish Water does not preclude the existing wastewater treatment system from continuing in use.
- The response includes foul water calculations as submitted to Irish Water which illustrate a peak of 5.5l/s for the development of 54 house units (only 51 units applied for). The estimated existing storm flow for the public roads (surcharge into existing combined sewer) is 55l/s. By diverting the stormwater into the new system proposed this will result in a reduction of 90% in contributing flow at peak time to the treatment plant, reducing the discharge from the existing treatment plant. The discharge of surface to Lough Gash was subject to an NIS prepared on the basis of the existing sewerage system licenced by the EPA not having an impact on Lough Gash and which included recommendations to include the use of petrol interceptors to extract hydrocarbons prior to discharge. It is further argued that the current proposal represents a significant reduction in the overall discharge to groundwaters involved.
- It is set out that condition no. 2 should be revised and reworded to enable an alternative approach between Irish Water and the EPA as the wording is too specific and restrictive stipulating that no development shall commence until

the development works for the new relocated outfall for the Newmarket -on-Fergus wastewater treatment plant are completed... Reference is made to a recent part 8 decision for 18 houses in Newmarket On Fergus stipulating that no units be occupied until such time as the works required of Irish Water by the EPA are carried out. The applicant is requesting a similar approach to enable works commence on site.

- Reference is made to EPA discharge audit report in July 2019 which found the wastewater treatment plant to be satisfactory.

Pre-development Conditions

- It is set out that paragraph 7.3.4 of the Development Management Guidelines states that conditions should be “precise” and not “specific” as argued by the appellants. Section 34 (5) of the Planning Act makes provision for specific post decision agreement .The issue of pre-development conditions is a long-established practice.
- Part V agreement practices are in accordance with standard practices throughout the country.
- The applicant considers condition no. 24 is inappropriate and condition no. 26 should be deleted as it is the responsibility of the landowner to deal with invasive species.

Separation of storm water drainage system

- It is set out that there is no evidence of “foul water misconnections” as alluded to by the appellants and contrary to the appellants claims a detailed response was given at further information stage incorporating a revised foul and surface water regime and full details of cover levels and invert levels to same, as well as a hydrological and hydrogeological reports.
- The feasibility of connection to the Irish Water network is a matter for Irish Water. There is no requirement under the Planning Act for Irish Water to make available details of their network system.
- In terms of flooding on a private lands, the system of surface water drainage provided with the application is a positive addition.

AA and EIA

- The development is below the threshold for EIA
- An NIS was produced which concludes that there were no adverse effects to a European Site arising from the development.

Site Boundaries

- The change of site boundaries to incorporate certain utilities was re-advertised

Other Matters

- The applicant seeks to have condition no. 6 – Special Contribution removed as Appendix 7 of the Clare County Council Development Contribution Scheme 2017-2023 provides funding for pedestrian facilities and walkways including “*extensions to an remediation of existing footpath infrastructure*” and the condition amounts to double charging.

6.3 Planning Authority Response

The Planning Authority has responded to the grounds of appeal.

The response includes:

- It is set out that the Core Strategy provides scope for alterations to specified densities. The density of the development therefore does not materially contravene the development plan.
- Noting the Irish Water submission the issues with the discharge licence at the treatment plant were noted and constituted a material consideration in the assessment, a suitable condition (condition no .2) was attached and considered appropriate as the Irish Water Capital Investment Programme 2017-2021 includes for necessary infrastructure upgrades (subject to compliance with European Birds an Habitats Directives). it is listed on the draft Irish Water Capital Investment Programme 2020-2023 that will supersede same.
- Prior to commencement conditions, condition no. 24 and condition no. 26 are in accordance with Par. 7.3 of the Development Management Guidelines.

- Part V issues are managed by condition no. 4
- Stormwater network, EIA and AA are assessed in the planner's report.
- The development is in accordance with the proper planning and sustainable development of the area.

6.4 Observations

None

6.5 Further Responses

None

7.0 Assessment

7.1. Introduction

- 7.1.1. In relation to the validity of this planning appeal as raised by the first party, I have reviewed submissions and taking account of the submission of a valid observation to Clare County Council on behalf of the current appellants and the requirements of Section 127 of the Planning and Development Act 2000 (as amended), I am satisfied that the appeal received from Michael J. Duffy Consulting Engineer on behalf of the Concerned Ballynacragga Residents should be treated as a valid appeal.
- 7.1.2. The assessment covers the points made in the appeal submissions, including the applicants requested to modify the wording of condition no. 2 and omit condition no. 6 (Special Contribution), condition no. 24 and condition no. 26 of the planning authority's recommendation. A revised site layout has been submitted for the Boards consideration in response to the modifications stipulated in condition no. 3 of the planning authority's recommendation.
- 7.1.3. The assessment has regard to the first and third party submissions and also encapsulates my de novo consideration of the application. The main issues in the assessment of the proposed development are as follows:
- Principle of Development
 - Design and Layout
 - Water Services

- Other Matters
- Appropriate Assessment

The issues of Design and Layout is considered a **New Issue** in the context of the appeal.

