



An
Bord
Pleanála

Inspector's Report ABP 307385-20

Development	95 dwelling units.
Location	Old Course, Spaglen, Mallow, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/6344
Applicant	Taramount Construction Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. refusal
Appellant	Taramount Construction Ltd.
Observer(s)	None
Date of Site Inspection	12/08/20
Inspector	Pauline Fitzpatrick

1.0 Introduction

This is one of two appeals currently before the Board for the development of an unfinished housing estate known as Old Course in Mallow Co. Cork. This appeal is for 95 dwelling units. The 2nd under ref. ABP 307414-20 is for 44 units.

2.0 Site Location and Description

The site has a stated area of 4.59 hectares and forms part of an overall holding of 7.33 hectares on which there is an unfinished housing estate (Old Course). The said estate was subject of permission under ref. 04/5426 for 244 dwelling units. Only 57 units were completed comprising a mix of two and three storey dwellings and apartment blocks. The said houses/apartments are in the centre of the overall site with external finishes comprising a mix of stone and plaster. The estate is c. 1.6km to the north of Mallow town centre and is accessed from the L1207 to the north of its junction with L1237 and south-east of Ironmine Bridge.

The appeal site forms the southern and eastern sections of the holding. The overall lands slope from south-west to north-east. A 10 metre wide wayleave runs along the eastern boundary. An attenuation tank serving the estate has been developed in the north-eastern most section of the site. The section of the site to the south-west of the estate access road has been levelled and grassed, whilst the remainder of the lands are fenced off. The southern section of the site is stated to have been a quarry. It has been excavated with soil and rock removed. As a consequence, the one off dwellings that back onto the site to the south-east are higher than same with a retaining wall delineating the boundary. The Clifden housing estate backs onto the site to the south.

The northern most portion of the overall holding is subject of the concurrent appeal under ref. ABP 307414-20 with foundations evident on same. The River Valley housing estate bounds the overall site to the north with the boundary delineated by a mix of wall, fencing and planting.

The vehicular access serving the estate is flanked on either side by footpaths and planting.

3.0 Proposed Development

The application was lodged with the planning authority on the 26/09/19 with further plans and details submitted 17/12/19, 30/01/20 and 25/02/20 following requests for further information and clarification of further information dated 19/11/19 and 18/02/20 respectively. Unsolicited further information was received 20/03/20.

The proposal, as amended, entails 94 dwelling units (omission of 1 unit by way of FI) in the following arrangement:

- 11 no. two bed townhouses (80 sqm.)
- 34 no. three bed semi-detached houses (105.7 – 113.3 sq.m.)
- 12 no. three bed townhouses (100 -106.8 sq.m.)
- 24 no. four bed semi-detached houses (128.6 sq.m.)
- 6 no. two bed duplex units (88 sq.m.)
- 4 no. two bed apartments (71.2 sq.m.)
- 2 no. one bed apartments (55.8 sq.m.)
- 1 no. two bed bungalow (77.8 sq.m.)

The external finishes are to comprise a mix of render and stone. The development of the scheme in 3 phases is proposed.

The application is accompanied by:

- Design Statement
- Planning Statement
- Childcare Needs Assessment
- Part V Proposals
- Natura Impact Assessment
- Infrastructure Report
- Statement of Traffic, Access and DMURS Design Consistency including Stage 1 Road Safety Audit
- Construction and Waste Management Plan

- Archaeological Assessment (submitted by way of FI)
- Pavement Condition Report (submitted by way of FI)
- Landscape Design Rationale (submitted by way of FI)

4.0 Planning Authority Decision

4.1. Decision

Refuse permission for the above described development for 1 reason which can be summarised as follows:

It is considered that the proposed development has the potential to contribute to adverse effects on the integrity of the Blackwater River SAC and to interfere with the achievement of its Conservation Objectives including the objectives for the Freshwater Pearl Mussel, along with the requirements of the Freshwater Pearl Mussel Regulations 2009. The Planning Authority is not satisfied that the proposal would not be contrary to development plan objective HE 2-1 and the requirements of the Habitats Directive.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The **1st Area Planner's** report dated **19/11/19** notes:

- A schedule of existing and proposed housing mix required for the entire scheme.
- There is a lack of integration between the proposed development and the existing scheme. While variation is encouraged the existing site context should form part of the design approach.
- There are concerns about the level of fill particularly to the south and the height variations within the scheme.
- There are concerns about the size and height of some of the dwellings which are overbearing. Redesign required.
- Contextual elevational plans required.

