



An  
Bord  
Pleanála

## Inspector's Report ABP-308553-20

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<b>Development</b>	Construction of 14 semi-detached two-storey dwelling houses with garden walls, driveways, access roads and paths, car parking, site boundaries, connection to existing services and all ancillary site works.
<b>Location</b>	Glenbeg, The Beeches, Laharan East, Boherbue, Kanturk, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	19/06571
<b>Applicant(s)</b>	Charleville Firgrove Developments Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	Charleville Firgrove Developments Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> February 2021

**Inspector**

Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	7
5.0 Policy and Context.....	7
5.1. National Planning Guidelines .....	7
5.2. Development Plan.....	7
5.3. Natural Heritage Designations .....	8
6.0 The Appeal .....	8
6.1. Grounds of Appeal .....	8
6.2. Planning Authority Response .....	10
6.3. Observations .....	11
6.4. Further Responses.....	11
7.0 Assessment.....	11
8.0 Recommendation.....	21
9.0 Reasons and Considerations.....	22

## 1.0 Site Location and Description

- 1.1. The site is located on the eastern outskirts of Boherboy, a village on the R577, which runs between the N72 to the east south-east and Castleisland to the west north-west. This site lies on the southern side of the L1109 and on the eastern edge of a new housing estate, known as The Beeches. It is accessed off the L1109 through this housing estate.
- 1.2. The site itself is of regular shape and it extends over an area of 0.7551 hectares. This site is a building site in which the footings for 4 of the 7 pairs of the proposed semi-detached dwelling houses are in-situ, along with a cul-de-sac. This cul-de-sac serves 3 pairs of semi-detached dwelling houses on its western side, which have been constructed and 1 pair on its eastern side, which, likewise, has been constructed. The site excludes these pairs of semi-detached dwelling houses. Its remaining boundaries abut a strip of grass between the eastern end of the estate road and the L1109 to the north. Its eastern and southern boundaries abut farmland beyond and its remaining western boundary abuts the rear gardens of dwelling houses on Meadow Court, the original cul-de-sac in the housing estate, and the aforementioned 3 pairs of semi-detached dwelling houses.

## 2.0 Proposed Development

- 2.1. The proposal is for the construction of 14 semi-detached, two-storey, three-bed/five person dwelling houses (1756 sqm), 10 of which would be constructed on existing foundations permitted under application 04/7493. The submitted plans present the proposed dwelling houses alongside the previously permitted dwelling houses for the site. These plans show that, whereas the ground floors would be the same area, i.e. 47.7 sqm, the first floors now proposed would be 62.7 sqm compared to 59.3 sqm before. The additional floorspace would be provided to the rear and it would result in an overhang of the initial portion of rear garden and the specification of a larger roof with a higher ridgeline, i.e. c. 0.9m.
- 2.2. The proposal is also for the construction of garden walls, driveways, access roads and paths, car parking, site boundaries, connection to existing services and all ancillary site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following receipt of further information, permission refused for the following reasons:

1. *By reason of the Boherbue WWTP being hydraulically overloaded and not having sufficient capacity to cater for the proposed development and by reason of the Boherbue WWTP being non-compliant with the conditions of its discharge licence, the proposed development is considered to be premature and would also contravene policy objective WS 3-1 Wastewater Disposal (b) of the Cork County Development Plan 2014 – 2020. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development has the potential to contribute to adverse effects on the integrity of the River Blackwater SAC and to interfere with the achievement of the Conservation Objectives which apply to this SAC. The granting of permission for this development would be contrary to policy HE 2-1 of the Cork County Development Plan 2014 – 2020, and contrary to requirements of the Habitats Directive.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Further information was sought/received on the following items:

- Concern is expressed over the Boherbue WWTP and so the applicant is requested to (a) make a pre-connection enquiry to Irish Water to determine the feasibility of such a connection and (b) enquire as to proposed timelines of upgrades to this WWTP.
- Revised NIS to reflect the following:
  - Risk to water quality in the River Blackwater SAC to be assessed in conjunction with an understanding of upstream/downstream water quality at proposed discharge points and the operations of Boherbue WWTP in terms of its capacity and EPA compliance levels,
  - Data on qualifying interests within the receiving environment,

- Assess qualifying interests with respect to their conservation objectives and targets set to achieve these objectives,
- Surface water run-off to be attenuated to greenfield rates,
- NIS to be prepared by ecologist with expertise in freshwater systems, and
- Construction Method Statement to be prepared.
- Revised site layout to enable proposed houses nos. 1 – 8 to have two off-street car parking spaces.
- Surface water outfall to be shown to the nearest water course.
- Variety of clarifications and alterations to the design of houses, along with depiction of open space provision in the overall estate and Part V obligations.
- Detailed landscaping scheme and timetable for implementation.
- Compliance with Recreation and Amenity Policy.