7.2. Principle of Development

Zoning

- 7.2.1. The site is located in the town of Newmarket on Fergus. The development provides for a scheme of 51 dwellings incorporating 41 no. two storey units and 10 no. single storey units. The entrance to the site is zoned “Existing Residential” while the main body of the site is subject to zoning objective “LDR1” low density residential in Volume 3 of the Clare County Development Plan which states: LDR1 North of Woodfield Heights “is considered appropriate for a low density housing scheme, with access taken from the existing cul-de-sac road to the south. Layout and design of any proposal shall ensure that the existing residential amenities to the south and east are protected”.

Density

- 7.2.2. The appellants contend that the development is a **material contravention** of the Clare County Development Plan 2017-2023 in which low density development is defined in the CDP as 10 units per hectare (Table 2.4 Core Strategy Population Targets) and CDP 19.3 which requires development “proposals to comply with the zoning of the subject site in the settlement plan and local are plans”. Section 19.4 of the CDP defines Low Density Development as “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”. Whilst I acknowledge that the development plan does refer to 10 units per hectare for low density development, it also states that each application will be assessment on its own merits.
- 7.2.3. The applicant argues that the Sustainable Residential Development in Urban Area, May 2009 guidelines recommend a minimum density of 20/35 units per hectare for

outer edge of town locations and the density taking account of condition no. 3 of the planning authority's recommendation is 16.3 units per hectare. The PA set out that the Core Strategy provides scope for alterations to specified densities and the density of the development therefore does not materially contravene the development plan.

- 7.2.4. I am satisfied that the proposed increase to the density and unit numbers is justified by reference to Section 2.4.2 of the Core Strategy as set out in the development plan and Objectives 4, 33 and 35 of the National Planning Framework which support the creation of high-quality urban spaces and increase residential densities in appropriate locations, while improving quality of life and places.
- 7.2.5. I am satisfied that subject to other planning considerations the principle of a multiple residential development on the site is acceptable.

7.3. Design and Layout

- 7.3.1. The development provides for 51 houses reflecting a mixture of 2 and 3 bedroom bungalows, 3 bed two storey dwellings and 4/5-bedroom semi and detached dwellings, with access taken from the existing cul-de-sac road to the south. I note the Roads Department raised no concerns in relation to traffic as a result of the development.
- 7.3.2. Condition no. 3 of the planning authority's recommendation revised the layout stipulating the omission of units 1,2 and 3 , the omission of unit no. 22 to provide for a turning area and the omission of units 38,39 and 40 and the replacement of same with open space. Other amendments stipulated relate to the rear garden profiles of units 4-9, 41 and 51 and revised dual aspect dwellings for units no. 4 and 11. As part of their appeal response the first party propose the omission of unit 37 and the provision of two revised turning areas to serve the southwestern section of the site as per revised drawings number WNM-01-PL20. I have reviewed the drawings and documentation submitted with the application and in response to the appeal, and notwithstanding same, I have a number of concerns regarding the design and layout of the scheme.
- 7.3.3. The site is undulating in nature with a high point located in the centre of the site sloping gradually to the south towards Woodfield Heights. There is a depression on the eastern boundary and high areas to the northeast and south east. A key factor in

the design and layout of any residential scheme is site topography. In terms of the subject site it would appear the approach taken is to manipulate the site to accommodate the development which would, in my opinion, require significant amounts of “cut and fill” .

