



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307587-20

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<b>Development</b>	4 houses
<b>Location</b>	Ramparts View, Rahardrum Lane, Virginia
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19514
<b>Applicant</b>	Kevin McWeeney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Inland Fisheries Ireland
<b>Date of Site Inspection</b>	8 <sup>th</sup> September 2020
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. The site is located in an extended settlement area on the edge of Virginia, Co Cavan.
- 1.1.2. The site is accessed via a spine road from the R178, at the eastern (Dublin) end of the village, which accesses various residential developments of similarly recent origin, including Ramparts View and The Drumlins in an area known as Rahardrum. The residential developments include small unfinished areas. In the vicinity of the subject site, there are other similarly sized undeveloped parcels of land, and one which has development under construction. These unfinished area are fenced off and appear not to impact on the amenities of the adjoining developed areas. The site is bounded on two sides by residential roads. A third side is bounded in part by the turning head of a road and the remainder by the flank of an existing dwelling. The fourth side is bounded by the flank of an existing dwelling.

## 2.0 Proposed Development

- 2.1.1. The proposed development is the erection of 4 two storey dwellings in two pairs of semi-detached houses, on an existing residential road.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission subject to 17 no. conditions of which the following are of note:

3 Bond for the maintenance of the entire Rampart View Housing Estate until taken in charge.

4 proposals for compliance with Section 96 prior to commencement.

6 proposed timber fence to the rear to be replaced by brick wall.

7 LED public lighting scheme.

8 connection to public water/ wastewater agreement with IW.

16 Prior to commencement of development the applicant shall submit and agree in writing with the Planning Authority, detailed proposals regarding the completion works to the existing surface water and foul sewerage system serving the existing housing estate and how it can accommodate the proposed development.

Reason: In the interests of public health.

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

#### **3.2.1. Planning Reports**

There are two planning reports on the file. The first recommending a request for further information includes:

Zoned existing residential.

Noting planning history and submissions.

Further information

- 1) Submit a S96 exemption cert.
- 2) Submit DETAILS OF BOUNDARY TREATMENT.
- 3) Engage with Irish Water, through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to public water/wastewater infrastructure. Confirmation of Feasibility (COF) must be submitted to the planning department as the response to this further information request.

#### **3.2.2. Other Technical Reports**

Area Engineer:

Existing footpath is lipped in places. Replace footpath along entire front of site prior to occupation.

### **3.3. Prescribed Bodies**

#### **3.3.1. Irish Water:**

No objection. The applicant must sign a connection agreement with IW prior to the commencement of development. In the interest of public health and environmental

sustainability, Irish Water infrastructure capacity requirements and proposed connections to the water and wastewater infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.

### 3.3.2. IFI

- Citing EU Water Framework Directive.
- Citing Article 5 of the 2009 Surface Water Regulations.
- Lough Ramor is at 'bad status' under the Water Framework Directive and should be at least at 'good status' by the end of 2015.
- From the 2017 Annual Environmental Report (AER) as submitted to the EPA, the design capacity of Virginia WWTP is 3,800pe. This was reassessed from a figure of 2,000 pe in 2016. In the 2017 AER Irish Water reported capacity of 24pe. This was adjusted to 343 in the 2018 AER. IFI understands from a meeting with IW that these figures do not take into account the 105 houses (315 extra pe.) granted (extension of permission) to Capital Oil Supplies Ltd (17/475); or the granted (extension of planning permission) to Lycon Properties Ltd (18/118) for 42 houses (118pe.). These figures do not take into account the recently granted 5 houses (15pe) to Patrick Potter (17/341 and ABP 300872) and 8 houses granted to Mithbro Developments Ltd, currently on appeal. This may potentially leave Virginia WWTP overloaded by 3% or 119pe including this application. They oppose any development in Virginia which may be constructed pre any capital upgrade which may add to this pe.
- The capital upgrade was originally due by the end of 2021. Appendix 1 Table 4 of the River Basin Management Plan for Ireland (2018-2021) indicates that the completion date for the Virginia WWTP upgrade is 2024, this accounts for an extra 5.5% of a potential load. The IW 2018 AER confirms that the expected completion date is 30/3/2024.
- In the CDP it is stated: 'The Waste Water Treatment Plant is currently working over capacity. These are issues which must be addressed before further development can occur in the town'.
- Court of Justice of the European Union judgement (Case C – 461/13 of 2015) held that member states are required, unless a derogation is granted, to refuse an individual project where it may cause a deterioration of the status of a body of

surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Water Framework Directive.

