



An  
Bord  
Pleanála

## Inspector's Report ABP 307632-20

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<b>Development</b>	21 dwellings
<b>Location</b>	Woodlands, Mill Road, Corbally, Co. Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	19/682
<b>Applicant</b>	Rocktop Asset Management Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. refusal
<b>Appellant</b>	Rocktop Asset Management Ltd.
<b>Observer(s)</b>	1. Sharon & Declan Duggan 2. Ann O'Sullivan 3. Noel Nicholas 4. Michael Gilroy 5. Maria C. Ryan

6. Deirdre Kerrigan on behalf of Silverbrook Residents Assoc.
7. Rosaleen Bolger
8. Veronica O'Neill
9. Liam Joyce, Brookhaven Walk Residents Committee
10. James & Orla O'Sullivan
11. Nik Robson
12. Lisa Sheehan
13. Alan Lynch
14. Declan Greene
15. Sharon Martin
16. Kieran Martin
17. Lavina Duggan, Spring Grove residents
18. Aidan and Lavina Duggan
19. Gerard & Lucy Hayes & Others

**Date of Site Inspection**

23/09/20

**Inspector**

Pauline Fitzpatrick

## 1.0 Site Location and Description

The site is currently accessed via a private dwelling site known as Woodlands which, itself, is accessed from Mill Road in Corbally c. 2.5km to the north of Limerick City Centre. The site is roughly rectangular in shape and slopes down from east to west. It has a stated area of 1.247 hectares. It is overgrown and was inaccessible on day of inspection.

Woodlands House, which is a detached two storey red brick dwelling with private amenity space (access is via it's curtilage), bounds the site to the east. The shared boundary is delineated by fencing and mature trees. The site is bounded to the north by a detached dwelling and a small cul-de-sac of detached two storey dwellings to the south. The lands to the west are undeveloped with the Abbey River c.300 metres from the site boundary. The Limerick-Galway railway line runs in-between.

The front boundary of the site to Mill Road is delineated by a high stone wall backed with trees. Mill Road in the vicinity of the site is narrow with a footpath which cannot facilitate two way pedestrian movements on the side of the appeal site. Traffic calming measures in the form of ramps are noted along its length. Scoil Ide primary school is 200 metres to the south of the appeal site which, itself, is in close proximity to the signalised junction of Mill Road, Corbally Road and Rosedale/Roseville Gardens.

## 2.0 Proposed Development

The application was lodged with the planning authority on the **10/07/19** with revised plans and details submitted **15/04/20** following a request for further information dated 27/08/19 (period for submission extended). Revised public notices were received 11/05/20.

The original proposal for 21 dwellings was reduced by way of further information to 16 no. dwellings comprising:

- 14 no. 4 bedroom units
- 2 no. 3 bedroom units

The application is accompanied by:

- Urban Design Statement
- Traffic and Transport Assessment (updated by way of FI)
- Stage 1 Road Safety Audit
- Architectural Impact Statement
- Landscape Specification
- Arboricultural Impact Assessment Report
- Flood Risk Assessment (updated by way of FI)
- Ecological Impact Assessment
- Natura Impact Statement

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Refuse permission for the above described development for 4 no. reasons which can be summarised as follows:

1. The applicant has failed to demonstrate that the proposal would not have an adverse impact on the Lower River Shannon SAC and its qualifying interests, including but not limited to annex habitat hydrophilous tall herb fringe communities of plain and of the montane to alpine levels.
2. The site is within an area identified as being at risk of fluvial flooding and adjoins the existing Corbally Embankments which forms part of the study area of the CFRAM Phase II Programme (Limerick City and Environs Flood Relief Scheme). The proposal would be premature pending the delivery of the programme. It would be contrary to development plan objective WS.9 which seeks to ensure development should not be at inappropriate risk of flooding or exacerbate such a risk elsewhere and would be contrary to the Guidelines on the Planning System and Flood Risk Management.

3. The proposal fails to include proper cycle and pedestrian facilities between the site entrance and the primary school to the south. The increased pedestrian movement along this portion of the road would be inherently hazardous. The absence of suitable pedestrian facilities would lead to an increase in unsustainable use of the private car. The proposal would endanger public safety by reason of traffic hazard.
4. Failure to demonstrate that the development would not adversely affect the favourable conservation status of the lesser horseshoe bat with a potential loss of foraging habitat.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The *1<sup>st</sup> Planner's report* dated 26/08/19 (countersigned) refers to Woodlands house as a protected structure. In addition to the issues raised in the other technical reports detail is required on site levels and house design, masterplan showing access to adjoining residential lands, alterations/details on boundary treatment and dwelling finishes. Further information recommended.

The *2<sup>nd</sup> report* dated 16/06/20 (countersigned) following further information notes:

- approx. one third of the site is within a flood extent area and contains marsh habitat which may contain an annex habitat. The extent of the loss and destruction of the marsh habitat has not been properly quantified or assessed. The NIS is deficient as per the Heritage Officer's report.
- whilst the provision of open space is considered acceptable as a water compatible use in the Planning and Flood Risk Guidelines, the creation of a play area and potential impact of same on marsh habitats has not been adequately assessed.
- the open space would be rendered unusable during winter and early spring due to flood risk.
- the proposal seeks to alter levels which have not been adequately assessed and may potentially affect the average storage of flood waters. In the absence of the completed CFRAM Phase 2 the proposal is premature.