### 3.2.2. Other Technical Reports

- Department of Culture, Heritage and the Gaeltacht – Nature Conservation: Advises of potential hydrological links to the Blackwater SAC and so measures needed to safeguard water quality.
- Irish Water: No objection, standard observations.
- Cork County Council:
  - Public Lighting: No objection, subject to conditions.
  - Water Services: No objection.
  - Environment: Following receipt of further information, no objection, subject to conditions.
  - Estates: No objection, subject to conditions.
  - Area Engineer: Following receipt of further information, clarification sought with respect to attenuation of surface water run-off.
  - Heritage: Following receipt of further information, objects: See second reason for refusal set out above.

## 4.0 Planning History

- 04/7493: 64 dwelling houses – 4 detached, 50 semi-detached, and 10 terraced, access roadways and associated site development works: Permitted.
- 07/11082: Alteration of parent permission by the omission of 2 four-bed detached and 4 four-bed semi-detached in favour of 8 three-bed semi-detached: Permitted.

## 5.0 Policy and Context

### 5.1. National Planning Guidelines

- Sustainable Residential Development in Urban Areas
- Quality Housing for Sustainable Communities: Best Practice Guidelines

### 5.2. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), Boherbue is identified as a key village. For ease of reference the two policy objectives cited in the Planning Authority's reasons for refusal are set out below:

*WS 3-1(b): Development in all main settlements connect to public waste water treatment facilities subject to sufficient capacity being available which does not interfere with Council's ability to meet the requirements of the Water Framework Directive and the Habitats Directive. In settlements where no public waste water system is either available or proposed, or where design, capacity or licensing issues have been identified in existing plants, new developments will be unable to proceed until adequate waste water infrastructure is provided.*

*HE 2-1: Provide protection to all natural heritage sites designated or proposed for designation under National and European legislation and International Agreements, and to maintain or develop linkages between these. This includes Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas, Statutory Nature Reserves, Refuges for Fauna and Ramsar Sites.*

Under the Kanturk Mallow Municipal District Local Area Plan 2017 (LAP), the site is shown as lying within the development boundary and in an “existing built-up” area. Objective DB-01 of this Plan encourages the provision of up to 150 houses during its life and Objective DB-02 states the following:

*(a) The boundary of the village is adjacent to the River Blackwater SAC. Development will only be permitted where it is shown that it is compatible with the requirements of the Habitats Directive and the protection of this site.*

*(b) Appropriate and sustainable water and waste water infrastructure, that secures the objectives of the Water Framework Directive and the protection of the River Blackwater SAC must be available to cater for the development of the settlement.*

Paragraphs 4.4.11 – 13 of the LAP provide further information on the waste water situation that pertains to Boherbue:

*There are capacity constraints in the village, particularly in terms of wastewater infrastructure, and so substantial new development in Boherbue of the scale outlined above can only proceed on the basis of the implementation of plans to provide satisfactory sewage disposal arrangements. Discharge is to the Brogeen River which is in a protected area and a designated Special Area of Conservation (River Blackwater).*

*Water quality impacts and/or licence compliance issues associated with waste water infrastructure serving the village must be addressed to accommodate further growth.*

*Further development of this key village is dependent on the sewage treatment infrastructure being upgraded to provide additional capacity and an appropriate level of treatment having regard to the need to protect water quality in the receiving water.*

### **5.3. Natural Heritage Designations**

River Blackwater SAC (002170)

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The applicant draws attention to its justification of the proposal, as set out in the planning report submitted with the application and the subsequent response to the request for further information.



The applicant also draws attention to the fact that the proposal is for the completion of a housing estate, 80% of which has already been constructed. If the current application is refused, then the remainder of this estate will remain in its present unattractive partially constructed state.

