



An
Bord
Pleanála

Inspector's Report

ABP-309568-21

Development	Construction of 22 houses.
Location	Roslevan , Ennis , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20158
Applicant(s)	J. J. Fahy
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Gort Leamhán Residents Committee Paul & Catherine Coffey Mark & Concepta O'Dea Brendan Manning & Aisling McMahon Dr Bruce & Anne Marie O'Donnell
Observer(s)	Development Applications Unit - Heritage

Date of Site Inspection

5th of May 2021

Inspector

Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The appeal site is located to the north east of Ennis in County Clare. The application is located c. 2.7km from the centre of the town and c 800m west of the M18 motorway from Limerick to Galway.
- 1.2. The site has a stated area of 1.2089 ha and is a parcel of land located to the south of an existing housing development known as Gort Leamhán. Gort Leamhán is accessed off the Millbank Road (L4608) c. 280m south of the R352 Regional road from Ennis to East and North East Co. Clare.
- 1.3. Gort Leamhán is a typical housing estate with detached, semi-detached and terrace style two storey housings front and rear gardens and large areas of open space. The application site boundary includes the main entrance in to Gort Leamhán and one of the cul de sac spur roads that serves houses No. 4-13. The part of the application site for the proposed houses is not currently accessible through this cul de sac which is closed with existing boundary treatment of concrete plinth with wooden fencing. This area is mainly used as a turning circle with car parking spaces provided. At the time of my inspection I also observed this area was been used for children's play.
- 1.4. At the time of the site inspection the main part of the site was accessible from the Millbank Road through an underutilised existing passage located along the southern side of an existing housing development known as Cuirt an Fhile. The site itself is overgrown with trees and vegetation. The site is underutilised with evidence of dumping and antisocial behaviour throughout. The lands are elevated towards the southern boundary before falling northwards towards Gort Leamhán.
- 1.5. The Gaurus River flows c. 20-80 metres from the sites southern and eastern boundaries in a south to south west direction.

2.0 Proposed Development

- 2.1. The application comprises-
 - Construction of 22 no. houses-
 - 5 detached

- 3 no. two bed detached bungalows;
 - 2 no. three bed houses
- 8 no. three bed semi-detached
- 9 terrace houses in 3 blocks of three houses i.e.
 - 6 no. three bed and
 - 3 no. four-bed
- Connect to public foul sewer and water supply,
- Access via Gort Leamhán

2.2. On the 16/06/20 the Planning Authority sought Further Information (FI) including-

- Revised proposals to address zoning requirements- relocation or removal of house no. 22 from open space zoning
- Proposals to address zoning requirement for a riverside walk
- Public safety issues- water safety and level differences across the site
- Residential amenity issues- useability of private open space and overlooking
- A traffic management plan for construction phase of the development
- Proposed road layout integration and connectivity with existing road of Gort Leamhán
- A landscaping plan and details of boundary treatments
- House design
- Proximity of Gaurus River and surface water management concerns including requirement for Flood Risk Assessment.
- Proximity to Special Area of Conservation, requirement for up to date Ecological Reports informed by on site bat and badger surveys.
- CEMP
- Demonstrate sufficient legal interest in the site and landholding
- Details of pre-connection enquiry to Irish Water

2.3. On the 15/12/20 the applicants submitted Further Information (FI) generally addressing the concerns of the Planning Authority.

- The proposal now seeks 21 residential units
 - 5 detached
 - 3 no. two bed detached bungalows;
 - 2 no. three bed houses
 - 10 no. semi-detached houses¹
 - 9 no. three bed semi-detached
 - 1 no. four bed semi detached
 - 6 terrace houses in 2 blocks of three houses i.e.
 - 4 no. three bed and
 - 2 no. four-bed

2.4. This was readvertised as significant further information on the 07/01/21.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission on the 03/02/21 subject to 23 conditions generally of a standard nature and including-

- C1
 - (b) 21 residential units only
 - (c) Lands to the eastern boundary of the site as outlined in blue shall be developed as an open space area with associated walkway
- C2
 - (a) Construction access only from existing laneway to south west of the site. Use of Gort Leamhán access road not permitted.