- Submission of Recreation and Amenity Policy Statement.
- The case made by the applicant against provision of childcare facility accepted.
- Requirements of technical reports (summarised below) noted.

Further information recommended. The recommendation is endorsed by the Senior Executive Planner.

The **2nd Area Planner's** report dated **17/02/20** following FI notes the redesign of the scheme and alterations to the proposed house types. Issues relating to potential overlooking and differences in heights remain. Clarification of FI recommended. This recommendation is endorsed by the Senior Executive Planner.

The **3rd Area Planner's** report dated **16/04/20** following clarification of further information considers that the issues regarding the NIS in the Ecologist's report and the recommendation seeking an addendum to same raises a procedural matter as it results in the introduction of a new issue which was not raised previously. As AA Screening cannot be completed there appears to be no option but to refuse permission.

The **Senior Executive Planner** notes that the risk of likely significant effects on the Freshwater Pearl Mussel was screened out in the NIS submitted on the basis that the 2009 regulations did not apply to this section of the Blackwater River. However, in the intervening period court proceedings have resulted in the setting aside of the 2018 Freshwater Pearl Mussel Regulations (which removed the obligation to apply the Freshwater Pearl Mussel Regulations to the main channel of the Blackwater River). Therefore, the 2018 Regulations are no longer in force and the 2009 regulations apply at the location where effluent from the WWTP discharges to the river. The Area Planner's recommendation is endorsed. The Senior Planner endorses both recommendations.

4.2.2. Other Technical Reports

The **1st Area Engineer's** report dated **15/11/19** recommends further information on the road safety audit, site services and drainage, bin enclosure areas, condition survey of estate roads, boundary treatments and omission of pedestrian connection to River Valley estate. A **further email** dated **19/11/19** states that an assessment of

the attenuation tank was undertaken and is deemed appropriate for the site. Clarification that parking provision is adequate for the site required. The **3rd report** dated **17/02/20** following FI recommends that the bin area be roofed. Roads which show any defects to be rectified by the applicant. Landscape maintenance to be within the remit of the applicant going forward. Alterations to the boundary beside house no.46 recommended. No objection subject to conditions. The **4th report** dated **01/04/20** following clarification of FI has no objection and refers to previous report.

Report on **Public Lighting** dated **09/10/20** recommends further information on public lighting. **2nd report** dated **31/01/20** following FI considers the proposals to be acceptable subject to conditions.

Water Services Section in a report dated **11/10/19** has no objection. It notes that permission for the upgrade of the Mallow WWTP and removal of combined storm water overflows has been sought. Subject to permission being secured it is expected that both projects would commence construction in the middle of 2020. These will facilitate the proposed development.

Council Archaeologist in a report dated **14/11/19** recommends the preparation of an Archaeological Impact Assessment. **2nd report** dated **05/02/20** following FI accepts the conclusion that no potential for subsurface archaeology remains.

Environment Section in reports dated **08/11/19 & 12/02/20** has no objection subject to conditions.

Council Architect in a report dated **15/11/19** recommends redesign including relocation of proposed plaza, omission of open space to side of house no.47, external design treatment to reflect character and style of existing units and relocation of certain dwellings where the size and height would not be overbearing or visually inappropriate.