The applicant identifies the two underlying concerns behind the Planning Authority's reasons for refusal and comments upon each of these as follows:

The capacity and performance of the Botherbue WWTP:

- The applicant has received a connection offer from Irish Water to utilise its capacity at the Botherbue WWTP. It is not appropriate for the Planning authority to now question the validity of this offer by questioning the adequacy of the available capacity.
- Irish Water operates the Botherbue WWTP under a waste water discharge authorisation given by the EPA. As no record of any prosecution for breach of this authorisation exists, the Planning Authority is not in a position to allege that breaches are occurring.
- In the light of the above, the Board should weigh the following factors when considering the Planning authority's allegation:
  - Irish Water would be entitled to a notice, i.e. so it could understand the case against it,
  - The Planning Authority has not submitted any evidence to support its allegation, and
  - In any event the EPA is the relevant enforcement agency.

Section 35 of the Planning and Development Act, 2000 – 2020, counsels that care should be taken in drawing adverse inferences of a breach of the planning code. Similar care should be taken in doing the same under other legal codes.

- Even when questions arise concerning the performance of the Botherbue WWTP, in terms of pollutants such as ammonia and orthophosphate, the Planning Authority should have weighed the following factors:

- An upgrade of this WWTP is imminent, i.e. it is in the current Investment Programme, a contractor has been appointed, design work is due to be completed in Q2 2021 and construction is due to commence in Q3 2021. Accordingly, the Planning Authority's concerns are temporary and so its conclusion that the proposal would be premature is unsustainable.
- Recent EPA tests of water quality in the River Brogeen indicate that it is "good" and "unpolluted" and so notwithstanding discharges from the WWTP water quality is not being adversely affected.
- The most recent EPA inspector's report indicates that ammonia and orthophosphate levels have been continuously elevated since January 2015 and yet water quality has not been adversely affected. Hence the NIS's conclusion that the integrity of the SAC is not being adversely affected.
- Best scientific knowledge available is represented by the EPA's sampling and reporting and its reflection in the applicant's NIS.
- The Planning Authority has not considered the marginal contribution that would be made by the proposed 14 dwelling houses to the Boherbue WWTP.

The attenuation of storm water run-off:

- The proposed 14 dwelling houses were previously permitted under application 04/7493, when 64 dwelling houses were proposed without storm water attenuation measures. Consequently, the applicant did not propose such measures under the current application.
- The applicant's engineer has identified SUDS measures that can be incorporated into each house plot of the proposal. (The estate road network is already in-situ). Consequently, the run-off rate would fall from 74 to 42 litres per second during a 5-minute storm with a 5-year return. This reduced rate would be in line with the completed part of the overall housing estate.

## 6.2. Planning Authority Response

None

### 6.3. Observations

None

### 6.4. Further Responses

None

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of the Cork County Development Plan 2014 – 2020 (CDP), the Kanturk Mallow Municipal District Local Area Plan 2017 (LAP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, planning history, and density,
- (ii) Development standards,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) Appropriate Assessment.

#### **(i) Land use, planning history, and density**

7.2. Under the CDP, Boherbue is identified as a key village, and, under the LAP, the site is shown as being within the development boundary around this village and in an “existing built-up” area. The LAP encourages the provision of up to 150 houses within the village over its life time.

7.3. The site and the existing housing estate, known as “The Beeches”, were the subject of previous planning applications. Thus, the parent permission, which was granted to application 04/7493, authorised 64 dwelling houses. Under a subsequent amending application 07/11082, a net increase of 2 dwelling houses brought the total number of permitted ones to 66. The foundations for 4 of the 7 pairs of semi-detached dwelling houses appear to have been laid under these permissions.

- 7.4. Previously, the site would have been developed to provide 12 dwelling houses, i.e. 2 detached and 10 semi-detached. Under the current proposal, the 2 detached at the southern end of the site are re-specified as a pair of semi-detached and an additional pair of semi-detached is introduced to the north eastern corner of the site.
- 7.5. Under the Sustainable Residential Development in Urban Areas Guidelines, advice is given on net residential density in small towns and villages. The population threshold for a town is 400 and, as Boherbue has a population of 334 (2016 Census), it qualifies as a village. The density ranges for edge of centre and edge of village are 20 – 35 dwellings per hectare and 15 – 20 dwellings per hectare, provided the number of dwellings represents no more than 20% of the total new planned housing stock.
- 7.6. The site has an area of 0.7551 hectares and so the previous and current proposals for the construction of 12 and 14 dwelling houses upon it would represent densities of 15.89 dwellings per hectare and 18.54 dwellings per hectare. I note that, as the entirety of the cul-de-sac is included within the site, the density is suppressed, i.e. if the 8 already constructed dwelling houses were to be included, then a higher overall density of 21.01 dwellings per hectare would emerge. I note, too, that the proposed 14 dwelling houses would represent 9.33% of the 150 dwellings envisaged by the LAP for Boherbue and so it would be within the 20% cap for lower density housing in this village.
- 7.7. I conclude that there is no in principle land use objection to the proposal, which would represent the completion of an existing housing estate to a density that is capable of being justified.