¹ Original terrace of three houses- No's 20, 21 and 22 are now proposed as a pair of semidetached houses- No's 20 and 21 (but not mirroring design or layout)

- (b) €45,000 bond for public roads
- (c) upon completion the access laneway shall cease to be used for vehicular traffic.
- C3 Part V
- C6 Submission of Construction and Environmental Management Plan
- C7 Mitigation measures of Flood Risk Assessment to be implemented.
- C8 Mitigation measures of Bat Survey and reviewed Ecological Assessment to be implemented.
- C17 No commercial overnight guest accommodation regardless of exemptions
- C18 All precautions necessary to avoid spread of non-native invasive plants
- C20
 - (a) landscape as per plan submitted
 - (b) proposed amphitheatre seating not permitted
 - (c) proposed palisade fencing not permitted
 - (d) Railway sleepers as steps not permitted
 - (e) boundary treatment to proposed open space and walkway required to prevent access to riverbank area
- C22 Archaeology condition
- C23 Storm, surface water, wastewater requirements.

4.0 Planning Authority Reports

4.1. Planning Reports

4.1.1. The first planners report (dated 12/06/20) south further information. The following is noted from the report-

- The site is located in the settlement of Ennis and is zoned for Low Density Residential (LDR73) purposes and partially as Open Space.

- The Core Strategy provides for 15 units to the hectare. It also provides scope for alterations to specified densities.
- A density of 18.2 is proposed. This is lower than permitted in the 2006 application and subject to resolution of other issues would be acceptable.
- There are no recorded monuments or architectural designations on the site or within its immediate environs. Archaeological monitoring is recommended by adopting a precautionary principle.
- An Appropriate Assessment Screening and Determination has been carried out and concludes that there is no potential for significant impacts to European Sites.
- The development does not fall within the mandatory requirements for EIA. The proposal is subthreshold and having regard to nature and scale of the development and the nature of the receiving environment there is no real likelihood of significant effects on the environment. The need for EIA is excluded and a screening determination is not required.

4.1.2. The second planners report (dated 21/12/20) reflects the decision of the Planning Authority. The following is noted from the report-

- For the most part the points as raised in the request for FI have been addressed satisfactorily. There are several points that require further detail/agreement however it is possible to address these by condition.
- The Flood Risk Assessment is sufficient to address point 4a of the FI request. Floor levels are above 5.15m OD, Flood Risk Mitigation measures and on site attenuation details have been submitted and are acceptable
- An updated Ecological Report September 2020 prepared by Ecofact has been submitted. A full bat survey with field surveys August 2020 submitted. The site is not of major importance to bats, some bats are likely to roost in the trees along the site boundary. A derogation licence will be required. Mitigation measures are also proposed.
- The submitted Preliminary Construction Management Plan is lacking in detail such as on-site parking, wheel washing etc. Can be addressed by condition.

- Land registry and folio details have been submitted. The applicant is the owner. In relation to the proposed access laneway the greater part of this laneway is unregistered and is not on Clare County Council's schedule of roads. Historically evidence shows there was an access laneway that provided for a number of houses. The applicants indicate they have sufficient legal interest to access the lands via this laneway. The council and An Bord Pleanála permitted similar development under P17-238. Regard is had to section 5.13 of the Development Management Guidelines 2007 and this matter can be addressed by Condition.
- Details of pre-connection enquiry to Irish Water have been submitted.
- The site is located within the town boundary of Ennis and the zoning of the site is for residential development

4.2. Other Technical Reports

- Environmental Assessment Officer (01/02/21)-
 - The site is not considered important as a bat roosting habitat with no roosts identified. Some boundary trees provide potential roosting and a derogation licence will be required.
 - No objections subject to condition requiring implementation of the avoidance measures proposed.
- Ennis Municipal District Engineers Report (01/02/21)-
 - The roads in Gort Leamhán are in charge of the Council.
 - No objections subject to conditions
- Roads Design-
 - The applicants proposes a 30kph speed limit but the Area has a 50kph speed limit
 - No other concerns raised
- Fire Authority-
 - Additional Information required relating to TGD Part B