The **1st Ecologist's** report dated **19/11/19** states that a preliminary review of the NIS and other documents indicated that the matters regarding protection of receiving waters (Blackwater River) have been addressed. The **2nd Ecologist's** report dated **16/04/20** notes that taking account of the recent changes in status of Freshwater Pearl Mussel in the Blackwater River it is now necessary to consider possible implications for the species from the proposed development. It is recommended that

clarification of further information be sought seeking an addendum to the NIS taking account of proposals for management and disposal of wastewater, the current conservation status of Freshwater Pearl Mussel and the water quality standards required to be met to comply with the regulations, and to ensure compatibility with the targets which have been set for this species under its stated conservation objective.

Estates Section in a report dated **21/11/19** has no objection subject to conditions.

Housing Officer in a report dated **30/10/19** considers the units identified as suitable for social housing purposes.

4.3. **Prescribed Bodies**

Inland Fisheries Ireland in a report dated **21/10/19** states that whilst it is not opposed to the development it recommends that the Council should be satisfied that adequate spare treatment capacity exists in the WWTP and that the design capacity and level of treatment provided is sufficient to cater for the additional loading likely to arise from the proposal without its performance efficiency being adversely affected. SUDS measures should be adequately addressed. Incorporation of best practices and measures to minimise discharges of silt/suspended solids to waters and employment of biosecurity measures to prevent the spread of invasive species recommended.

Irish Water in a report dated **22/10/19** has no objection subject to conditions.

4.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to:

- Suitability of pedestrian link to River Valley estate and anti-social behaviour
- Density
- Access and traffic hazard
- Maintenance of street lighting
- Upkeep of estate during construction

- Legacy issues from unfinished estate
- Suitability of design relative to existing
- Adequacy of parking
- Location of open spaces
- Amenities of existing property

5.0 Planning History

Appeal Site

04/5426 – permission granted for 109 dwellings, 135 apartments and creche.

05/5906 – permission granted for change of layout and house type.

06/4071 – permission granted for change of layout and house type.

ABP 307414-20 (19/7081) – current appeal against planning authority’s notification of decision to refuse permission for 44 dwellings units (phase 2).

Wider Area

19/05078 – permission granted in January 2020 for alterations to the Mallow Sewerage Scheme to remove combined sewer overflows from the network. It will also include alterations to the WWTP to provide for wastewater treatment capacity for 22000pe (increased from 18000pe) and other works including construction of new pumping stations

6.0 Policy and Context

6.1. Cork County Development Plan, 2014

Mallow is designated as a hub town.

The site is zoned for residential with a ‘Medium A’ density which provides for a net density of between 20-50 units per hectare.

The following objectives pertaining to residential development are relevant:-

Objective HOU 3-1 - Sustainable Residential Communities

Objective HOU 3-2 Urban Design

Objective HOU 3-3 Housing Mix

Objective HOU 4-1 – Housing Density on Zoned Land (Medium Zone A)

6.2. Mallow Kanturk Municipal District LAP 2017

As per Table 2.2 4552 new dwelling units for the town has been identified.

The site is zoned MW-R-02 – residential with Medium A density. The zoning objective pertains to an area of 5.58 hectares.

Section 3.2.58 – Mallow Environs is served by the Mallow Waste Water Treatment Plant which has a design capacity of 18,000 p.e. and currently provides tertiary treatment for 14,000 p.e. The plant discharges to the River Blackwater downstream of Mallow Bridge. The Mallow WWTP has a Waste Water Discharge License from the EPA. There are some ongoing compliance issues with the plant. Further development in Mallow will require additional nutrient reduction measures to comply with Articles 2 and 4 of the EU Wastewater Treatment Directive.

Section 3.2.59 – Upgrading of the Mallow WWTP and upgrading/extension of sewer networks to the zoned areas of Mallow will be required in order to cater for the target population for Mallow.

6.3. Natural Heritage Designations

The Blackwater (Cork/Waterford) SAC (site code 002170) is c. 1.3km to the south of the entrance to the housing estate.