**(ii) Development standards**

- 7.8. The proposal is for the construction of 14 semi-detached, two storey, three-bed/five-person dwelling houses. Under Table 5.1 of the Quality Housing for Sustainable Communities: Best Practice Guidelines, target overall and specific floor areas for such dwelling houses are set out. Thus, the relevant target overall floor area is 92 sqm and the proposed dwelling houses would each have 122 sqm. Specific floor areas would, likewise, meet their relevant targets, although the single room at 8.75 sqm and the adjoining double room at 10.5 sqm would, variously, exceed and fall short of their targets of 7.1 sqm and 11.2 sqm. Clearly, there is scope here for the

reapportionment of floor area between these two bedrooms. This matter could be conditioned. Recommended minimum floor widths would also be achieved.

- 7.9. The proposed dwelling houses would be served by rear gardens or side/rear gardens. Each of these gardens would be of adequate size, with those in the southern portion of the site being more generous in their extent. Communal landscaping would be provided in the centre of the cul-de-sac and at its entrance, by way of grass and tree planting. Elsewhere, on the existing housing estate, there are more extensive areas of greenspace, which are shown on drawing no. RFI 05.
- 7.10. The majority of the pairs of semi-detached dwelling houses would be orientated on a roughly east/west axis, while the remaining pair would be roughly north/south. Separation distances across the cul-de-sac would be of the order of 38m. The pair of semi-detached dwelling houses proposed for the south-western corner of the site would have an offset relationship with the pair of semi-detached dwelling houses in Meadow Court further to the west. Separation distances here would be generous, too.
- 7.11. I conclude that the proposal would meet/exceed relevant quantitative and qualitative development standards and so it would afford a satisfactory standard of amenity to future residents.

### **(iii) Traffic, access, and parking**

- 7.12. Traffic generated by the proposal would use the existing estate road and the L1109. During my site visit, I observed the junction between these two roads: The available sightlines and forward visibility are all good. I consider that these roads and this junction would be capable of handling satisfactorily the traffic that would be likely to be generated by the proposal.
- 7.13. Each of the dwelling houses would be served by two off-street car parking spaces, which would be laid out in front of these dwelling houses and perpendicular to the cul-de-sac. In addition, six visitor spaces would be laid out as parallel parking spaces to the island in the centre of the cul-de-sac. Three of these spaces would be wide enough to serve the mobility impaired.
- 7.14. I conclude that no traffic, access, or parking issues would arise under this proposal.

#### **(iv) Water**

- 7.15. Under the proposal, the dwelling houses would be connected to the public water mains which serves the existing housing estate known as “The Beeches”. In this respect, Irish Water has raised no objection to the Planning Authority and, following an application to it by the applicant, it has made a connection offer to the applicant.
- 7.16. Under the proposal, the dwelling houses would be connected to the public waste water sewerage system which serves the existing housing estate known as “The Beeches”. In this respect, Irish Water has raised no objection to the Planning Authority and, following an application to it by the applicant, it has made a connection offer to the applicant.
- 7.17. Nevertheless, under the Planning Authority’s first reason for refusal, the proposal is considered to be premature, as the Boherbue WWTP is hydraulically overloaded and it is not operating in compliance with its discharge licence. In this respect, it would contravene Objective WS 3-1(b) of the CDP, under which the Planning Authority undertakes to support development that would be connected to public waste water treatment facilities where there is sufficient capacity available and where its ability to meet the requirements of the Water Framework Directive would not be interfered with. This Objective adds that where WWTPs have design, capacity or licensing issues, new developments will be unable to proceed until adequate waste water infrastructure is provided.
- 7.18. Objective WS 3-1(b) of the CDP is echoed by Objective DB-02 of the LAP, both of which make the availability of adequate/appropriate/sustainable waste water infrastructure a prerequisite for new residential development in Boherbue. Paragraphs 4.4.12 & 13 of the LAP explicitly state that water quality issues and/or licence compliance issues must be addressed by the upgrading of the WWTP and so new residential development is dependent upon this happening.
- 7.19. Annual reports from Irish Water on the Boherbue WWTP (D0437-01) are available for 2019 and preceding years. These reports state that the existing design of the WWTP does not enable the removal of nutrients, such as ammonia and orthophosphates, to occur. Consequently, the WWTP exceeds its EPA licencing requirements with respect to these nutrients. In this respect, according to its website, the EPA brought a successful prosecution against Irish Water in March 2017 and a