- the marsh habitat and flood risk have a symbiotic relationship which has not been adequately addressed.
- the proposal would be contrary to development plan policy LBR.8 which seeks to apply the precautionary principle in relation to developments in environmentally sensitive areas.
- it would be contrary to policy LBR21 which requires play areas to be close to houses to ensure overlooking and accessibility.
- the public lighting requirements would be in conflict with the light sensitive lesser horseshoe bat. Fragmentation of habitat is a cause of concern.
- there is a lack of adequate pedestrian and cycling facilities on Mill Road and would be contrary to DMURS.

A refusal of permission for 4 reasons recommended.

### 3.2.2. Other Technical Reports

*Physical Development Department* in emails dated 02/08/19 and 10/06/20 objects to the proposal on the principle of flood risk management. The existing Corbally Embankments and adjoining Lower River Shannon SAC are included in the study extents of the CFRAM Phase II Programme (Limerick City and Environs Flood Relief Scheme). The proposal would be premature pending investigations, route alignment, detailed design and delivery of the CFRAM Phase II Programme appropriate to the flood risk within the area. A *further report* via email dated 29/07/20 states that the footpath/cycle provisions on Mill Road from the site to the school are inadequate. The development is premature until such facilities can be provided.

*Roads Section* in a report dated 22/08/19 recommends further information on cycle and pedestrian facilities from the site entrance to the school, revised public lighting design, road and footpath layout, surface water hydraulic modelling, attenuation tanks and road markings and signage. The *2<sup>nd</sup> report* dated 29/07/20 recommends clarification of further information on public lighting, surface water drainage and road signage and markings.

*Environmental Services* in emails dated 15/08/19 & 23/08/19 recommend conditions re. site specific waste management plan.

*Conservation Officer* in a report dated 26/08/19 recommend further information on the construction date and occupancy of Woodlands, detailed survey drawing of boundary wall to be demolished and full archival standard photographic study of existing building and lands. The 2<sup>nd</sup> report dated 11/06/20 following further information considers the information provided to be useful and provides an insight into the evolution of both the building and the plot of land associated with it. Conditions recommended should permission be granted.

*Heritage* in an email dated 26/08/19 recommends refusal on grounds of loss of marsh habitat at the rear of the site which may contain pockets of annexed habitat hydrophilous tall herb fringe communities of plains and of the montane to alpine levels and that the development would effectively remove the area from bat usage. The 2<sup>nd</sup> report via an email dated 09/06/20 following further information notes that the NIS was not revised. It is difficult to assess the loss of annex habitat. The scheme will result in loss of foraging habitat for the lesser horseshoe bat. A refusal of permission is recommended.

*Archaeologist* in a report dated 14/08/19 recommends archaeological monitoring.

*Fire Authority* has no objection.

### 3.3. Prescribed Bodies

*Irish Water* in a report dated 26/07/19 has no objection subject to conditions.

The *Department of Culture, Heritage and the Gaeltacht* in a letter dated 13/08/19 notes the proximity of the site to the Lower River Shannon SAC and that the Council must ensure that there is no potential impact on water quality. Three trees were identified as having medium bat roosting potential. A further survey should be carried out to identify if these trees are being used by bats. If bats are found to be roosting a derogation licence will be required. All mitigation measures in the Ecological Impact Assessment to be adhered to.

### 3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the observations summarised in section 6 below.

### 4.0 **Planning History**

I am not aware of any previous planning applications on the site.

### 5.0 **Policy and Context**

#### 5.1. **Development Plan**

##### ***Limerick City Development Plan 2010-2016 (as extended)***

The site is within an area zoned ZO.2 (A) the objective for which is to provide for residential development and associated uses.

As per Map 2 the western part of the site is within Flood Zone A.

*Policy WS.8 Flood Protection* - to continue to work towards reducing flooding within the City and ensure that all new development proposals comply fully with the requirements of 'The Planning System & Flood Risk Management Guidelines for Planning Authorities', 2009, and any additional guidance introduced during the lifetime of the Development Plan.

##### *Objectives:*

- Avoid the risk of flooding by not permitting development in flood risk areas, particularly floodplains, unless where it is fully justified that there are wider sustainability grounds for appropriate development and unless the flood risk can be managed to an acceptable level without increasing flood risk elsewhere and where possible, reducing flood risk overall.
- Adopt a sequential approach to flood risk management based on (1) avoidance, (2) reduction and only then (3) mitigation of flood risk as the overall framework for assessing the location of new development.



- Incorporate flood risk assessment into the Development Management process and planning appeals.
- Cater for future developments through public and private driven initiatives where capacity permits.
- In association with the Office of Public Works, develop a Flood Risk Map of the City in accordance with Section 14.6 of the requirements of the EU Floods Directive (Directive 2007/60/EC).

*Policy WS.9 Flood Risk* - to ensure that development should not, itself, be subject to an inappropriate risk of flooding nor should it cause or exacerbate such a risk at other locations.

Development that is sensitive to the effects of flooding will generally not be permitted in flood prone or marginal areas.

Appropriately designed development, which is sensitive to the effects of flooding, may be permissible in flood plains provided it does not reduce the flood plain area or otherwise restrict flow across floodplains. (Examples of such development might include park areas, sports pitches, certain types of industry, warehousing, etc. designed to be flood resistant and/or insensitive. Such development should only be permitted provided it incorporates adequate measures to cope with the ever-existent flood risk, e.g. adequate drainage systems, safety measures, emergency response facilities and/or warning and response systems and where it is considered that flooding would not result in significant hardship/financial loss or cost.)