- Estates / Taking in Charge-
 - Addresses a number of Issues at FI stage.
 - Concerns raised relating to boundary treatment, proposals for open space, amphitheatre, walkway and steps materials etc.
 - No other concerns raised
- Road & Transportation-
 - Generally refers to public lighting proposals. No concerns raised

4.3. Prescribed Bodies

- DAU Archaeology (29/01/21)
 - National Monument Service has no comments to make at this time
- DAU Archaeology (23/04/20)-
 - Development located in close proximity to Recorded Monument CL034-050- Earthwork. Subsurface archaeological remains may be encountered. An Archaeological Impact Assessment should be prepared and conditions be applied in the event of a grant.
- DAU Nature Conservation (22/04/20)-
 - The site is approx. 150m from the Lower River Shannon SAC.
 - The site is in close proximity to 3 Lesser Horseshoe Bat roosts- 1 historic and 2 current.
 - The submitted 2007 Ecological Report is considered no longer relevant
 - The Council should carry out its own Appropriate Assessment
 - Further detail required in relation to pedestrian and cyclist access route in south west corner of the site.
 - Bat and badger surveys are required

4.4. Third Party Observations

4.4.1. Nine third party submissions were received and are on file. Six third party submission were received in response to the Significant Further information submitted by the applicants. The main planning issues/concerns raised can generally be summarised as follows-

- Traffic and Road Safety, use of the cul de sac during construction and operation, congestion and existing traffic on Millbank Road.
- Residential Amenity impacted by traffic, value of property, proximity to existing houses, overshadowing loss of sunlight and privacy
- Non-compliance with zoning objective
- Overdevelopment and density
- Pressure on existing public services, water supply, surface and waste water
- Overall design and layout, out of character with area, significant filling of land, compliance with Sustainable Residential Development in Urban Areas (SRDUA) Guidelines
- Flood risk and public safety
- Environmental and ecological Impact, outdated report, proximity and impacts to European Sites and protected species.
- Legal entitlement to access lands

5.0 Planning History

This and adjoining sites-

- 06/21161- 48 residential apartments and houses and access through development previously granted Planning Ref. No. 99/232. **Grant** 02/01/2008 subject to 50 conditions.
 - C2 permitted 42 residential units
- 16/1019- outline permission for 2 houses, **Refused**, 23/02/2017
 - Materially contravene open space zoning objective

- Flood risk
- Traffic safety and sufficient legal interest to provide adequate sightlines
- Wastewater treatment
- PL.58.130815, 99/21232 (or 99/232 Ennis Town Council)- to construct 190 dwelling houses, **Grant** subject to 16 conditions.
 - C2 and C3 omitted c.56 units

6.0 Policy Context

6.1. Planning and Development Legislation-

6.1.1. Act 2000-21 (as amended)

Section 34 (4) (a) states-

Conditions under subsection (1) may, without prejudice to the generality of that subsection, include all or any of the following—

(a) conditions for regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant if the imposition of such conditions appears to the planning authority—

(i) to be expedient for the purposes of or in connection with the development authorised by the permission, or

(ii) to be appropriate, where any aspect or feature of that adjoining, abutting or adjacent land constitutes an amenity for the public or a section of the public, for the purposes of conserving that amenity for the public or that section of the public (and the effect of the imposition of conditions for that purpose would not be to burden unduly the person in whose favour the permission operates);

Section 34 (13) states-

A person shall not be entitled solely by reason of a permission under this section to carry out any development.

6.1.2. *Regulations 2001-21 (as amended)*

Schedule 2 Part 1 Class 16 indicates the following as exempted development-

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

Conditions and Limitations-

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

6.2. **National Planning Framework (NPF)**

6.2.1. The NPF seeks to focus growth on cities, towns and villages with an overall aim of achieving higher densities than have been achieved to date.

National Strategic Outcome 1 Compact Growth

From an urban development perspective, we will need to deliver a greater proportion of residential development within existing built-up areas of our cities, towns and villages and ensuring that, when it comes to choosing a home, there are viable attractive alternatives available to people.