- Board decision 248992, Murmod Estimates Limited, to complete 79 no. houses, refused on the grounds of the inadequacy of Virginia Waste Water Treatment Plan, that *'the proposed development is dependent on the delivery of an upgrade to the plant'*, as far as IFI are concerned it still stands that, *'the nature and extent of the necessary upgrade works is unclear, the necessary consents are not in place and there no defined timeline for the works'*.
- Board decision 303509, Murmod Estimates Limited, to complete 27 no. houses, refused on the grounds of the inadequacy of Virginia Waste Water Treatment Plan to accept wastewater from these houses. IFI believe that *'the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities and the period within which this constraint may reasonably be expected to cease'*.
- There was no Screening for Appropriate Assessment Report or any ecological assessment.
- The planning application should be refused or postponed until the planned upgrading of Virginia Waste Water Treatment Plan has been completed in the form of a clearly worded planning condition that should be inserted into any grant of permission prohibiting any connection to Virginia Waste Water Treatment Plan from this site until the proposed expansion and capital upgrade of Virginia Waste Water Treatment Plan has been commissioned.

#### 4.0 Planning History

306108 - 8 houses refused.

303509 - application to complete 27 houses refused by the Board.

1. The site of the proposed development would ultimately be connected to the Virginia Wastewater Treatment Plant, which in turn discharges into Lough Ramor.

Having regard to:

- (a) The existing constraints at the Virginia Wastewater Treatment Plant, which is currently operating beyond its design capacity of 3,800 p.e,
- (b) the lack of certainty in respect of future capacity improvements to the Wastewater Treatment Plant, and the extended timescale with which any such improvements may be carried out,
- (c) the existing biological status of Lough Ramor, which has been classed by the Environmental Protection Agency as of bad ecological status,
- (d) article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009, which requires that a public authority, in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows 'deterioration in the chemical or ecological status of a body of surface water, and
- (e) article 28(2) of the said Regulations, which states that a surface water body whose status is determined to be less than good shall be restored to at least good status not later than the end of 2015,

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

2. The proposed development discharges to the Virginia Wastewater Treatment Plant, with a primary discharge to Lough Ramor, which links directly to the River Boyne and River Blackwater Special Area of Conservation (Site Code 002299) and River Boyne and River Blackwater Special Protection Area (Site Code 004232). A Natura impact statement (NIS) accompanied the proposed development which:

- (a) identified a potential impact as additional loading on the treatment plant and concluded that the proposed development would not lead to any impact on Lough Ramor once the treatment plant is upgraded, and
- (b) included mitigation measures linking compliance with Emission Limitation Values (ELVs) in line with the Discharge Licence.

In the absence of any upgrade of the treatment plant above its existing capacity the Natura impact statement could not definitively conclude that the proposed development

would not have a significant negative impact on the Conservation Objectives of the European Site.

Accordingly, the Board cannot be satisfied, beyond reasonable scientific doubt on the basis of the information contained in the Natura impact statement made in connection with the planning application and the appeal, that adequate information has been provided on the impact of the proposed development on ecological status of the receiving waters in the River Boyne and River Blackwater (Site Code 002299) and River Boyne and River Blackwater Special Protection Area (Site Code 004232).

It is considered, therefore, that the Board is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the proposed development will not adversely affect the integrity of a European Site and it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

300872 - application for 4 semi-detached houses granted by the Board.