Development must, so far as is reasonably practicable, incorporate the maximum provision to reduce the rate and quantity of runoff.

## 5.2. **Natural Heritage Designations**

The Abbey River which forms part of the Lower River Shannon SAC (site code) is c. 300 metres to the west of the site boundary. The nearest point of the SAC is c. 100 metres to the north.

### 5.3. Environmental Impact Assessment

Having regard to the nature and extent of the proposed development on zoned and serviced lands within Limerick city, 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submission by Future Analytics Consulting Ltd. on behalf of the 1<sup>st</sup> Party against the Planning Authority's notification of decision to refuse permission, which is accompanied by a report by JBA Consulting and other supporting documentation, can be summarised as follows:

#### 6.1.1. Overview

- The current zoning provisions state that the site is suitable for residential development.
- The proposal complies with the NPF and the Southern Regional Spatial and Economic Strategy in terms of settlement location policy and provision of residential development.
- The proposal presents an opportunity to unlock the wider area's potential having regard to the quantum of land zoned for residential development under zoning objective ZO-2(A).

#### 6.1.2. Reason for Refusal No.1 – Integrity of SAC

- Annex 1 habitat 'hydrophilous tall herb fringe communities of plains and of montane to alpine levels' is not a qualifying interest of the Lower River Shannon SAC or of the other Natura 2000 sites in the area.
- The habitat was not found on the site.
- There are no deficiencies in the NIS. The conclusions were misunderstood by the planning authority.

- The proposal will not have significant impacts on the Lower River Shannon SAC or on any other Natura 2000 site in the area.

#### 6.1.3. Reason for Refusal No.2 – Flood Risk

- The Limerick City and Environs Flood Relief Scheme is known to be several years away. The application site and adjoining lands should not be sterilised until the scheme is carried out. Adequate measures can be implemented on Mill Road to accommodate the development.
- Following an examination of the Catchment Flood Risk Assessment and Management (CFRAM) Phase 1 Preliminary Options Report, the local topography, environmental constraints and specific flood risks, it is concluded that the embankment alignment as indicated in CFRAM is unlikely to form the preferred flood relief scheme for the Corbally area. The location, elevation, current and future flood risks give no reason to think the embankment will need to pass anywhere near the proposed development site. On this basis the proposal is not considered premature.
- The conclusions of the Flood Risk Assessment demonstrate compliance with policy WS.9 of the City Development Plan and the Guidelines on the Planning System and Flood Risk Management and will not cause flood risk to neighbouring lands.

#### 6.1.4. Reason for Refusal No.3 – Lack of Adequate Pedestrian and Cycling Facilities

- Limerick City and County Council intends to construct a 3 metre wide off road shared walking and cycling path along a 600 metre stretch of Mill Road connecting Scoil Ide to the northern part of Mill Road (access to the residential cul-de-sac). A public consultation event for same is scheduled with a Part VIII application expected shortly after.
- The site is currently bordered along its eastern boundary by a 2.5 metre high stone wall beyond which there is a 1.2 metre wide footpath which runs the length of Mill Road.
- The applicant, as far as practicable, has sought to improve pedestrian and cycling facilities. The proposal entails the repositioning of the stone wall and increasing the width of the footpath to 2 metres along the site frontage which

exceeds both development plan and DMURS requirements. Cycle parking is provided for.

- The applicant will discharge its obligations under section 48 with respect to the General Development Contribution Scheme.
- The applicant is willing to liaise with the council to provide a shuttlebus service to Scoil Ide until such time as the pedestrian and cycle upgrades have been carried out.
- It is not the case that the increased pedestrian movements along this section of the road would be inherently hazardous and further endanger public safety by reason of traffic hazard.
- The applicant is willing to liaise with the council to provide appropriate speed calming measures along Mill Road in the vicinity of the site.
- The carparking provision accords with the development plan requirements.

#### **6.1.5. Reason for Refusal No.4 – Impact on Bats**

- The mitigation developed for bat species goes over and above legislative requirements and the modelled light spillage shows that the development will not result in the loss of foraging habitat. See report from JBA Consulting

#### **6.2. Planning Authority Response**

None received.

#### **6.3. Observations**

Observations have been received from

- Sharon & Declan Duggan
- Ann O'Sullivan
- Noel Nicholas
- Michael Gilroy
- Maria C. Ryan

- Deirdre Kerrigan on behalf of Silverbrook Residents Assoc.
- Rosaleen Bolger
- Veronica O'Neill
- Liam Joyce, Brookhaven Walk Residents Committee
- James & Orla O'Sullivan
- Nik Robson
- Lisa Sheehan
- Alan Lynch
- Declan Greene
- Sharon Martin
- Kieran Martin
- Lavina Duggan, Spring Grove residents
- Aidan and Lavina Duggan
- Gerard & Lucy Hayes & Others

The submissions can be summarised as follows:

#### 6.3.1. **Access and Traffic**

- Traffic congestion in the area will be exacerbated. The signalised junction of Mill Road-Corbally Road and Roseville Gardens is operating above capacity during AM and PM peaks.
- Mill Road is a cul-de-sac, it is too narrow with a footpath on one side only. The current situation is hazardous.
- There is no extant project for Mill Road in the council's work programme. A financial contribution would not help to address the issue.
- The provision of a shuttlebus is not considered a practical option.
- The proposed pedestrian and cycle path will not address the material issues. It may not have the support of landowners and has not gone through Part 8. Public consultation has not yet taken place. It is aspirational.