further prosecution, covering 8 excessive ammonia and orthophosphate emissions between August 2017 and January/February 2019, appears to remain outstanding.

- 7.20. Irish Water includes an upgrade of the Boherbue WWTP in its 2020 – 2024 investment plan. The applicant reports that Irish Water is presently at the detailed design stage of this upgrade and it expects to make a planning application for it this year. Project commencement is “anticipated” for later this year, too, and completion would presumably occur in 2022/23.
- 7.21. The applicant does not deny that ammonia and orthophosphate emissions are in excess of EPA licencing limits. However, it states that water quality in the receiving waters of the River Brogreen is “good” and “unpolluted”, the needed upgrade of the WWTP is imminent, and the Planning Authority has not considered the marginal contribution that the proposed 14 dwelling houses would make to the situation.
- 7.22. The most recent EPA inspector’s report of Boherbue WWTP relates to a site visit that was undertaken on 6<sup>th</sup> February 2019. This report confirms the need for the WWTP to be upgraded as a matter of priority so that licencing requirements can be met. It advises that the WWTP is hydraulically overloaded, especially during wetter months, and water samples from a downstream point on the Brogreen River showed elevated levels of ammonia and orthophosphate.
- 7.23. The applicant undertook a water sampling exercise upstream and downstream of the discharge point of the WWTP on 19<sup>th</sup> May 2020. (It reports on this exercise in the submitted Screening and Natura Impact Assessment, which accompanies the application). The former and latter samples were compared and the downstream one was found to have raised orthophosphate levels consistent with non-compliant emissions from the WWTP. While not the only indicator influencing water quality status, these levels would be consistent with “poor/bad” status and yet the River Brogreen enjoys a “good” status. The applicant, therefore, contends that its sample was anomalous.
- 7.24. In the light of the foregoing paragraphs, the WWTP is causing pollution, even if such pollution may not be sufficient to change the categorisation of the River Brogreen from that of “good” and “unpolluted”. In these circumstances, the addition of the proposed 14 dwelling houses would lead to a relatively small increase in the waste water handled by the WWTP, i.e. Boherbue has a population of 334 and so, if each

of the proposed dwelling houses has an average household size of 3, then an additional population of 42 or 12.58% would ensue.

- 7.25. The capacity of the WWTP is 800 PE. However, as it also serves business uses, including a local cheese factory, it is operating at over capacity. Furthermore, as it is causing pollution at present, the proposed increase in waste water would lead to a deterioration in the situation. While the needed upgrade has progressed to the detailed design stage, it has yet to be made the subject of a planning application and so planning permission has yet to be obtained. I, therefore, consider that the current proposal is premature.
- 7.26. Under the proposal, the dwelling houses would be connected to the public storm water sewerage system which serves the existing housing estate known as “The Beeches”. This system comprises a pipeline that discharges to a stream, to the north-east of the site, and this stream discharges to the River Brogeen, further to the north. It would include a by-pass separator, but it would not include an attenuation tank.
- 7.27. The absence of an attenuation tank was raised under further information. The applicant responded by stating that, under the previous permissions for 66 dwelling houses on the site (application 04/7493), such a tank was not required. Consequently, the existing 54 dwelling houses are served by a storm water sewerage system that has no attenuation tank.
- 7.28. By implication, the applicant contends that to fit an attenuation tank now would be unreasonable. Instead, it proposes to incorporate SuDS measures into each house plot in line with the approach adopted in the construction of dwelling houses of the overall housing estate.
- 7.29. The Area Engineer remains concerned about the absence of an attenuation tank and the Heritage Officer is concerned that the implications of increased flows of storm water into the River Brogeen has not been properly assessed. While I recognise the difficulties of retro-fitting an attenuation tank, the identified outstanding assessment prevents me from accepting the applicant’s position in this matter.
- 7.30. The OPW’s flood maps do not show the site or the surrounding area of Boherbue as being the subject of any identified flood risk.