- 7.3.4. Section 6.8 of the Sustainable Residential Development in Urban Areas Guidelines, 2009 sets out design principles to be considered in the layout and design of residential schemes to include making a positive contribution to its surroundings and take the best advantage of its location through the use of site topography, levels, views, context, landscape, design orientation to optimise sustainability. This is reinforced in chapter 17: Design and the Built Environment of the Clare County development plan.
- 7.3.5. By contrast the proposed development seeks to significantly alter and manipulate the site levels to accommodate the development. Site levels have been indicated on some of the infrastructure (services) drawings submitted, however a clear and legible site layout plan indicating existing site topography and proposed alterations to site levels to include any cut and fill proposed and resulting ground levels across the site has not been submitted. I do not consider the cross-section drawings submitted adequately demonstrate the topography of the overall site and the extent of alterations to site levels to accommodate the layout of the development as proposed and the associated impact on the character of the landscape and the quality of the development layout, in particular, public and private open spaces, residential amenity and the impact on adjoining properties. I note the planning authority’s attempt to address these matters by way of condition, however owing to the lack of information provided in relation to the manipulation of the site levels, I am not satisfied that these matters can be address by way of condition in this instance as the impact cannot be accurately accessed.
- 7.3.6. I consider the proposed development to be contrary to the “Urban Design Manual – a Best Practice Guide” issued by the Department of the Environment, Heritage and Local Government (2009), to accompany the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas in so far as the manipulation of the site topography will significantly alter the visual amenity of the area and is contrary to key criteria of the Guidelines including connections, inclusivity, variety distinctiveness and, in particular, the design response to site context, which sets out

that development should “evolve naturally as part of its surroundings”. It is considered that the development as proposed fails to adequately address the natural topography of site and the manipulation of the existing site levels to accommodate the development would seriously injure the visual amenities of the area and would result in a poor design layout that is unimaginative and substandard and fails to provide high quality usable public and private open spaces for future residents. The proposed development, accordingly, would be contrary to the proper planning and sustainable development of the area.

7.4. Water Services

- 7.4.1. It is proposed to connect to public infrastructure services serving Newmarket-on-Fergus.
- 7.4.2. The appellants have expressed concerns in this regard setting out that the development is a material contravention of the CDP as expressed on Chapter 8 - Physical Infrastructure Environment and Energy noting Section 8.4 *Water and Waste Water Services* and the existing restraints on wastewater services in Newmarket on Fergus. It is argued that the development is **premature** and condition no. 2 unenforceable. It is set out that the issue at hand is that the effluent from the municipal WWTP is unlawfully discharging to Lough Gash, a recognised SAC, with connectivity to other European Sites and resolving this is a matter beyond the control of the planning authority. A new destination for the effluent has yet to be identified, lands acquired, planning permission, funding, construction, and licencing achieved. It is further set out that Section 7.16.1 of the Development Management Guidelines states that “Development which is premature because of existing deficiencies in water supply, sewerage facilities and/or road network may be refused without incurring a compensation liability provided that the criteria set out in the Fourth Schedule of the Planning Act are met”.
- 7.4.3. The key issue in this instance relates connection feasibility to the WWTP in so far as the development may be premature by reference to the lack of hydraulic capacity in the combined sewer network the applicant is proposing to discharge into and the requirement to provide a new outfall. The wastewater treatment plant for Newmarket on Fergus has been in operation for more the 50 years and upgraded in 2015, is in public ownership and operated by Irish Water. It is noted that a new discharge

location for the WWTP is on the Irish Water Capital Investment Programme 2017-2021 and that the new outfall for and review of the Newmarket on Fergus Wastewater Treatment Plant is included in Irish Water draft Capital Investment Plan 2020-2024. The project is at a feasibility study stage with the expectation to get approval to go to detail design stage over the forthcoming months.

- 7.4.4. Condition no. 2 of the decision of the PA stipulated that “No development shall commence on the site unless and until the development works for the new relocated outfall for the Newmarket -on-Fergus wastewater treatment plant are completed and the applicant has obtained a connection agreement from Irish Water to discharge treated effluent via this new outfall. Copies of this connection agreement shall be submitted to the Planning Authority prior to the commencement of the development. In the interest of public health and to ensure that there are no adverse effects on the integrity of the Lough Gash Special Area of Conservation”. The applicant suggests condition no. 2 should be revised and reworded to enable an alternative approach between Irish Water and the EPA as the wording is too specific and restrictive stipulating that no development shall commence until the development works for the new relocated outfall for the Newmarket -on-Fergus wastewater treatment plant are completed. Reference is made to a recent part 8 decision for 18 houses in Newmarket On Fergus stipulating that no units be occupied until such time as the works required of Irish Water by the EPA are carried out. The applicant is requesting a similar approach to enable works commence on site. I do not agree.
- 7.4.5. I note the EPA email correspondence dated 22nd January 2020 setting out that Condition 3.7.1 of the WWDL for Newmarket on Fergus agglomeration states that “the existing discharges from the agglomeration, directly to groundwater, shall cease as soon as possible and no later than 31st December 2019 and recommends that prior to commencement of an alternative discharge the licensee shall apply for a review of this Certificate of this Licence. I further note that the discharge has still not ceased and the request to review the WWDL has not been lodged with the EPA.
- 7.4.6. The response to the planning authority’s request for further information includes proposal to divert stormwater flow from the main R458 together with the storm water runoff generated from the development site and discharge same to Lough Gash. The proposal provides that on site storm attenuation facilities are provided for the development site. The diverted foul water calculations as submitted illustrate a peak