- The Board refused permission for an apartment scheme at Hillside, Mill Road under ref. PL30.219670 on grounds of traffic and inadequacy of Mill Road.
- The proposed entrance from Mill Road is inadequate. The road at this section is too narrow. Sight lines will be restricted.
- The traffic assessment does not take into account the increased traffic anticipated when the Limerick Northern Distributor Road and the University of Limerick Northern Campus projects are realised.

### 6.3.2. Flood Risk

- The site is on the steep bank and includes part of a flood plain.
- The proposal contravenes City Development Plan policies and objectives pertaining to flood risk.
- The proposal is premature pending the delivery of CFRAM Phase II.
- The surface water disposal proposal to drains, which are inadequate, will exacerbate flooding downstream.
- The potential flood relief measures envisaged in the JBA report relate to the existing residential areas on Mill Road and do not take account of the expanded residential area envisaged in the appeal submission.
- It is considered appropriate that the planning for flood risk should be carried out in the wider context of the east bank of the Abbey River and not on a site-by site basis.

### 6.3.3. Biodiversity

- The NIS is deficient.
- It has not been demonstrated that the proposal will not have significant adverse impacts on the Lower River Shannon SAC.
- Gaps/lacunae exist in the baseline biodiversity information which negates AA.
- There is a lack of clarity as to whether hydrophilous tall herb fringe communities of plain and of the montane to alpine levels is on site.
- The wording of the planning authority's 1<sup>st</sup> reason for refusal is not limited to the qualifying interests of the Lower Shannon SAC.

- Further assessment is required on the potential impact on waterbirds.
- A large badger sett was not identified.
- The proposal has not adequately demonstrated that the lesser horseshoe bat will not be adversely affected.

#### 6.3.4. Scheme Design

- The density of the scheme is not reflective of that prevailing in the area.
- Adverse impact on adjoining properties arising from overlooking and loss of privacy.
- The amenity space is substandard with respect to access, lack of overlooking and passive surveillance and may give rise to anti-social behaviour. The series of access ramps are not user friendly for those with impaired mobility.
- The proposal to raise the lands will result in level differentials to adjoining lands of 2.5 metres. The rear boundary walls will be c.4 metres higher than the lands and properties and will be overbearing.
- There appears to a 2.4 metre strip of land locked space proposed between the rear of house nos. 9-12 and the existing houses on the lane off Mill Road. This could lead to anti-social behaviour and have adverse impacts on adjoining property.
- The proposals put forward to allow for the potential future development of lands to the north behind existing housing on Mill Road is flawed. The lands are not suitable for large scale residential development. The proposal would set a dangerous precedent.
- The design is car dependent.
- The development will result in the deterioration to the setting of Woodlands house and other properties listed as being of regional importance.
- The issue of surface water disposal onto adjoining lands has not been addressed.
- Foul drainage has not been given proper consideration.

#### 6.4. **Section 131 Notice**

In view of the site's location in proximity to the Lower River Shannon SAC (site code 002165) certain prescribed bodies were invited to make a submission on the application.

No responses received.

### 7.0 **Assessment**

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

- Zoning Provisions
- Flood Risk
- Design and Layout
- Access and Traffic
- Biodiversity
- Other Issues
- Appropriate Assessment

#### 7.1. **Zoning Provisions**

- 7.1.1. The site is accessed from Mill Road which is a mature residential area characterised by large detached dwellings on relatively large plots. In view of the proximity to Limerick City Centre it has the characteristics of an inner suburban location. The proposed development for a small residential scheme accords with the ZO.2(A) zoning provisions for the site as set out in the current City Development Plan, the objective for which is to provide for residential development and associated uses. However the acceptability of the proposal is predicated on other environmental and planning considerations being satisfied.



## 7.2. Flood Risk

- 7.2.1. As per Map 2 of the current Limerick City Development Plan approx. a third of the site is within Flood Zone A. The Flood Risk Assessment confirms that the western portion of the site is deemed to be at high risk of flooding from a tidal event with the 10% AEP flood extent partially inundating the site and the 1% and 0.1% covering the lower lying portion of the site. The risk from fluvial flooding is moderate, with the western area of the site at risk from the 1% and 0.1% AEP flood extent. The area flooded is stated to span a distance of c.45 metres from the western boundary. The eastern section of the site is within Flood Zone C.
- 7.2.2. The Guidelines on the Planning System and Flood Risk Management 2009, amended and clarified by the subsequent Circular PL2/2014, state that most types of development would be considered inappropriate in this zone and should be avoided and/or only considered in exceptional circumstances and where the justification test has been applied. These principles have been incorporated into the County Development Plan. Policies WS.8 and WS.9 seek to avoid development in areas at risk of flooding and, where development in floodplains cannot be avoided, that a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk is taken. Essentially, save for certain water compatible uses there is a presumption against development.
- 7.2.3. The layout and design of the proposed development has been informed by the flood risk constraints and, in my opinion, the issues are inextricably linked in terms of assessment. I propose to address the scheme design and layout in section 7.3 below.
- 7.2.4. The dwellings are to be located in the eastern most section of the site with the lowest finished floor level set at 9.25mOD which is c. 4 metres above the 0.1% AEP flood level and 3 m above the 0.1% AEP flood level under the high end future climate change scenario.
- 7.2.5. The scheme, as amended by way of further information, proposes a small area of fill to accommodate the carparking and attenuation tank within the tidal 0.5% AEP and 0.1% AEP extents. It is stated in the appeal submission that no compensatory storage for loss of floodplain is required for changes in ground levels within the 0.1% AEP extent, or where the source of flooding is tidal regardless of the frequency of

tidal inundation. The part of the floodplain within the site boundary is considered 'inactive' and not used to convey flood waters and thus there would be no impact on flow paths as a result of the development. It is concluded that as there is no loss of active floodplain and no change in flow path there would no impact in flood risk to neighbouring lands.