7.31. I conclude that, in the absence of the needed upgrade of the WWTP, the proposal would be premature.

**(v) Appropriate Assessment**

7.32. The site is located within the development boundary around the village of Boherbue. Under the proposal, it would be developed to provide 14 dwelling houses, which would bring to completion an existing fully serviced housing estate, known as “The Beeches”. This site is not in a European site and the nearest such site lies 0.7 km to the north, i.e. the River Brogeen, which forms part of the River Blackwater (Cork/ Waterford) SAC (002170). The proposal would be linked hydrologically to this River via the public waste water and storm water sewerage systems.

7.33. In the light of the above, I will undertake a Stage 1 Screening Exercise for Appropriate Assessment. In doing so, I will draw upon the applicant’s Screening Report, dated October 2020, the report of the Planning Authority’s Heritage Officer, information available from the NPWS’s website, and my own site visit.

7.34. The question to be answered at Stage 1 is whether the project is likely to have a significant effect either individually or in combination with other plans and projects on a European site(s).

7.35. The project is, as outlined above, one entailing the final phase of an existing fully serviced housing estate within Boherbue.

7.36. The nearest European site is the River Blackwater (Cork/ Waterford) SAC (002170), which includes the River Brogeen to which the project would be connected hydrologically. A source/pathway/receptor route would thus exist. Other European sites are further away and there would be no source/pathway/receptor routes between the projects and these sites.

7.37. The Qualifying Interests of the SAC are as follows:

*1029 Freshwater Pearl Mussel Margaritifera margaritifera*

*1092 White-clawed Crayfish Austropotamobius pallipes*

*1095 Sea Lamprey Petromyzon marinus*

*1096 Brook Lamprey Lampetra planeri*

*1099 River Lamprey Lampetra fluviatilis*

*1103 Twaité Shad Alosa fallax*

1106 Atlantic Salmon *Salmo salar* (only in fresh water)

1130 Estuaries

1140 Mudflats and sandflats not covered by seawater at low tide

1220 Perennial vegetation of stony banks

1310 *Salicornia* and other annuals colonizing mud and sand

1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)

1355 Otter *Lutra lutra*

1410 Mediterranean salt meadows (*Juncetalia maritimi*)

1421 Killarney Fern *Trichomanes speciosum*

3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation

91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles

91E0 \*Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)

91J0 \**Taxus baccata* woods of the British Isles

7.38. The Conservation Objectives for these Qualifying Interests are as follows:

- To restore the favourable conservation condition of the following Qualifying Interests: 1029, 1095, 1103, 1330, 1355, 91A0 & 91E0,
- To maintain the favourable conservation condition of the following Qualifying Interests: 1012, 1096, 1099, 1106, 1130, 1140, 1220, 1310, 1410, 1421 & 3260, and
- In the case of Qualifying Interest 91J0, its Conservation Objective has yet to be determined.

7.39. During the project's construction phase, best practice methodologies would be adopted with respect to the handling of surface water. These methodologies would be adopted regardless of the relative proximity of the SAC.

7.40. During the project's operational phase, the project would be connected to the public waste water and storm water sewerage systems.

- The former system discharges to the SAC via the Boherbue WWTP, which is presently operating at over capacity and in a manner in which nutrients such as ammonia and orthophosphates are incapable of being removed. It is thus polluting the SAC. The project would contribute further to surcharging of the WWTP and the pollution of the SAC.
- The latter system discharges to the SAC via a stream. While the project, like the existing housing estate, would be served by a drainage system fitted with an hydrocarbon interceptor, this system would not be served by an attenuation tank, and so storm water surges from the site would affect the natural hydraulic processes of the SAC.

7.41. Further changes in the water quality and hydrology of the SAC would potentially affect several of the Qualifying Interests. In this respect, the Freshwater Pearl Mussel is particularly sensitive to pollutants. Its Conservation Objective is to restore its favourable conservation condition, an Objective that would not be furthered by increased pollution.

7.42. I am not aware of any other projects that are presently being undertaken in Botherbue. Irish Water is at the detailed design stage of a project to upgrade the WWTP. Thus, the prospect exists that, in the future, the current issues with this WWTP would be resolved.