6.2.2. The various policies in the NPF are structured under National Policy Objectives (NPOs). Relevant National Policy Objectives include-

- *3a Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements²*

² This means within the existing built-up footprint of all sizes of urban settlement, as defined by the CSO in line with UN criteria i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

- *3c- Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints³.*
- *5- Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.*
- *6- Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.*
- *9- In each Regional Assembly area, settlements not identified in Policy 2a or 2b of this Framework⁴, may be identified for significant (i.e. 30% or more above 2016 population levels) rates of population growth at regional and local planning stages, provided this is subject to:*
 - *Agreement (regional assembly, metropolitan area and/or local authority as appropriate);*
 - *Balance with strategies for other urban and rural areas (regional assembly, metropolitan area and/or local authority as appropriate), which means that the totality of planned population growth has to be in line with the overall growth target; and*
 - *A co-ordinated strategy that ensures alignment with investment in infrastructure and the provision of employment, together with supporting amenities and services.*
- *11- In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to*

³ This means within the existing built-up footprint of all sizes of urban settlement, as defined by the CSO in line with UN criteria i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

⁴ Ennis is a settlement and not identified in Policy 2a or 2b of the NPF

development meeting appropriate planning standards and achieving targeted growth.

- *35- Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.*

6.2.3. Other relevant sections include-

Section 2.6 Securing Compact and Sustainable Growth states-

An increase in the proportion of more compact forms of growth in the development of settlements of all sizes, from the largest city to the smallest village, has the potential to make a transformational difference. It can bring new life and footfall, contribute to the viability of services, shops and public transport, increase housing supply and enable more people to be closer to employment and recreational opportunities, as well as to walk or cycle more and use the car less.

6.3. Regional Spatial & Economic Strategy for the Southern Region (RSES)

6.3.1. The Southern Region's strategy is to build a strong, resilient, sustainable region and have identified eleven 'Statements of the Strategy' including-

1. Compact Growth- Strengthening and growing our cities and metropolitan areas; harnessing the combined strength of our 3 cities as a counterbalance to the Greater Dublin Area, through quality development; regeneration and compact growth; building on the strong network of towns and supporting our villages and rural areas.

6.3.2. The policies in the RSES are structured under Regional Policy Objectives (RPOs) (p.7)

6.3.3. The Strategy focuses on 'Key enablers' (P.25) including-

Delivering ambitious and sustainable growth targets for our cities.....

6.3.4. *Key Towns-* Table 1.1 identifies Ennis with a population of 25,276. Table 3.2 of the identifies settlement types categories and the table identifies 'Key Town's as second

on the tier. Ennis is identified as 'Key Town'⁵ (see Map 3.1). The attributes of Key Towns are-

“Large population scale urban centre functioning as self-sustaining regional drivers.

Strategically located urban centres with accessibility and significant influence in a sub-regional context..”

Policy levels for key towns are listed as RSES, Development Plans and Local Area Plans.

6.3.5. Section 3.5 of the RSES deals specifically with Key Towns and states-

“They each play a critical role in underpinning the RSES and ensuring a consolidated spread of growth beyond the cities to the sub-regional level. It is envisaged that the Key Towns will be a focus for significant growth (more than 30%). The nature, scale and phasing of this growth will be determined by local authorities depending on a capacity analysis of each town.”

Regional Policy Objective 11 details-

“a. Local Authorities are supported in targeting growth of more than 30% for each Key Town.....

k. To plan increasing population growth in all Key Towns on a phased basis in collaboration with Irish Water, the local authority and other stakeholders to ensure that the assimilative capacity of the receiving environment is not exceeded and that increased wastewater discharges from population growth does not contribute to degradation of water quality and avoids adverse impacts on the integrity of water dependent habitats and species within the Natura 2000 network;”

Regional Policy Objective 13 deals specifically with Ennis and seeks-

“a. To support Ennis as a self-sustaining, regional economic driver and as a key location for investment choice in the Region, to support its enhanced development based on its strategic location relative to Limerick and Galway

⁵ The RSES details- The Regions network of Key Towns strengthens the urban structure across the Region, align with NPO 7 of the NPF and are a complement to the three pillars of cities and metropolitan areas which are the primary drivers of population and employment growth in the Region.