of 5.5l/s for the development of 54 house units (only 51 units applied for). The estimated existing storm flow for the public roads (surcharge into existing combined sewer) is 55l/s. By diverting the stormwater into the new system proposed this will result in a reduction of 90% in contributing flow at peak time to the treatment plant, reducing the discharge from the existing treatment plant. It is argued that the proposal represents a significant reduction in the overall discharge to groundwaters involved. Irish Water in their report dated 6th December 2019 set out that the development is conditional on the applicant creating additional capacity by removing stormwater, surface water inputs from the existing combined sewer drainage network to make capacity available to facilitate the development.

7.4.7. Reference is made by the applicant to the EPA discharge audit report in July 2019 which found the wastewater treatment plant to be satisfactory. Noting the EPA condition on the licence that the outfall to ground water would cease by 31/12/2019 is not at present being fully complied with it is set out that this is a matter for the EPA and it is also a matter for the EPA to decide if they wish to serve notice of compliance on Irish Water. It is set out that this matter is in the process of being addressed and the expansion of the town cannot cease whilst this matter is being resolved. The fact that there is evidence of an outstanding licence issue between the EPA and Irish Water does not preclude the existing wastewater treatment system from continuing in use through the removal of stormwater/surface water input. It is set out that there is no evidence of “foul water misconnections” as alluded to by the appellants and contrary to the appellants claims a detailed response was given at further information stage incorporating a revised foul and surface water regime and full details of cover levels and invert levels to same, as well as a hydrological and hydrogeological reports.

7.4.8. The appellants argue that the development materially contravenes Objective CDP 8.24 and 8.27 in so far as the applicant or the planning authority have no control over when Irish Water will address issues with the discharge. By contrast, the applicant sets out that the development is not a material contravention of CDP 8.24 as the applicant at all times liaised with Irish Water in respect of provision of the development and agreed with Irish Water that they would divert surface water to an alternative outfall in order to ensure there are no capacity issues. Section 5.3.3 (IV) of the Water Services, DRAFT Guidelines for Planning Authorities Department of Housing,

Planning and Local Government (2018) states that having regard to the views of Irish Water and having satisfied itself that there is a reasonable prospect of the constraint(s) being addressed within the lifetime of the permission, in this instance the hydraulic capacity of the sewerage network and the outfall, a planning authority may approve, inter alia, this aspect of the development, subject to a condition that requires the applicant to enter into a connection agreement (s) with Irish Water to provide for a service connection to the public water supply and / or wastewater collection networks, as appropriate. In this regard I note the final report from Irish Water dated 6th December 2019 sets out that the development is conditional on the applicant creating additional capacity by removing stormwater, surface water inputs from the existing combined sewer drainage network to make capacity available to facilitate the development. However, this does not address the fundamental issue of a new outfall for the Newmarket -on-Fergus wastewater treatment plant.

- 7.4.9. Whilst I note the applicants attempts to address the issue, the underlying issue remains that the final effluent from the treatment plant discharges into an outfall piped and is discharged into Lough Gash. The existing WWTP is not in compliance with the requirement of the EPA Licence and whilst I note the Irish Water Capital Investment Programme 2017-2021 includes for necessary infrastructure upgrades (subject to compliance with European Birds and Habitats Directives) and the works are listed on the draft Irish Water Capital Investment Programme 2020-2024 that will supersede same, I am not satisfied having regard to extensive works required to be carried out by the developer outside of the defined site boundary, the on-going failure of Irish Water to address the issue of the outfall that the development is unlikely to be satisfactory serviced within the lifetime of the permission by strategic water services infrastructure, and the development is premature, pending the required upgrades. Permission should be refused for this reason.
- 7.4.10. I note the report form Environmental Officer dated 22nd January 2020 states that discharge from the development to Lough Gash via the WWTP will not be possible and that an alternative discharge which will be the subject of appropriate assessment at plan level by Irish Water and will need to be sourced prior to the commencement of development on site.
- 7.4.11. In relation to the appellants concerns regarding the feasibility of connection. The feasibility of connection to the Irish Water network is a matter for Irish Water. There

is no requirement under the Planning Act for Irish Water to make available details of their network system.