- 7.2.6. In terms of surface water management SuDS principles are to be incorporated with a sealed attenuation tank proposed to discharge to the drain along the northern boundary for infiltration to groundwater or discharge to the River Shannon. By way of further information the agent for the applicant states that the drain is within the site boundary. This is contested by an observation made on behalf of the adjoining landowner which states that the said drain is not within the appeal site but within his property and is not connected to a drainage network.
- 7.2.7. The site is adjacent to the Corbally Embankments and the Lower River Shannon SAC which form part of the CFRAM Phase II Programme of the Limerick City and Environs Flood Relief Scheme. As noted by the agent for the appellant in the appeal the realisation of the said scheme remains a number of years away. In this regard I note that a project brief for the procurement of Engineering and Environmental Consultants has been drawn up and advertised by Limerick City and County Council with the closing date being 22/05/20. The appointed consultants are to be tasked with the identification and development of a preferred scheme and progressing the project through the planning process and to procurement through to overseeing its construction.
- 7.2.8. The agent for the appellant in the appeal submission makes reference to the scheme options revised under the Preliminary Options Report published in 2016 with the preferred scheme c. 100-200 metres from the site. It is stated that the preferred embankment route would not impact/have any interaction with the proposed development. The response goes further and makes recommendations for alternative embankments routes and reasons for same concluding that the embankment alignment as indicated in the CFRAM is unlikely to form the preferred flood relief scheme for the Corbally Area.
- 7.2.9. Whilst I acknowledge the author's expertise in this area the fact remains that the final scheme design has not yet been decided upon and will be a matter for the appointed

consultants to determine. To adjudicate the application on what is effectively conjecture at this juncture is inappropriate.

- 7.2.10. Whilst the applicant may have provided sufficient information to support its case that the proposed development in itself would not exacerbate flood risk downstream, on the basis of the above detail I consider that the proposal is premature pending the finalisation of the preferred flood relief scheme. In this regard I am cognisant of the extent of lands zoned for residential purposes in the immediate vicinity, the development potential of which will be largely reliant on the advancement of the said flood relief scheme. Therefore the preclusion of development which may prejudice the optimum solution is of paramount importance. Therefore, I concur with substance of the planning authority's 2<sup>nd</sup> reason for refusal in this regard.

### 7.3. Design and Layout

- 7.3.1. As noted above the layout is effectively dictated by the constraints imposed by flood risk. The dwellings are to be laid out in a linear arrangement in the eastern portion of the site with the western section retained as open space.

#### *Density*

- 7.3.2. In terms of density the proposal, as amended by way of further information, provides for 16 dwellings on a 1.247 hectare site. Even allowing for the fact that a significant proportion of the site is excluded from development by reason of flood risk I calculate that the proposal would equate to a density of approx. 13 units per hectare.
- 7.3.3. In the context of the recommendations of the Limerick City Development Plan, which have been informed by the Guidelines on Sustainable Residential Development in Urban Areas, densities of between 35-50 units per hectare are required. This corresponds with that as recommended in the guidelines for outer suburban/greenfield sites. The guidelines further state that developments of net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.
- 7.3.4. Even making allowance for the constraints imposed on the overall 1.247 hectare site in terms of flood risk, the reasonable developable area, and the need to protect the amenities of adjoining property, I consider that the proposed density is misplaced and not in keeping with either the Development Plan provisions or the Guidelines for

Planning Authorities on Sustainable Residential Development in Urban Areas (2009). The proposal is considered to be an inefficient and unsustainable use of scarce serviceable land in an area zoned for residential development in proximity to Limerick City Centre.

#### *Open Space*

- 7.3.5. The proposed open space arrangement, whilst invariably generous in area, is problematic in terms of its actual amenity value. The fact that the area or parts thereof could potentially be under water for periods of the year effectively reduces its amenity value. The proposed access arrangements from the dwellings to counter the difference in levels, namely the proposed ramp, is not an optimum solution, whilst I would also have reservations about the absence of passive surveillance due to the positioning of the dwellings and the fact that the open space would be at a materially lower level.

#### *Housing Mix and Design*

- 7.3.6. The relative absence of any meaningful housing mix, contrary to current policy requirements including policy H.3 of the current Limerick City Development Plan, is noted with the scheme providing for 14 no. 4 bed units and 2 no. 3 bed units.
- 7.3.7. The reason for the setback of the site boundary from the existing dwellings to the south resulting in a strip of land locked ground would require resolution by way of condition should permission be granted.
- 7.3.8. In view of the setback to be maintained to the adjoining dwellings both to the north and south issues in terms of overlooking and loss of privacy do not arise. However there is lack of clarity as to the difference in ground levels between the site and adjoining properties and the consequent height of boundary walls.
- 7.3.9. Following a request by the planning authority for a masterplan for the future development of adjoining lands zoned residential, an indicative corridor for a roadway via the scheme to lands to the north is denoted. This is somewhat of a cursory consideration. I submit that preparation of such a document and indicative access arrangements would more appropriately be prepared by the planning authority.