247622 - 1 house refused

248992 - retain and complete 21 houses refused.

245105 - 1 house granted

01/784 – permission to develop 41 dwellings to connect to existing partially complete housing development – withdrawn.

04/1525 - permission granted to erect 105 dwellings to connect to existing mains sewerage via pumping station.

06/1037 - permission granted to revise site layout 04/1525.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The Cavan County Development Plan 2014-2020 is the relevant statutory plan.

Relevant provisions include:

- Virginia is designated as a Tier 2 Settlement (Large Town). The Virginia Town Development Plan is provided in Chapter 13 of the County Development Plan.
- The site is predominantly zoned “Proposed Residential” with an objective “To provide for residential development and to protect and improve residential amenity. New housing and infill developments should be of sensitive design which is complimentary to their surroundings. Residential development shall ensure the provision of high quality new residential environments with good layout design and adequate private and public open space and also provide an appropriate mix of house sizes, types and tenures. No piecemeal development can take place unless it does not conflict with the possible future development of towns.”
- Infrastructure section states that “The Waste Water Treatment Plant is currently working over capacity. These are issues which must be addressed before further development can occur in the town.”

## **5.2. Natural Heritage Designations**

- 5.2.1. The nearest Natura sites are the River Boyne and River Blackwater SPA 004232 River Boyne and River Blackwater SAC 002299, located c6km distance downstream.

## **5.3. EIA Screening**

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The third party appeal against the Planning Authority's decision to grant permission submitted by Inland Fisheries Ireland, includes:
- EU Water Framework Directive.
  - Article 5 of the 2009 Surface Water Regulations.
  - Lough Ramor is at 'bad status' under the Water Framework Directive and should be at least at 'good status' by the end of 2015.
  - From the 2017 Annual Environmental Report (AER) as submitted to the EPA, the design capacity of Virginia WWTP is 3,800pe. This was reassessed from a figure of 2,000 pe in 2016. In the 2017 AER Irish Water reported capacity of 24pe. This was adjusted to 343 in the 2018 AER. IFI understands from a meeting with IW that these figures do not take into account the 105 houses (315 extra pe.) granted (extension of permission) to Capital Oil Supplies Ltd (17/475); or the granted (extension of planning permission) to Lycon Properties Ltd for 42 houses (118pe.). These figures do not take into account the recently granted 5 houses (15pe) to Patrick Potter (17/341 and ABP 300872). This may potentially leave Virginia WWTP overloaded by 3% or 119pe including this application. They oppose any development in Virginia which may be constructed pre any capital upgrade which may add to this pe.
  - In 2018 Virginia WWTP was non-compliant with Emission Limitation Values (ELVs) due to stormwater overflow. This highlights deficiency in the wastewater collection system.
  - The attach an EPA audit report which they wish the Board to note regarding serious deficiencies in Virginia WWTP.
  - The capital upgrade was originally due by the end of 2021. Appendix 1 Table 4 of the River Basin Management Plan for Ireland (2018-2021) indicates that the completion date for the Virginia WWTP upgrade is 2024, this accounts for an extra 5.5% of a potential load. The IW 2018 AER confirms that the expected completion date is 30/3/2024.

- The CDP 'The Waste Water Treatment Plant is currently working over capacity. These are issues which must be addressed before further development can occur in the town.
- Court of Justice of the European Union judgement (Case C – 461/13 of 2015) held that member states are required, unless a derogation is granted, to refuse an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Water Framework Directive.
- Board decision 248992, Murmod Estimates Limited, to complete 79 no. houses, refused on the grounds of the inadequacy of Virginia Waste Water Treatment Plan, that *'the proposed development is dependent on the delivery of an upgrade to the plant'*, as far as IFI are concerned it still stands that, *'the nature and extent of the necessary upgrade works is unclear, the necessary consents are not in place and there no defined timeline for the works'*.
- Board decision 303509, Murmod Estimates Limited, to complete 27 no. houses, refused on the grounds of the inadequacy of Virginia Waste Water Treatment Plan to accept wastewater from these houses. IFI believe that *'the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities and the period within which this constraint may reasonably be expected to cease'*.
- Board decision 306108, Mithbro Developments, to build 8 houses, refused on the grounds of the inadequacy of Virginia Waste Water Treatment Plan to accept wastewater from these houses.
- There was no Screening for Appropriate Assessment Report or any ecological assessment.
- The planning application should be refused or postponed until the planned upgrading of Virginia Waste Water Treatment Plan has been completed in the form of a clearly worded planning condition that should be inserted into any grant of permission prohibiting any connection to Virginia Waste Water Treatment Plan from