6.4. Environmental Impact Assessment

Having regard to the nature and extent of the proposed development on zoned lands within the development boundary of Mallow, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

The submission by HW Planning on behalf of the applicant against the planning authority's notification of decision to refuse permission, which is accompanied by an addendum to the NIS, can be summarised as follows:

7.1.1. *Compliance with Planning Policy*

- The site is within the development boundary of Mallow and is zoned residential.
- The proposal complies with national, regional and local planning policies and objectives.

7.1.2. *Ecology*

- Available data indicates that Freshwater Pearl Mussel is functionally extinct downstream of Mallow and any scattered adult individuals which occur are not reproducing. Within the Blackwater catchment there will be areas where freshwater pearl mussel numbers can be increased independent of the lower reaches of the catchment near Mallow.
- The key improvements needed for the Munster Blackwater Catchment are to restore juvenile habitats to appropriate condition by simultaneously reducing nutrient and silt inputs to the river.
- The Q value downstream of the existing Mallow WWTP (Q4) is indicative of 'good' water quality. The annual environmental report for Mallow WWTP states that the discharge from the wastewater treatment plant is not having an observable negative impact on water quality or an observable negative impact on Water Framework Directive Status.
- Irish Water has been granted permission for substantial upgrade works to the wastewater and storm water management. The elimination of combined storm overflows from the network and the introduction of a storm water overflow holding tank with a capacity of 24,000m³ will greatly reduce the frequency and volume of discharges of untreated wastewater and stormwater

flows to the River Blackwater. The permitted works will increase capacity of the WWTP from 18000 to 22000 p.e. and will be subject to modernisation and improved efficiency. The collective measures are predicted to have a positive impact on water quality, on aquatic ecology and on the conservation objectives for the SAC.

- The increase in the discharge loading arising from the development will be minimal and a representative calculation for notional clear river indicates that the impact of the discharge from the upgraded WWTP will satisfy Surface Water Regulations 2009 standards. Waste Assimilative Capacity and Mass Balance calculations also indicate that the discharge from the WWTP will satisfy Surface Water Regulations 2009 standards.
- The permitted and significant improvements in wastewater and stormwater management in the town will reduce nutrient and silt inputs into the river.
- The development, if approved, is unlikely to come forward until the specified upgrades are delivered in Mallow. The applicant is amenable to a condition requiring that the wastewater connection occur on completion of the said upgrade works.
- It has been concluded that the proposed development will not have a significant adverse effect on the restoration of the adult mussel populations within the overall catchment and will not have an adverse effect on the integrity of the Blackwater River SAC.

7.2. Density

- The proposal, coupled with the existing development, will provide for 152 units on a combined site area of 4.48 hectares equating to a density of 34 units per hectare.
- The site can be classified as 'outer suburban'. The density exceeds the lower threshold of 30 units per hectare as per the Guidelines on Sustainable Residential Development.
- Having regard to the unfinished nature of the site and legacy matters, it is considered that the density is wholly appropriate.

7.3. Connectivity

- The pedestrian connection to the River Valley Estate to the east was omitted at the request of the planning authority.
- The possible future pedestrian connection to the south has been retained.
- The footpath on the south side of the estate entrance terminates at a grass verge for a short distance before recommencing at the Clifden estate entrance. This is a legacy issue related to the unfinished estate. The lands in question have been taken in charge by the local authority. The extension of the footpath is appropriate. It has been agreed that this would be addressed by way of a special development contribution.

7.4. Planning Authority Response

None

7.5. Observations

None

7.6. Section 131 Notice

Certain prescribed bodies were invited to make a submission on the appeal on the basis that the Board is of the opinion that the proposal lies within the screening zone of Blackwater River SAC and is close to recorded monument CO033129 Railway Bridge.

No responses received.