Cities and Shannon International Airport, as well as its role as a centre of employment and economic activity within the Region.....”

6.4. Ministerial Guidelines and Circulars

- 6.4.1. Circular Letter: NRUP 02/2021- Residential Densities in Towns and Villages, as set out in Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)-

.....The NPF also acknowledges that there is a need for more proportionate and tailored approaches to residential development. This means that it is necessary to adapt the scale, design and layout of housing in towns and villages, to ensure that suburban or high density urban approaches are not applied uniformly and that development responds appropriately to the character, scale and setting of the town or village.....

Development at the Edge of Larger Towns

Section 5.11 of the Sustainable Residential Development Guidelines states that for Outer Suburban/‘Greenfield’ sites within cities and larger towns, the density of development should be in the general range of 35-50 dwellings per hectare. Section 5.11 of the guidance also states that development at net densities of less than 30 dwellings per hectare is generally discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.

Section 5.12 further notes that to facilitate a choice of housing types, limited provision may be made for lower density schemes provided that, within a neighbourhood or district as a whole, average densities achieve any minimum standards recommended above.

While the Sustainable Residential Development Guidelines clearly encourage net densities in the 35-50 dwellings per hectare range within cities and larger towns, net densities of 30-35 dwellings per hectare may be regarded as acceptable in certain large town contexts and net densities of less than 30 dwellings per hectare, although generally discouraged, are not precluded in large town locations.

These ‘outer suburban’ provisions apply to cities and larger towns, and the Sustainable Residential Development Guidelines define larger towns as having a population in excess of 5,000 people. Large towns therefore range from 5,000 people up to the accepted city scale of 50,000 people. Given the very broad extent of this range and variety of urban situations in Ireland, it is necessary for An Bord Pleanála and Planning Authorities to exercise discretion in the application and assessment of residential density at the periphery of large towns, particularly at the edges of towns in a rural context.

Accordingly, the full range of outer suburban density, from a baseline figure of 30 dwellings per hectare (net) may be considered, with densities below that figure permissible subject to Section 5.12 of the Sustainable Residential Development Guidelines.

6.4.2. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) (2009)-

- These guidelines provide high-level policy aims to be translated into specific planning / design policy and objectives to be applied at different scales of residential development including districts or neighbourhoods within large urban centres. Chapter 5 deals with ‘Cities and larger towns’ and provides detailed advice on appropriate locations for increased densities in cities and larger towns.

- Section 5.11 f) *Outer Suburban / ‘Greenfield’ sites* states-

“These may be defined as open lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities.

Studies have indicated that whilst the land take of the ancillary facilities remains relatively constant, the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be

encouraged generally. Development at 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.”

- Section 5.12 deals with *Provision for lower densities in limited cases and states-*

“To facilitate a choice of housing types within areas, limited provision may be made for lower density schemes provided that, within a neighbourhood or district as a whole, average densities achieve any minimum standards recommended above.”

- Section 7.2 deals with Daylight and Sunlight and states-

“Overshadowing will generally only cause problems where buildings of significant height are involved or where new buildings are located very close to adjoining buildings. Planning authorities should require that daylight and shadow projection diagrams be submitted in all such proposals. The recommendations of “Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice” (B.R.E. 1991) or B.S. 8206 “Lighting for Buildings, Part 2 1992: Code of Practice for Daylighting” should be followed in this regard.”

6.4.3. Development Management Guidelines for Planning Authorities June, 2007

- Section 5.13-

“.....where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may

decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”

6.4.4. Transport Infrastructure Ireland’s ‘Traffic and Transport Assessment Guidelines May 2014’.

- Section 1.3- Traffic and Transport Assessment

“A Traffic and Transport Assessment is a comprehensive review of all the potential transport impacts of a proposed development or re-development, with an agreed plan to mitigate any adverse consequences.