this site until the proposed expansion and capital upgrade of Virginia Waste Water Treatment Plan has been commissioned.

- Irish Waters Annual Environmental Report for Virginia (December 2019) is included as an appendix to the appeal.

## 6.2. Applicant Response

6.2.1. The applicant has not responded to the grounds of appeal.

## 6.3. Planning Authority Response

Re grounds of appeal:

- They note reference to the 2019 decision to refuse permission for 27 houses, (303509) and the 2020 decision to refuse permission for 8 houses, (306108) refused due to the constraints on Virginia Waste Water Treatment Plan. As part of the planning application the applicant has submitted a letter from IW which confirms that a connection to the WWTP for 4 houses can be facilitated.
- Appropriate Assessment is not required for this development due to the nature of the development and the distance of same from the nearest Natura 2000 site.
- The inspector's report on 17/345 is referred to, where permission for 5 houses was granted by the Board.
- It is Irish Water's responsibility to advise whether there is sufficient capacity to accommodate such developments.

## 7.0 Assessment

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the development and effluent disposal and the following assessment is dealt with under these headings.

## 7.2. Appropriate Assessment

- 7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.
- 7.2.2. Neither an NIS nor an Appropriate Assessment Screening Report were submitted with the application.
- 7.2.3. The following European sites are located in the vicinity of the site:

European Site	Site Code	Relevant QIs & CIs	Distance
River Boyne and Blackwater SAC	002299	alkaline fens alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> river lamprey, atlantic salmon and otter	c4.5km south (downstream)
River Boyne and Blackwater SPA	004232	Kingfisher	c4.5km south (downstream)

- 7.2.18. The subject site is located close to Lough Ramor and the wastewater treatment system for the town discharges to the lake. River Blackwater flows into Lough Ramor c. 1.1 km's south of the site and flows out of Lough Ramor at the downstream/southern end of the lake. From immediately downstream of Lough Ramor the River Blackwater is part of the designated River Boyne and Blackwater SAC and the River Boyne and Blackwater SPA is located further south.

- 7.2.1. The Conservation Objectives for both the SAC and SPA are to maintain or restore the favourable conservation condition of the qualifying interests for which the SAC/SPA has been selected.
- 7.2.2. Surface water in the area drains to the watercourse to the west which forms part of the Blackwater Sub-Catchment and wastewater from the development would be directed to the Virginia Waste Water Treatment Plant, which has its discharge to Lough Ramor upstream of the designated sites.
- 7.2.3. The Waste Water Treatment Plant is operating beyond its design capacity. Having regard to the current deficiencies in the treatment plant I consider that the proposed development would pose a risk to water quality in Lough Ramor and in the River Blackwater and that potential impacts on the River Boyne and River Blackwater SAC and SPA cannot be ruled out. In relation to a possible future upgrade of the plant, the nature and extent of the necessary upgrade works is unclear, the necessary consents are not in place and there is no defined timeline for the upgrade.
- 7.2.4. On the basis of the foregoing, I am not satisfied that sufficient information exists to reach a conclusion that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Boyne and River Blackwater SAC (Site Code: 002299) and River Boyne and River Blackwater SPA (Site Code:004232), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

### **7.3. Principle of the Development**

- 7.3.1. The proposed development is located in an area zoned for residential use. The design and layout is compatible with the surrounding area. The need for this residential development in the context of the extent of residential development in the town, which might otherwise need to be established; or the design and density of this infill site, having regard to the requirements for sustainable urban density; must in this case take account of the planning history of the site. I am satisfied that the development is acceptable in principle subject to the provision of adequate wastewater infrastructure.