7.3.10. Overall I consider that the scheme design is deficient and would benefit from reconsideration with due cognisance given to an increase in density and greater variety of housing mix. I consider that this constitutes a new issue. The Board may wish to seek the views of the parties. However, having regard to the substantive reason for refusal set out below, it may not be considered necessary to pursue the matter.

#### 7.4. Access and Traffic

7.4.1. The issue of the adequacy of Mill Road to accommodate the additional vehicular and pedestrian movements comprises a substantive issue for many of the observers.

7.4.2. Mill Road is effectively a cul-de-sac c. 1.5km in length, which serves a number of housing estates to the north of the appeal site in addition to individual properties and a primary school. The road in the vicinity of the site is relatively narrow, albeit wide enough to facilitate two way vehicular movements, with traffic calming measures by means of ramps noted. A narrow footpath on one side is available which can facilitate single file, only, resulting in pedestrians having to walk on the carriageway when passing.

Scoil Ide primary school is c. 200 metres to the south in close proximity to the signalised junction of Mill Road, Corbally Road and Rosedale/Roseville Gardens. As per the Traffic and Transport Assessment Report accompanying the application the junction is currently operating above capacity during the AM and PM peaks.

Inevitably the congestion is compounded during school drop off and pick up times.

7.4.3. I accept the conclusions of the assessment that the additional vehicular movements arising from the 16 no. dwellings would have a negligible impact on traffic flows on the existing road network and the levels of congestion already experienced and, within such an urban context, is not a reasonable basis for a refusal of permission.

7.4.4. The proposed access onto Mill Road will include setting back the existing stone wall to provide for sight lines and will allow for the widening of the footpath along its length and is considered acceptable. The proximity of the entrance to that serving the small cul-de-sac of dwellings to the south is not unusual within an urban context where the 50kph speed limit applies.

- 7.4.5. There is no question that the current pedestrian facilities along Mill Road in the vicinity of the site are deficient with the footpath not wide enough to facilitate 2 way movement without having to step onto the carriageway. The narrowness of the road and the pattern of the development constrains the potential for widening. Whilst reference is made to plans for the construction of a 3 metre wide off road shared walking and cycling path along a 600 metre stretch of Mill Road connecting Scoil Ide to the northern part of Mill Road, no details are available as to whether the proposal will be realised and, if affirmative, the timescale for same. I would also submit that the provision of a shuttlebus between the site and the school is not a realistic option.
- 7.4.6. Notwithstanding, in view of the proposals to widen the footpath along the site frontage and the relative proximity to Scoil Ide where the footpath infrastructure is better, I do not consider that the deficiency in the pedestrian infrastructure for the wider area falls solely within the applicant's remit to resolve and is more appropriately a matter for the local authority. I therefore do not consider it to be reasonable grounds for refusal.
- 7.4.7. In view of the foregoing I do not concur with the planning authority's 3<sup>rd</sup> reason for refusal.

## 7.5. **Biodiversity**

- 7.5.1. There is an overlap with the Appropriate Assessment below and I recommend that the relevant sections be read in tandem.
- 7.5.2. An Ecological Impact Assessment report accompanies the application in which the results of a bat survey are provided. Bat species were recorded including Leisler's bat, Common Pipistrelle and Soprano Pipistrelle. Lesser Horseshoe bat was recorded on the 1<sup>st</sup> survey night, only, which suggests that the species may be commuting nearby but was not using the site at the time.
- 7.5.3. None of the species are identified as qualifying interests of the Lower Shannon SAC. The nearest designated sites where Lesser Horseshoe Bat is a qualifying interest are Ratty River Cave SAC (site code 002316) and Danes Hole, Poulnalecka SAC (site code 000030) c. 14km distant. As assessed in the appropriate screening below it is considered that in view of the separation distance between the sites and the fact that the species normally forage in woodlands/scrub within 2.5km of their roosts,

effects on the European Sites resulting from the proposed development can be excluded. Notwithstanding, there is an obligation to secure a derogation licence if bats are found to be roosting on the site.

- 7.5.4. Details of the mitigation measures for bat protection on the site are detailed in the Ecological Impact Report including pre-construction survey of trees, sensitive lighting design and installation of bat boxes. I note that the Department of Culture, Heritage and the Gaeltacht in a report to the planning authority recommends that a further survey be carried out to identify if trees are being used by bats. Whilst such a survey should more appropriately be sought prior to any grant of permission it could be addressed by way of condition should the Board be minded to grant permission.
- 7.5.5. On the basis that the western section of the site is to be retained and developed as open space with the retention, as far as practicable, of the existing trees and their augmentation, it is considered that the foraging opportunities for bat species would not be adversely impacted as to warrant a refusal of permission. On this basis I do not concur with the planning authority's 4<sup>th</sup> reason for refusal.
- 7.5.6. The Ecological Impact Assessment did not identify any signs of badger but there is a likelihood that the species may use the site for foraging in view of the suitable habitat available thereon. Further survey and appropriate measures to be incorporated into the construction phase could be addressed by way condition should the Board be disposed to a favourable decision.