8.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Context and Planning History
- Density and Design
- Site Services
- Appropriate Assessment

8.1. Context and Planning History

The current proposal, as amended, which provides for 94 dwelling units, comprises one of two appeals currently before the Board for the completion of the unfinished housing estate known as Old Course which was granted permission under ref. 04/5426 for 109 dwellings, 135 apartments and creche. To date 57 units have been constructed, located roughly in the centre of the overall holding. The current appeal pertains to the lands generally to the south and east including the area of the attenuation tank in the north-east portion of the site. The 2nd appeal under re. ABP 307414-20 is for the remainder of the holding to the north of the constructed units on which 44 dwelling units are proposed.

As to why the lands are split into two separate parcels and subject of individual applications is unclear with limited reference made to same in the documentation on either file. Notwithstanding, and in view of the clear linkage between the proposals availing of the existing infrastructure, including the road and footpath network developed to date within the scheme, I consider it appropriate that they should be assessed in tandem.

8.2. Density and Design

Density

The lands are c. 1.6 km to the north-west of Mallow town centre and are within its development boundary. As delineated in the Mallow Kanturk Municipal District LAP the lands are within an area zoned residential providing for 'medium A' density of between 20-50 units per hectare. I would concur with the agent for the applicant that the site would be appropriately classified as an outer suburban site although I

note that a large area to the north-east of the appeal site is zoned in the LAP for development including residential development of up to 3,000 units so as to allow for the town's expansion in accordance with its designated hub status (see LAP objective MW-R-04).

Assessed in isolation the current application for 94 units on a site stated to be 4.59 hectares in area equates to a density of 20.7 units. The applicant in the documentation accompanying the application considers the exclusion of the open space area above the attenuation tank in the north-eastern section to be appropriate. Having regard to the Guidelines for Sustainable Residential Development and recommendations in terms of calculating net and gross density I consider the exclusion of the said area equating to 1.46 hectares to be acceptable. This gives a reduced area of 3.13 hectares. This results in a density of 30.5 units per hectare. Whilst within the parameters set out in the LAP it only marginally exceeds the absolute minimum recommended in the said guidelines for such an outer suburban location.

In view of the fact that the proposal will facilitate the part completion of an unfinished housing estate and is inextricably linked to that already developed immediately to the north and that proposed on the remainder of the overall holding further north again, I submit that the density for the overall scheme would be the more appropriate measure. In total 195 residential units are proposed on an overall site of 7.33 hectares which equates to a density of 26.6 units per hectare. The exclusion of the area of the attenuation tank would give a reduced area of 5.87 hectares. This corresponds with the specified site area to which the zoning objective MW-R-02 of the LAP refers. This would give a density of 33.2 units per hectare. For the Board's information the previously permitted development under ref. 04/5426 for 244 units on the 5.87 hectare site (area of storm water tank excluded) resulted in a density of 41.5 units per hectare.

I submit that the development, coupled with that existing and proposed to finish out the estate, would result in a relatively low density that falls marginally short of the recommended minimum of 35 units per hectare for outer suburban sites as set out the guidelines for sustainable residential development. However, having regard to the constraints imposed by the unfinished nature of the estate with that as built in the middle of the site exerting a material influence in terms of layout, and the legacy

issues in terms of the infrastructure constructed to date (estate road layout and attenuation tank), I consider that the provisions for lower densities in limited cases as set out in the guidelines would be acceptable in this instance.

Housing Mix, Layout and Design

Coupled with the existing and proposed development to complete the estate I consider that an acceptable mix of unit types and sizes including apartments, duplex units, townhouses, semi-detached units and 1 single storey unit is proposed. I calculate the estate, when complete, will provide for:

Unit Size	Number	% of total provision
1 bed	7	4%
2 bed	40	21%
3 bed	98	50%
4 bed	50	25%

The layout of the units has evolved through the planning authority assessment process and, as amended, provides for the protection of the amenities of both existing and proposed units. Adequate private amenity space and parking is provided. Due consideration has been given to site levels, with the scheme as amended taking due cognisance of same. The design of the units also has due regard to the scheme as constructed to date and provides for an appropriate level of integration with specific regard had to the proposed external finishes comprising of render with stone detailing.