## 7.4. Wastewater Disposal

- 7.4.1. Wastewater from the proposed development would connect to the public network, which discharges to the Virginia Waste Water Treatment Plan (WWTP). The appellant (Inland Fisheries Ireland) argues that the treatment plant is currently operating beyond its design capacity and opposes any development that would add to the current loading.
- 7.4.2. The Planning Authority in response to the grounds of appeal state that it is a matter for Irish Water to determine whether or not the plant has capacity to accommodate the additional houses.
- 7.4.3. The IFI submission includes a copy of the EPA site visit report of 18/12/2019, from which it is clear that the treatment plant is currently operating outside its licence and does not have capacity to accommodate the additional houses.

The summary section of the report states:

Discharges from the Virginia agglomeration have been identified as one of the pressures putting Lough Ramor at risk of not meeting the environmental objectives required by the Water Framework Directive. The waste water discharge licence for Virginia (Reg No D0255-01) requires an upgrade of the WWTP by 31/12/2021 to ensure that the emission limit values (ELVs) specified from that date (new ELVs for Ammonia and total Phosphorus) are complied with. The Virginia agglomeration is on the EPA's priority list of urban areas where improvements are needed and the EPA has an open Compliance Investigation (ref CI001172).

The EPA notes Irish Water's responses under CI001172 with regard to planned upgrades to the Virginia WWTP and replacement pumps in the inlet works. However the proposed date for completion of the works is over two years after the date specified in the licence, the WWTP is experiencing ELV breaches of the licence on occasion and the WWTP is hydraulically overloaded on a regular basis following heavy rainfall/storm events which causes partial washout of the WWTP. The onus is on IW to comply with the ELVs specified in the licence.

Irish Water is required to address the issue highlighted in this report and as a priority the washout issue referred to above. IW shall provide updates to the

EPA on the measures being taken to ensure compliance with the requirements of the waste water discharge licence for Virginia (Reg No D0255-01) by way of response to CI actions INCI014998 with full details as set out in Condition 6.1 of the licence.

In addition the report refers to the provision of replacement pumps in the works ensuring that all waste water collected is sent forward for treatment, however the WWTP is not able to treat all this waste water load and it is causing partial washout on occasions.

- 7.4.4. In my opinion, having regard to the deficiencies noted, the discharge of further effluent to the WWTP would exacerbate current problems, would contribute to pollution of this waterbody and would therefore be contrary to the proper planning and sustainable development of the area.

## **8.0 Recommendation**

- 8.1.1. I recommend that planning permission for the proposed residential development be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. The proposed development would be connected to the Virginia Wastewater Treatment Plant, which in turn discharges into Lough Ramor. Having regard to: (a) the existing constraints at the Virginia Wastewater Treatment Plant, which is currently operating beyond its design capacity (b) the lack of certainty in respect of future capacity improvements to the Wastewater Treatment Plant, (c) the existing biological status of Louth Ramor, which has been classed by the Environmental Protection Agency as of bad ecological status, (d) article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009, which requires that a public authority, in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows 'deterioration in the chemical or ecological status of a body of surface water, and (e) article 28(2) of the said Regulations, which states that a surface water body whose status is determined to be less than good shall be restored to at least good status not later than the end

of 2015, it is considered that the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage facilities and the period within which this constraint may reasonably be expected to cease and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant adverse effect on European Site No. 002299 (River Boyne and River Blackwater SAC) and 004232 (River Boyne and River Blackwater SPA) in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

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Planning Inspector

30 September 2020

Appendices

Appendix 1: photographs

Appendix 2: Cavan County Development Plan 2014-2020, extracts