All new developments will generate trips on the existing transport network, either by car, commercial vehicle, cycling, walking or public transport. In cases where a proposed development is of a size or type that would generate significant additional trips on adjoining transport infrastructure, this additional demand may necessitate changes to the road layout or public transport service.”

- Section 2.1- This sets thresholds at which the production of Traffic and Transport Assessments in relation to planning applications is recommended and include-

- *Traffic to and from the development exceeds 10% of the traffic flow on the adjoining road.*
- *Traffic to and from the development exceeds 5% of the traffic flow on the adjoining road where congestion exists or the location is sensitive.*
- *Residential development in excess of 200 dwellings.*

- Section 2.2. Sub-Thresholds

- *In some cases, the impact of traffic volumes may not be significant and the thresholds requiring a TTA may not be exceeded. However, the type and volume of generated traffic on National Roads may be of a nature to raise concerns about effects on road safety and road*

infrastructure. The planning authority should consult the evaluation criteria in Table 2.3. It is recommended that if the proposed development meets two or more of these criteria, then a Transport Assessment should be requested.

- Table 2.3 Sub-threshold Criteria for Traffic and Transport Assessment

6.4.5. Design Manual for Urban Roads and Streets

- *Section 3.2.1- The movement function of a street is generally described using a classification system, such as a street hierarchy. This guide refers to street hierarchy as follows (see Figure 3.3):*
 - *Arterial Streets*
 - *Link Streets*
 - *Local Streets*
- *Figure 3.3 Local Streets- These are the streets that provide access within communities and to Arterial and Link streets.*
- *Section 4.4.1 Carriageway Widths-*
 - *Research from the UK has found that narrow carriageways are one of the most effective design measures that calm traffic.*
 - *The standard carriageway width on Local streets should be between 5 - 5.5m (i.e. with lane widths of 2.5-2.75m).*
 - *When carrying out upgrades, or traffic calming works on existing streets, the first priority of authorities should be to narrow existing carriageways where they exceed those standards listed above. This will not only calm traffic, but will free up additional space within the street reserve to widen footpaths, insert cycle lane/tracks, provide bus lanes, street trees and on-street parking (all of which will further contribute to traffic calming).*

6.5. Clare County Development Plan 2017-2023 (CDP)

6.5.1. Table 2.1 of the Plan sets out the Settlement Hierarchy for County Clare. Ennis is identified as a the 'County Town/Hub'.

6.5.2. The Ennis settlement boundary is identified on Page 124, Volume 3a of the County Development Plan- Ennis Municipal District (Map No. PLP-18-0001-24) This also identifies the subject application site as largely zoned **Low Density Residential** with a specific LDR73 zoning objective. A portion of the site towards the turning head and cul de sac of Gort Leamhán is zoned **Open Space**.

6.5.3. The indicative land use zoning matrix is set out in Volume 1 of the CDP. Chapter 19 deals with Land Use and Zonings.

- Low Density Residential is described as-

This zoning refers to the use of lands to accommodate a low density pattern of residential development, primarily detached family dwellings. The underlying priority shall be to ensure that the character of the settlement/area is maintained and further reinforced by a high standard of design. Proposed developments must also be appropriate in scale and nature to the areas in which they are located.

- Open Space is described as-

"It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas but these would only be a small component of the overall areas involved."

6.5.4. Volume 3a of the CDP, section 2 is titled Ennis and Environs Technical Guidance and provides site specific guidance on zoning and zoning objectives and much of this site is identified as-

- LDR73 Millbank, Roslevan

"The site is suitable for a low density residential housing scheme of a high quality design and layout. Any development application shall be accompanied by proposals to provide a river walk from the site towards the river to the east,

within the Open Space area. No residential development shall take place on the zoned Open Space areas. Additionally, development proposals shall be accompanied by a surface water management plan to ensure that the run-off flow rates from the development are managed and to reduce the impact of development on flooding. This will also serve to protect and enhance water quality. All development proposals for this site must ensure the sensitive incorporation of mature trees and hedgerows located on the lands and provide a buffer to protect these features. Future development on this site must be connected to a wastewater treatment plant with adequate capacity to accommodate the proposed development.