Open space which equates to approx. 20% of the site area, is interspersed throughout, the largest being that in the north-eastern corner at the location of the attenuation tank. The spaces are considered to be acceptable and benefit from good passive surveillance. A landscaped strip along the wayleave parallel to the eastern site boundary is proposed. I note that the original pedestrian connection to the River Valley estate to the north has been omitted following the request from the Planning Authority. The potential future pedestrian link to the local neighbourhood centre in the southern most corner is to be retained and is acceptable.

A Childcare Needs Assessment accompanies the application. On the basis of the detail provided including proximity of existing facilities and spare capacity available, I accept the conclusions that there is no demand for an onsite creche arising from the proposed developments. The planning authority did not object to the absence of such on-site provision.

Access is via the existing estate entrance. As noted by the agent for the applicant in the grounds of appeal the footpath on the south side of the estate entrance terminates at a grass verge for a short distance before recommencing at the Clifden estate entrance when travelling towards Mallow Town Centre. This is a legacy issue related to the unfinished estate. It is stated that the lands in question have been taken in charge by the local authority. The extension of the footpath is required. A special development contribution is considered the most appropriate way to realise same.

Conclusion

On the basis of the above I consider that the proposed development in its own right and in conjunction with that existing and proposed to complete the unfinished estate is acceptable in terms of both density and design and I have no objection to same subject to conditions.

8.3. Site Services

The site is fully serviced with both surface and waste water arising to be conveyed for treatment to the Mallow Waste Water Treatment Plant (WWTP) which is located approx. 1.9km to the south. As detailed in the Annual Environmental Report 2018 for the WWTP prepared by Irish Water, the Organic Capacity – Design/As constructed (p.e.) was 10500. With a population equivalent loading of 14060 recorded the design population equivalent was exceeded by 3,560 p.e.

Irish Water has secured permission from Cork County Council in January 2020 under ref. 19/5078 for extensive improvement works to the waste water treatment system within the town including removal of combined storm overflows, development of stormwater storage, increased gravity sewer network capacity, increased pumping capacity to the WWTP and increased treatment capacity at the WWTP to 22,000 p.e. to cater for the 10 year design horizon. The project is included in Irish Water's Investment Plan for 2017-2021.

Irish Water has issued a Confirmation of Feasibility under Ref. CDS19004428 (Appendix 2 of NIS) for the proposed development on the basis that there is sufficient capacity in the water and wastewater infrastructure including sufficient capacity in Mallow WWTP.

Should the Board be disposed to a favourable decision I recommend that a condition precluding the occupation of any dwelling unit until the necessary upgrade works to the WWTP have been completed to be appropriate. The applicant is amenable to such a requirement.

8.4. **Appropriate Assessment**

Background

The Board is advised that the EU Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 identified 27 different populations and water bodies as requiring protection, the largest being the Munster Blackwater population in the Munster Blackwater River (main channel). In 2018, the Minister enacted the EU Environmental Objectives (Freshwater Pearl Mussel) (Amendment) Regulations 2018, removing the Munster Blackwater population and the Munster Blackwater River (main channel) from the list of protected populations and sites. Following a legal challenge the said 2018 Regulations were set aside. The 2009 Regulations now apply again to the Munster Blackwater population of Freshwater Pearl Mussel and to the Munster Blackwater River (main channel), as do the various obligations imposed on the Minister by the 2009 Regulations.

The application is accompanied by a Natura Impact Statement (NIS). The Freshwater Pearl Mussel was screened out on the basis of the regulations that pertained at the time of the preparation of the document. Subsequent to the lodgement of the application and the respective requests for further information and clarification of further information by the planning authority the above Court decision setting aside the 2018 regulations was issued. As a consequence of the procedural constraints in terms of seeking information on a new issue not previously raised in the said further information requests the planning authority recommended refusal on the grounds that AA Screening cannot be completed.