7.5. Other Issues

- 7.5.1. In terms of issues raised by the appellants in relation to **flooding** on private lands. The system of surface water drainage provided with the application is a positive addition.
- 7.5.2. The appellants have expressed concerns regarding the number of prior to commencement conditions attached to the PA's recommendation and in accordance with Par. 7.3.4 of the Development Management Guidelines conditions are required to be specific and conditions No. 3, 9, 10 and 10 are not specific requiring matters to be agreed. Par. 7.9 sets out that such conditions should be avoided in cases where the matters involved are of a fundamental nature or such that third parties could be affected, and the use of such conditions should be minimised. Most of the issues subject to **prior-to -commencement agreement conditions** were raised at further information stage and not answered properly to the satisfaction of the planning authority. The PA in their submission consider the conditions to be in accordance with Par 7.3 Development Management Guidelines. Par. 7.3.4 of the Development Management Guidelines states that conditions should be "precise" and not "specific" as argued by the appellants. Section 34 (5) of the Planning Act makes provision for specific post decision agreement. The issue of pre-development conditions is a long-established practice.
- 7.5.3. Concern has been expressed in relation to the applicant's **legal interest** in all lands relevant to the development works, including ancillary infrastructural works. I note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, and then Section 34 (13) of the Planning and Development Act 2000 is relevant.

- 7.5.4. Further to the above I note that the change of **site boundaries** to incorporate certain utilities was re-advertised.
- 7.5.5. The applicant has requested **condition no. 6 – Special Contribution** towards the improvements of public footpaths on the LP-3158 and LP-3159 which the PA consider necessary to facilitate the development be removed. Having regard to the nature of the condition which provides for a special financial contribution towards the improvements and provision of footpaths in accordance with Sections 48(2)(c) of the Planning and Development Act 2000 as amended, and to the provisions of the general Clare County Council Development Contribution Scheme 2017-2023 (adopted 24th April 2017), site inspection indicated the presence of an incomplete footpath connecting the footpath to the south of the site fronting Woodland Heights to the footpath to the east of the site east of the site at Gencragga Estate which connects to the town centre. Therefore, in my opinion the contribution for the footpath is already provided for in the general Section 48 Development Contribution Scheme. In particular, Appendix 1 of the general scheme provided for “extensions to and remediation of existing footpath infrastructure” under Capital Projects. The imposition of a condition under 48(2)(c) was not appropriate as improvements and provision of footpaths are not specific exceptional costs and are already covered by the general contribution scheme.
- 7.5.6. The appellants argue that they were not afforded the opportunity to see the **Part V** agreement reached. There is no public consultation for Part V agreement, this is a matter for the Housing Section of the Local Authority. I note final report from the Housing Department (email dated 13th January 2020) notes Part V has been agreed.
- 7.5.7. The applicant has requested that **Condition no. 26** relating the control and management of invasive species be omitted. In this regard, I note the Ecological Impact Assessment states that no invasive species were reordered on site. Therefore, should the Bord be minded to grant planning permission I consider this condition can be omitted.
- 7.5.8. The applicant has also requested that **Condition no. 24** removing commercial overnight guest accommodation without a separate grant of planning permission also be omitted. In the context of the design, layout and nature of the development, I consider this condition reasonable.

7.6. Ecological Impact Assessment

- 7.6.1. An Ecological Impact Assessment has been submitted with the application. This has regard to Desk Study and Field Surveys. These include regard to habitats, including water courses, flora and fauna on site. Table 4.1 sets out EU Designated sites within the likely Zone of Impact, the conservation objectives for these sites and the likely zone of impact determination. The desktop study concluded no Habitats Directive Annex 1 habitats have been recorded within the proposed site boundary.
- 7.6.2. Habitats identified within the development site include dry calcareous and neutral grassland (GS1), scrub (WS1), hedgerows (WL1), Treelines (WL2), Oak-ash-hazel woodland (WN2), buildings and artificial surfaces (BL3). Much of the south of the site comprises of dense gorse dominated scrub (WSI).
- 7.6.3. A total of 18 bird species were recorded within or immediately adjacent to the site. No bird species of conservation concern were recorded. The report sets out that a number of common and soprano pipistrelles were observed commuting outside the south of the site possibly indicated the presence of a nearby roost outside of the site but no sites suitable for roosting lesser horseshoe bats were identified and no built structures occur within the site with potential for large maternity roosts for any bat species. No suitable habitat for taxa protected species or other invertebrate species were identified with the site boundaries.
- 7.6.4. The report sets out that bats were the only faunal species identified as a key ecological receptor for further assessment. It is set out that the loss of hedgerow and treelines has been minimised through the design of the project and through enhanced planting this will ensure feeding and commuting habitat is maintained. It is further stated that the lighting associates with the development is designed to avoid light spillage.
- 7.6.5. It is concluded in the Report, that given the mitigation proposed for the predicted impacts as described in the documentation submitted that the proposal will not result in adverse impact on the ecology in the local or wider environment.