## 7.6. Other Issues

- 7.6.1. Woodlands House, although noted on the National Inventory of Architectural Heritage as being of regional importance, is not listed for protection in the current Limerick City Development Plan. The information accompanying the application, as supplemented by way of further information, provides details of the dwelling including a photographic survey providing an insight into the evolution of both the building and the plot of land associated with it. I consider that the proposed development in terms of layout and design has due regard to the protection of the integrity and setting of the dwelling and is acceptable.

## 7.7. Appropriate Assessment

7.7.1. The application is accompanied by a Natura Impact Statement which includes AA-Screening.

### **Stage 1 - Screening**

#### Project Characteristics

7.7.2. The proposed development is as described in section 2 and, in summary, is a small residential development of 16 no. detached and semi-detached dwellings.

#### Designated Sites

7.7.3. Having regard to the information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source-pathway-receptor principle and sensitivities of the ecological receptors, the following European Sites are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment on the basis of likely significant effects

<b>Designated Site</b>	<b>Qualifying Interests</b>	<b>Distance</b>
Lower River Shannon SAC (site code 002165)	<ul style="list-style-type: none"><li>• Sandbanks which are slightly covered by sea water all the time</li><li>• Estuaries</li><li>• Mudflats and sandflats not covered by seawater at low tide</li><li>• Coastal lagoons</li><li>• Large shallow inlets and bays</li><li>• Reefs</li><li>• Perennial vegetation of stony banks</li><li>• Vegetated sea cliffs of the Atlantic and Baltic coasts</li><li>• Salicornia and other annuals colonising mud and sand</li><li>• Atlantic salt meadows</li></ul>	100 metres to north



	<ul style="list-style-type: none"> <li>• Mediterranean salt meadows</li> <li>• Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation</li> <li>• <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils</li> <li>• Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i></li> <li>• Freshwater Pearl Mussel</li> <li>• Sea Lamprey</li> <li>• Brook Lamprey</li> <li>• River Lamprey</li> <li>• Salmon</li> <li>• Common Bottlenose Dolphin</li> <li>• Otter</li> </ul>	
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Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the designated habitats and species.

The site is in close proximity to the SAC boundary. Indirect effects arising from impact on water quality during construction and operation phases and disturbance to species during the construction works could arise. Thus, the potential for significant effects on the European Site cannot be excluded at this stage.

Designated Site	Qualifying Interests	Distance
River Shannon and River Fergus Estuaries SPA (site code 004077)	<ul style="list-style-type: none"> <li>• Cormorant</li> <li>• Whooper Swan</li> <li>• Light-bellied Brent Goose</li> <li>• Shelduck</li> <li>• Wigeon</li> <li>• Teal</li> </ul>	2km to the west

	<ul style="list-style-type: none"> <li>• Pintail</li> <li>• Shoveler</li> <li>• Scaup</li> <li>• Ringed Plover</li> <li>• Golden Plover</li> <li>• Grey Plover</li> <li>• Lapwing</li> <li>• Knot</li> <li>• Dunlin</li> <li>• Black-tailed Godwit</li> <li>• Bar-tailed Godwit</li> <li>• Curlew</li> <li>• Redshank</li> <li>• Greenshank</li> <li>• Black-headed Gull</li> <li>• Wetland and Waterbirds</li> </ul>	
<p>Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the designated habitats and species.</p> <p>In view of the separation between the sites and the intervening built up area, indirect effects on the European Site resulting from the proposed development can be excluded</p>		

Designated Site	Qualifying Interests	Distance
Ratty River Cave SAC (site code 002316)	<ul style="list-style-type: none"> <li>• Caves not open to the public</li> <li>• Lesser Horseshoe Bat</li> </ul>	14km to north-west
<p>Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the designated habitats and species.</p> <p>Whilst bats have been recorded on the appeal site, I submit that in view of the separation distance and the detailed conservation objectives in which it is stated that Lesser Horseshoe Bats normally forage in woodlands/scrub within 2.5km of their roosts, effects on the European Site resulting from the proposed development can be excluded.</p>		

Designated Site	Qualifying Interests	Distance
Danes Hole, Poulnalecka SAC (site code 000030)	<ul style="list-style-type: none"> <li>• Caves not open to the public</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles</li> <li>• Lesser Horseshoe Bat</li> </ul>	14km to the north
<p>Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the designated habitats and species.</p> <p>Whilst bats have been recorded on the appeal site, I submit that in view of the separation distance and the detailed conservation objectives in which it is stated that Lesser Horseshoe Bats normally forage in woodlands/scrub within 2.5km of their roosts, effects on the European Site resulting from the proposed development can be excluded.</p>		

Stage 1 – Screening Conclusion

- 7.7.4. Based on my examination of the AA Screening, NIS supporting information, the NPWS website, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my assessment of

the subject site and the surrounding area, I conclude that a Stage 2 Appropriate Assessment is required for 1 of the 4 European sites referred to above, namely the Lower River Shannon SAC (site code 002165). It is reasonable to conclude, 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 following European sites:

- River Shannon and River Fergus Estuaries SPA (site code 004077)
- Ratty River Cave SAC (site code 002316)
- Danes Hole, Poulnalecka SAC (site code 000030)

### ***Stage 2 - Appropriate Assessment***

7.7.5. The Appropriate Assessment concerns the said Lower River Shannon SAC. The qualifying interests are as detailed above.