The 1st party appeal is accompanied by an Addendum to the NIS specifically addressing the Freshwater Pearl Mussel.

Stage One - Screening

Project Description and Characteristics

The site and proposed development are as described in sections 1 and 2 above.

Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives

There are no European sites within the proposed development area. There are two European sites within 15km of the site.

Site	Qualifying Interests	Distance to Site
River Blackwater (Cork/Waterford) SAC (site code 002170)	Estuaries Mudflats and sandflats not covered by seawater at low tide Perennial vegetation of stony banks Salicornia and other annuals colonising mud and sand Atlantic salt meadows Mediterranean salt meadows Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche- Batrachion vegetation Old sessile oak woods with Ilex and Blechnum in the British Isles Alluvial forests with Alnus glutinosa and Fraxinus excelsior Freshwater Pearl Mussel White-clawed Crayfish Sea Lamprey Brook Lamprey	1.3km to the south

	River Lamprey Twaite Shad Salmon Otter Killarney Fern	
Detailed conservation objectives for the site have been drawn up, the overall aim being to maintain or restore the favourable conservation status of the qualifying interests.		

Kilcolman Bog SPA (site code 004095)	Whooper Swan Teal Shoveler Wetland and Waterbirds	10.6 to north
To date generic conservation objectives apply for the site, again the overall aim being to maintain or restore the favourable conservation status of the qualifying interests.		

Assessment of Likely Effects

As the site is not within a designated site no direct impacts will arise.

I submit that Kilcolman Bog SPA can be screened out from further assessment due to the scale and location of the proposal within the development boundary of Mallow, the surrounding pattern of development and the separation distances between the proposed development and the European site.

There is no direct hydrological link between the appeal site and the River Blackwater (Cork/Waterford) SAC. There are no drains or watercourses within or in the vicinity of the site. The site is within the development boundary of Mallow and is fully serviced with both surface and waste water arising to be conveyed for treatment to the Mallow Waste Water Treatment Plant (WWTP) which is located approx. 1.9km to

the south. The said WWTP plant was originally constructed in the 1980's and was upgraded in 2006-2008 to provide for a population of 18,000 p.e. The outfall from the WWTP discharges to the River Blackwater 700 metres downstream of Mallow Bridge. The WWTP is currently not operating at full capacity with some of the existing treatment units no longer operational requiring refurbishment and/or replacement. As detailed in the Annual Environmental Report 2018 for the WWTP prepared by Irish Water, the Organic Capacity – Design/As constructed (p.e.) was 10500. With a population equivalent loading of 14060 recorded the design population equivalent was exceeded by 3,560 p.e .

Wastewater discharges from Mallow Agglomeration are required to comply with a wastewater discharge licence (D0052-01/A) issued by the EPA (last revised in 2017). The Q value downstream of the existing WWTP (Q4) is indicative of 'good' water quality. The annual environmental report concluded that the discharge from the WWTP is not having an observable negative impact on water quality or an observable negative impact on Water Framework Directive Status.

Irish Water has secured permission from Cork County Council in January 2020 under ref. 19/5078 for extensive improvement works to the waste water treatment system within the town including removal of combined storm overflows, development of stormwater storage, increased gravity sewer network capacity, increased pumping capacity to the WWTP and increased treatment capacity at the WWTP to 22,000 p.e. to cater for the 10 year design horizon. The application was accompanied by a NIS and was subject of Appropriate Assessment. The works are considered to assist in achieving the objectives of the Water Framework Directive by improving water quality in the River Blackwater and assisting the Blackwater in Mallow in achieving good water quality status.

The project is included in Irish Water's Investment Plan for 2017-2021.

Irish Water has issued a Confirmation of Feasibility under Ref. CDS19004428 (Appendix 2 of NIS) for the proposed development on the basis that there is sufficient capacity in the water and wastewater infrastructure including sufficient capacity in Mallow WWTP.