7.7. Appropriate Assessment

Stage 1 Screening

- 7.7.1. The proposed development would not be located within an area covered by any European site designations and the works are not relevant to the maintenance of any such sites.
- 7.7.2. A Natura Impact Statement accompanied the application documentation received by the Board. The NIS submitted provides a description of the development. The site location and description of the project are set out in Section 3. It is noted that Lough Gash SAC is located approximately 250m to the south of the site.
- 7.7.3. Figures 3.1 and 3.2 of the AA Screening Report – Appendix 1 of the NIS illustrates the SPA's and SAC's within 15km of the site:
- Lough Gash Turlough SAC
 - Lower River Shannon SAC
 - River Shannon and River Fergus Estuaries SPA
 - Poulmagordon Cave (Quinn) SAC
 - Old Domestic Building (Keevagh) SAC
 - Newhall and Edenvale Complex SAC
 - Ratty River Cave SAC
 - Knocharian House SAC
 - Kilkishen House SAC
 - Poulagaig Cave SAC
 - Ballyallia Lake SAC
 - Newgrove House SAC
 - Danes Hole, Poulnalecka SAC
 - Old Domestic Building Rylane SAC
 - Askeaton Fen Complex SAC
 - Ballyallia Lough SPA
 - Slieve Aughty Mountains SPA

**Detailed conservation objectives are available at www.npws.ie*

7.7.4. The AA provides a brief screening within Section 3, table 3.1 of the report which concludes that all other identified sites with the exception of Lough Gash Turlough SAC (000051), Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) can be screened out from further assessment having regard to the separation distance from the site, absence of a pathway and the relevant qualifying interests. I have reviewed the relevant qualifying interest and conservation objectives for these sites, and I am satisfied that they are not within the zone of influence of the project with no potential pathways given their removed location from the site.

7.7.5. The following designated sites are considered to be located within the zone of influence of the proposed development.

Conservation Objectives: to maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC and SPA has been selected

Site Name & Code	Approx. Distance from Site	Qualifying Interests
Lough Gash Turlough SAC (000051)	250m	Turloughs [3180] Rivers with muddy banks with Chenopodium rubri p.p. and Bidention p.p. vegetation [3270]
Lower River Shannon SAC (002165)	2.5km	Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160] Reefs [1170] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

		<p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>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]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]</p> <p><i>Lutra lutra</i> (Otter) [1355 7.8.</p>
<p>River Shannon and River Fergus Estuaries SPA (004077)</p>	<p>2.5km</p>	<p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]</p> <p>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Wigeon (<i>Anas penelope</i>) [A050]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p>

		Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Scaup (<i>Aythya marila</i>) [A062] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Lapwing (<i>Vanellus vanellus</i>) [A142] Knot (<i>Calidris canutus</i>) [A143] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Greenshank (<i>Tringa nebularia</i>) [A164] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]
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7.8.1. Table 3.1 of the AA screening assessment of the report provides a screening determination which states due to the hydrological pathway and proximity, the screening assessment undertaken resulted in the conclusion that Lough Gash Turlough SAC (000051), Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) occur within the zone of influence of the project and in the absence of appropriate mitigation measures are at risk of likely significant effects from elements of the project.