#### **Brief Description of Site**

7.7.6. As per the NPWS site synopsis it is a very large site stretching along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site encompasses the Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head. 10.4.4. This site is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the E.U. Habitats Directive, including the priority habitats lagoon and alluvial woodland, the only known resident population of Bottlenosed Dolphin in Ireland and all three Irish lamprey species. A good number of Red Data Book species are also present. A number of species listed on Annex I of the E.U. Birds Directive are also present, either wintering or breeding.

#### **Conservation Objectives**

7.7.7. Detailed conservation objectives have been prepared for the site, the overall aim being to maintain or restore the favourable conservation status of the qualifying interests. A copy of the objectives is available on the following link:

[https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO002165.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002165.pdf)

Potential Indirect Effects

7.7.8. The site is c. 100 metres to south of the nearest point of the SAC with the Abbey River c. 300 metres to the west. The Limerick-Galway railway line is in-between the river and the site. Indirect effects arising from impact on water quality during construction and operational phases and disturbance of species during the construction works could arise.

7.7.9. The NIS sets out certain qualifying interests that will not be indirectly impacted by the proposal. They are as follows:

- Sandbanks which are slightly covered by sea water all the time
- Mudflats and sandflats not covered by seawater at low tide
- Coastal lagoons
- Estuaries
- Large shallow inlets and bays
- Reefs
- Perennial vegetation of stony banks
- Vegetated sea cliffs of the Atlantic and Baltic coasts
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows
- Mediterranean salt meadows
- Callitricho-Batrachion vegetation
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils
- Freshwater Pearl Mussel
- Common Bottlenose Dolphin

7.7.10. I concur with the conclusions that the potential for significant indirect effects can be excluded on the basis that the designated habitats are not within the development

area and are outside the zone of potential impact influence and that suitable habitats for the identified species do not occur within the development area or the zone of the potential impact influence. I have had regard to the detailed conservation objectives drawn up for each and the mapped features where relevant. On this basis, they are screened out for further assessment.

7.7.11. The following qualifying interests are considered:

- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
- Water courses of plain to montane levels with the *Ranunculus fluitantis*
- Brook Lamprey
- River Lamprey
- Sea Lamprey
- Salmon
- Otter

#### Proposed Mitigation Measures

7.7.12. Construction Phase

- A Construction and Environmental Management Plan is to be prepared.
- Site compound management.
- Fuel storage and refuelling protocols.
- Construction of a swale around 3 sides of the site perimeter.
- The finished site drainage outfall (225mm pipe with non-return flap) to be the 1<sup>st</sup> element of site construction in that it will be drainage outfall for the construction activity.
- As part of the permanent outfall works there is to be a petrochemical interceptor to which the site swales are to drain through before draining away to the outfall.
- Dust suppression measures
- Noise control measures

### 7.7.13. Operational Phase

- The existing hedgerows and trees are to be retained as far as is practicable with an appropriate landscaping regime
- Marsh habitat is to be retained as far as is possible. Any areas that are disturbed will be reseeded with a suitable seed mix suitable for wet areas.
- A lighting plan is proposed.

#### Assessment

The project is not directly connected with or necessary to the management of a European Site.

A number of the qualifying interests of the SAC downstream of the proposed development are reliant on water quality. In view of the nature and location of the proposed development and the measures to be incorporated into the construction phase of the proposed development, which would align with what are considered to be proven best practice measures, I would submit that potential for impact of construction works on water quality of the SAC is very low.

In terms of the operational phase the site, within Limerick city, is serviced. The system includes an attenuation tank which will store run-off when the inflow rate exceeds the greenfield runoff rate and includes petrol interceptors.

There was no sign of Otter commuting, spraints or any other form of habitation recorded on the site or the area immediately surrounding it. The Abbey River is the closest suitable water source which is c. 300 metres away with the rail line in between disrupting the direct path. If foraging or commuting otter are present it is likely to be habituated to the existing urban lighting and noise disturbance. Potential displacement impacts are considered non-significant.

As per section 4.3.6 of the NIS it is stated that whilst the marsh habitat may contain pockets of the annexed habitat 'hydrophilous tall herb fringe communities of plains and of the montane to alpine levels' no examples were found on the site. As noted by the appellant the habitat is not a qualifying interest of the SAC.

I also note that the Lesser Horseshoe Bat is not a qualifying interest of the designated site.

Potential in-combination effects

7.7.14. A description of the in-combination effects with a number of developments in the vicinity. Due consideration is also given to the Limerick City Development Plan, the proposed Limerick Northern Distributor Road and the Limerick City and Environs Flood Relief Scheme. Having regard to the size, scale and nature of the project on a serviced site within Limerick City it is considered that there are no current or outstanding grants of planning permission or proposed projects which could interact with the project to create significant in combination effects.

**Appropriate Assessment – Conclusion**

7.7.15. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the Lower River Shannon SAC (site code 002165) or any other European site, in view of the site's Conservation Objectives.



## **8.0 Recommendation**

In conclusion I consider that the development of the site is premature pending the determination of the preferred flood relief scheme for the area, the realisation of which may allow for the comprehensive and efficient development of the residentially zoned lands in this area of Limerick City of which the appeal site forms part. Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the portion of the site within an area at risk of flooding and identified as Flood Zone A in the current Limerick City Development Plan 2010-2016, as extended, and to the proximity of the site to the Corbally Embankments which are within the study area the CFRAM Phase II Programme (Limerick City and Environs Flood Relief Scheme) it is considered that the proposed development would be premature pending the determination of the preferred flood relief scheme. The proposed development would therefore be contrary to the proper planning and sustainable development of the area

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**October, 2020**