In the context of the imminent upgrades works to the said WWTP and provision of additional capacity as detailed above the proposed development which is calculated

to have a p.e. of 256.5, can be accommodated therein. It would equate to a very small percentage of the overall licensed discharge at the plant and thus its impact on the overall discharge would be negligible. The potential for likely significant effects on the water quality of the SAC as a consequence of the proposed development can, therefore, be discounted.

The proposal is to utilise the existing attenuation tank constructed on site under ref. 04/5426 which will allow a greenfield run-off rate for the development with the tank designed for a 1 in 100 year storm event.

I note that a Construction and Waste Management Plan has been prepared for this scheme and accompanies the application. The measures outlined are regarded as best work practices that are an integral part of the proposed development that will be implemented by those carrying out the development at the same time and as part of the same process, as opposed to separate measures that would be conceived and implemented to mitigate potential impact on Natura 2000 sites. The site, at a remove from the designated site within the town boundary would not give rise to issues in terms of noise and disturbance during the construction phase.

Having regard to the location within the town of Mallow on serviced, zoned lands and to permitted improvement works to the WWTP providing additional capacity for a 10 year design horizon as detailed above, no significant in-combination or cumulative effects are identified in relation to potential effects associated with other plans or projects.

Stage 1 Screening Conclusion

Notwithstanding the submission of an NIS in order to facilitate the Board in carrying out an Appropriate Assessment, I consider that the particular characteristics of the project for which permission is being sought in the current application, including its location on a fully serviced and zoned site are such that it would not be likely to have a significant effect on any Natura 2000 site, either individually or in combination with other projects. This exclusion can be made in view of the objective information set out in the application and this report.

It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects

would not be likely to have a significant effect on the Blackwater River (Cork Waterford SAC (site code 002170), Kilcolman Bog SPA (site code 004095) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harming effects of the project on any European Sites

9.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations, subject to conditions.

10.0 Reasons and Considerations

Having regard to the residential zoning objective for the site as set out in the Kanturk Mallow Municipal District Local Area Plan 2017, and to the planning history of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 17th day of December 2019 30th day of January, 2020 and 25th day of February 2020 and 20th day of March, 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development

and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water,

Reason: In the interest of public health.

3. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. No dwelling or apartment shall be occupied until the upgrade works to the Mallow waste water treatment plant permitted under planning register reference number 19/05078 have been completed.

Reason: In the interest of public health.

5. The development shall be carried out in accordance with the phasing as delineated on drawing no 19088/P/011 Revision P2 received by the planning authority on the 17th day of December, 2019. Works on the 2nd and 3rd phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

6. Details of the materials, colours and texture of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

8. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interest of amenity and public safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

10. All screen walls shall be two metres in height above ground level, constructed in concrete block, and shall be capped, and rendered on both sides in a finish that matches the external finish of the dwellings.

Reason: In the interest of residential and visual amenity.

11. All rear gardens shall be bounded with 1.8 metre high concrete block walls, suitably capped and rendered, on both sides, or by 1.8 metre high timber fences with concrete posts.

Reason: In the interest of residential and visual amenity.

12. Proposals for an estate/street name, housing numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

13. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be levelled, soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 17th day of December, 2019. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

14. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000,

as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the current Development Plan for the area.

15. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

16. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

17. Prior to the commencement of development, the developer shall submit a construction and demolition waste management plan to the planning authority for agreement prepared in accordance with the Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects published by the Department of the Environment, Heritage and Local Government in July 2006. This shall include details of waste to be generated during site clearance and construction phases and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material.

Reason: In the interest of orderly development and sustainable waste management.

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

Reason: In the interests of public safety and residential amenity.

19. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority

and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

20. The developer shall pay to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of the provision of a footpath along local road L1207 southwards from the existing site entrance to the entrance to the Clifden housing estate. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with charges in the Wholesale Price Index – Building and Construction (Capital Goods) published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

21. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Senior Planning Inspector

August, 2020