Conclusion on Screening

- 7.8.2. I have outlined in the above the sites within c.15km of the subject site and I have reviewed the conservation objectives and qualifying interests of the European Sites. I concur with the applicant's agent that Lough Gash Turlough SAC (000051), Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) are the only sites that have a potential hydrogeological connection to the subject site.
- 7.8.3. Therefore, it is reasonable to conclude that on the basis of the information on the file which I consider adequate that the proposed development either individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites Poulmagordon Cave (Quinn) SAC , Old Domestic Building (Keevagh) SAC , Newhall and Edenvale Complex SAC, Ratty River Cave SAC, Knocharian House SAC, Kilkishen House SAC, Poulagaig Cave SAC, Ballyallia Lake SAC, Newgrove House SAC, Danes Hole, Poulnalecka SAC, Old Domestic Building Rylane SAC, Askeaton Fen Complex SAC, Ballyallia Lough SPA, Slieve Aughty Mountains SPA and Lough Levally SAC (000295).
- 7.8.4. On the basis of the information on the file, which I consider adequate in order to issue a screening determination, it is not possible to conclude 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 Lough Gash Turlough SAC (000051), Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077), or any other European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment is therefore, required.

Appropriate Assessment – Stage 2 NIS

7.8.5. Introduction

As outlined in the screening undertaken above, this AA relates to the following site:

- Lough Gash Turlough SAC (000051)
- Lower River Shannon SAC (002165)
- River Shannon and River Fergus Estuaries SPA (004077)

Lough Gash Turlough SAC

Lough Gash Turlough is one of the latest turloughs to dry out in any year and may fail to do so sometimes; as such it is highly rated for being at one of the extremes of

turlough variation, i.e. wetness. It is also of considerable ecological interest for its eutrophic nutrient status. The annual flora found at the site is highly distinctive and well-developed: there are only fragments of such vegetation at other turloughs. The presence of an abundance of the rare Northern Yellow-cress and of the protected Orange Foxtail (in its only Clare site) is notable. This site is at the extreme end of two ranges in variation of the turlough habitat, i.e. wetness and trophic status. It has a greater area of annual vegetation than any other site and this includes *Rorippa islandica*, a rare species found in 10-20 turloughs. Wildfowl numbers are high for its size especially *Aythya ferina* and *Cygnus olor*. There is no effective drainage of the site and, though over enriched, its nutrient balance could be restored.

Lower River Shannon SAC

The Lower River Shannon SAC stretches for over 120km through counties Clare, Limerick and Kerry. The site is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II, including the priority habitats lagoon and alluvial woodland, Bottle-nosed dolphin and lamprey.

River Shannon and River Fergus Estuaries SPA

The estuaries of the River Shannon and River Fergus form the largest estuarine complex in Ireland. The site comprises the entire estuarine habitat from Limerick City westwards as far as Doonaha in Co. Clare and Dooneen Point in Co. Kerry.

The River Shannon and River Fergus Estuaries SPA is an internationally important site that supports an assemblage of over 20,000 wintering waterbirds. It holds internationally important populations of four species, i.e. Light-bellied Brent Goose, Dunlin, Black-tailed Godwit and Redshank. In addition, there are 17 species that have wintering populations of national importance. The site also supports a nationally important breeding population of Cormorant. Of particular note is that three of the species which occur regularly are listed on Annex I of the E.U. Birds Directive, i.e. Whooper Swan, Golden Plover and Bar-tailed Godwit. Parts of the River Shannon and River Fergus Estuaries SPA are Wildfowl Sanctuaries.

- 7.8.6. The NPWS Conservation Objectives for the River Shannon and River Fergus Estuaries SPA (004077) and the Lower River Shannon SAC (002165) set out that the sites overlap and the conservation objectives for each site should be used in conjunction with those for the overlapping site as appropriate.

7.8.7. Potential Effects and Proposed Mitigation indirect effects on Lough Gash Turlough SAC (000051), Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077), relate to:

- Detrimental change to water quality as a result of the proposed development , and a section of the nearby public road network as a result of sediment laden surface water run-off entering Lough Gash which has surface water connectivity via Boheraroan/Mill Race stream which runs through the Turlough and has connectivity downstream with the Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) and would affect the habitats or food sources for which the Natura 2000 Sites are designated. In the absence of mitigation measures, it is not possible to rule out impacts on water quality which could negatively impact on water sensitive qualifying interests of the SAC'S and the SPA.

7.8.8. At Section 4 of the NIS, the authors address the likely significant effects on each of the relevant features of interest within the zone of influence of the project setting out the potential for significant effects on the European Sites identified. I propose to address the matter by way of addressing the potential effects and will reference where appropriate particular qualifying interests.

Water Quality

7.8.9. Potential impacts include contaminants entering the waters of Lough Gash impacting on the water quality and qualifying interest species arising from surface water run-off, or impacts from foul water effluent storage, collection and disposal.