7.43. I conclude that the likelihood of significant effects upon the Conservation Objectives of the River Blackwater (Cork/ Waterford) SAC arising from the operational phase of the project cannot be excluded and so a Stage 2 Natura Impact Statement is required.

7.44. In the light of the above, I will undertake a Stage 2 Appropriate Assessment. In doing so, I will draw upon the applicant's Natura Impact Statement (NIS), dated October 2020, the report of the Planning Authority's Heritage Officer, information available from the NPWS's website, and my own site visit.

7.45. The question to be answered at Stage 2 is whether the project will adversely affect the integrity of a European site(s) either individually or in combination with other plans and projects in view of the site's conservation objectives.

- 7.46. The Qualifying Interests and Conservation Objectives of the River Blackwater (Cork/Waterford) SAC are set out under Paragraphs 7.37 & 7.38 above. Likewise, the project is as described under Paragraphs 7.39 & 7.40 above.
- 7.47. The applicant's NIS includes a series of three tables denoted as Nos. 5, 6 & 7. Table 5 presents the Qualifying Interests and Conservation Objectives of the SAC, Table 6 presents which of these Qualifying Interests are present in the receiving environment, and Table 7 presents potential significant effects upon these Qualifying Interests during the construction phase of the project. While a parallel table for the operational phase has not been prepared, I consider that, insofar as water borne pollutants would likewise be the issue during this phase, there may be considerable overlap.
- 7.48. The applicant's NIS outlines a water sampling exercise that it undertook upstream and downstream of the discharge point of the Boherbue WWTP on 19<sup>th</sup> May 2020. The former and latter samples were compared and the downstream one was found to have raised orthophosphate levels consistent with non-compliant emissions from the WWTP. While not the only indicator influencing water quality status, these levels would be consistent with "poor/bad" status and yet the River Brogeen enjoys a "good" status. The applicant, therefore, contends that its sample was anomalous.
- 7.49. I do not consider that the applicant's water sampling exercise is sufficient in itself to allay concerns over the emission of nutrients from the WWTP, emissions which would be increased by the proposal. Furthermore, the recent history of this WWTP, which is outlined under the fourth heading of my planning assessment, underscores this concern. Insofar as the NIS relies on this single water sampling exercise, I consider that it provides inadequate information. Additionally, insofar as it is silent on the effect that increased storm water flows from the project may have on natural hydrological processes in the SAC, the NIS is also deficient.
- 7.50. Turning to mitigation measures, the proposed upgrade of the WWTP by Irish Water would be undertaken with a view to overcoming existing capacity and pollution issues. Thus, the prospect exists that in the future such mitigation would be in place, although this is clearly not within the applicant's control. By contrast, the installation of an attenuation tank would, potentially, have the effect of allaying concerns over any adverse effects of storm water surges upon the SAC. However, the applicant

has not been prepared to accede to such installation and yet its NIS does not address the underlying concern insofar as it affects the SAC.

- 7.51. I, therefore, conclude that on the basis of the information provided with the application and appeal, including the NIS, and in light of the assessment carried out above, I am not satisfied that the proposal would not adversely affect the integrity of European Site No. 002170, in view of the Site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.
- 7.52. This conclusion is based on the precautionary principle that, as the project would result in an increase in nutrients being emitted into the European Site, it is not possible to conclude that the integrity of this Site would not be adversely affected. Furthermore, in the absence of information on the effects of an increase in storm water surges in the SAC resulting from the project, reasonable doubt attends the actual effects of such surges upon its integrity.

## 8.0 Recommendation

That permission be refused.

## 9.0 Reasons and Considerations

1. Having regard to Objective WS 3-1(b) of the Cork County Development Plan 2014 – 2020, Objective DB-02 of the Kanturk Mallow Municipal District Local Area Plan 2017, and current capacity and design issues with the Boherbue Waste Water Treatment Plant (WWTP), the Board considers that the proposal would be premature in advance of the upgrade of the WWTP and that to accede to it now would risk a scenario wherein existing pollution of the River Brogeen would be exacerbated. The aforementioned Objectives would thereby be contravened and public health jeopardised. The proposal would thus fail to accord with the proper planning and sustainable development of the area.
2. Having regard to the applicant's Natura Impact Statement, the Board is not satisfied that the proposal would not adversely affect the integrity of European Site No. 002170, in view of the Site's Conservation Objectives. The proposal would thus fail to accord with the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

26<sup>th</sup> March 2021