7.8.10. Due to the lack of drainage features in the vicinity of the proposed development site and the extreme groundwater vulnerability rating, effective rainfall landing of the site is expected to recharge to groundwater rapidly and flow towards Lough Gash. The proposed surface water drainage from the development will be fed towards and into Lough Gash via a man made connection.

7.8.11. The NIS recommended sediment control mitigation measures to protect the environment from pollutants. During construction these include the use of perimeter swales at low points around the construction areas, discharge onto ground will be via a silt bag, any proposed discharge area will avoid potential surface water ponding area, no pumped construction water will be discharged directly into the local

watercourse. The site will be monitored and inspected daily. Earthworks will take place during periods of low rainfall and good construction practices will be employed.

7.8.12. In relation to the operatorial stage of the development the NIS sets out that wastewater from the development is to connect to the existing wastewater network and there will be “no wastewater discharge from the development site and as such there can be no effect of European sites from these elements of the proposed development”.

7.8.13. Surface water will be collected by gullies and directed towards an attenuation tank. The outfall from the attenuation tank will be controlled using a ‘hydro brake’ and the total surface water discharge rate will be limited to the ‘greenfield’ run off value. All surface water drainage will be designed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works.

7.8.14. In terms of surface water and stormwater proposals the full implementation of mitigation measures and adherence to best practice will ensure that downstream water quality is protected. Therefore, no adverse effects on this Qualifying Interest are anticipated. Owing to the separation distance 2.5km from the site and the designated sites, I am satisfied that there is no conflict in terms of the conservation objectives of adjacent European sites the Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) as any minor discharge into Lough Gash would be diluted by the water cycle and unlikely to pose any significant risk to Natura 2000 sites/ rivers and streams that discharge into it.

In Combination or Cumulative Effects

7.8.15. This project is taking place within the context of greater levels of built development and associated increases in residential density in Newmarket on Fergus. This can act in a cumulative manner through increased volumes to the Newmarket on Fergus WWTP which discharges to Lough Gash and which then flows into the Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) a c. 3.2km hydrologic distance. As set out in section 7.4 above the issue in this instance relates connection feasibility to the WWTP in so far as the development may be premature by reference to the lack of hydraulic capacity in the combined sewer network the applicant is proposing to discharge into and the identified requirement to provide a new outfall.

- 7.8.16. As noted above the existing wastewater treatment plant is in breach of 3.7.1 of the WWDL for Newmarket on Fergus agglomeration which states that “the existing discharges from the agglomeration, directly to groundwater, shall cease as soon as possible and no later than 31st December 2019. The discharge has not ceased and the request to review the WWDL has not been lodged with the EPA.
- 7.8.17. The proposed development, in proposing to connect into the said system, would be likely to exacerbate the prevailing conditions. The potential indirect effects on water quality on which a number of the qualifying interests in the designated sites are reliant cannot be ruled out. Thus, on the basis of the information provided I am not satisfied that the proposed development would not be likely to have a significant effect on Lough Gash SAC. I do not have confidence in the documentation submitted with the application and to the Board. Therefore, I am not satisfied that the development would ensure the adequate protection of water quality. In conclusion, and applying the precautionary principle, significant effects on the Lough Gash SAC cannot be ruled out.

Conclusion

- 7.8.18. Therefore, on the basis of the information provided with the application and appeal, the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects, does not have the potential to have a significant effect on the qualifying interests of Lough Gash River SAC (000051), or any other European site, in view of the site’s Conservation Objectives

8.0 Recommendation

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

9.0 Reasons and Considerations

1. It is considered that the proposed development would be premature by reference to the existing deficiencies in the Newmarket-on-Fergus wastewater treatment plant to which connection is proposed and the period within which this constraint may reasonably be expected to cease. The proposed development would,

therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal 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 the qualifying interests of Lough Gash River SAC (000051), or any other European site, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting outline permission
3. The "Urban Design Manual – a Best Practice Guide" issued by the Department of the Environment, Heritage and Local Government (2009), to accompany the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas includes key criteria such as context, connections, inclusivity, variety and distinctiveness. It is considered that the development as proposed fails to adequately address the natural topography of site and the manipulation of the existing site levels to accommodate the development would seriously injure the visual amenities of the area, the character of the landscape and the quality of the development layout, in particular, public and private open spaces, residential amenity and the impact on adjoining properties and would result in a poor design layout that is unimaginative and substandard. The proposed development, accordingly, would be contrary to the proper planning and sustainable development of the area.

Irené McCormack
Planning Inspector

8th September 2020