It is noted that some of the lands to which development is proposed are located outside of the application site but are within the applicants control as per the lands identified in blue on the Site Location DRWG No PL1.1.

6.5.5. A 'Flood Risk Zones and Flooding' map is on page 127 of Volume 3a. This identifies much of the lands along the Gaurus River close to the application site as within Flood Zone A and B.

6.5.6. Volume 1, Table 2.4 of the CDP sets out the **Core Strategy** for the County. Ennis can be summarised as follows-

Ennis	
Population 2011	25,360
Population Target 2023	33,497
Target Increase in Population 2011-2023	8,137
Target Increase in No. of Households to 2023	3,166
Total Required Area of Residentially Zoned Land (ha) to 2023	137.2 ha
Total Area Zoned (given as Residential Equivalent in ha.)	134.65 ha
Water	Yes
Wastewater	Yes

Table 2.4 and the Core Strategy are informed by the following-

- Density of 15 to the hectare for low density residentially zoned land for Ennis.
- These are average figures for calculating supplies of zoned land. Individual planning applications on low density/residentially zoned land will be considered on their own merits;
- A household size of 2.57 persons per household
- A headroom of an additional 30% in Ennis to allow for choice and in anticipation of not all lands being made available

Section 2.4.2 of the plan states-

It is not intended that the population targets for individual settlements will be rigidly implemented without any flexibility.....

The following Development Plan Objectives are considered relevant-

- CDP3.1 Development Plan Objective: Ennis
 - a. To ensure that Ennis, as the County Town and as a designated Hub Town in the NSS, is a driver of County and regional prosperity by harnessing its strategic location and access on the Atlantic Corridor; its strong urban structure, existing retail, service and accommodation base and other competitive advantages;*
 - b. To achieve a vibrant and culturally-rich Ennis area with a revitalised town centre and strong economic growth balanced with enhanced social inclusion, sustainable neighbourhoods and a high level of environmental quality to ensure an excellent quality of life for all;*
 - c. To prepare a local area plan for the Ennis Town and Environs area during the lifetime of this Development Plan.*
- CDP3.9: Monitoring and Implementation of Settlement Strategy
It is an objective of the Development Plan:

a. *To achieve the delivery of strategic, plan-led, co-ordinated and balanced development of the settlements throughout the County;*

- CDP3.10: Planned Growth of Settlements-

It is an objective of the Development Plan:

a. *To ensure that the sequential approach is applied to the assessment of proposals for development in towns and villages and to ensure that new developments are of a scale and character that is appropriate to the area in which they are located;*

b. *To restrict single and/or multiple largescale developments that would lead to the rapid completion of any settlement within its development boundary, in excess of its capacity to absorb development in terms of physical infrastructure (water, wastewater, surface water, lighting, footpaths, access etc.) and social infrastructure (schools, community facilities etc.).*

- CDP4.2: Facilitating the Housing Needs of the Population

It is an objective of Clare County Council:

a. *To facilitate the housing needs of the existing and future population of County Clare through the management of housing development throughout the County in accordance with the Settlement Strategy;.....*

- CDP4.7: Housing Mix

It is an objective of the Development Plan:

a. *To secure the development of a mix of house types and sizes throughout the County to meet the needs of the likely future population in accordance with the guidance set out in the Housing Strategy and the Guidelines on Sustainable Residential Development in Urban Areas;*

b. *To require new housing developments to incorporate a variety of plot sizes to meet the current and future needs of residents;.....*

- CDP4.15 Green Infrastructure in Residential Developments

It is an objective of the Development Plan: To ensure that green areas associated with new residential developments enrich the quality of life of local residents and provide ecologically rich areas that enhance biodiversity and contribute to the green infrastructure network in the County.

- CDP5.1 Sustainable Communities

It is an objective of Clare County Council:

a. To ensure that future development proposals contribute to the creation of sustainable communities throughout County Clare;

b. To work in collaboration with all relevant stakeholders to facilitate the planning and delivery of accessible community facilities throughout the County

- CDP8.8 Design Manual for Urban Roads and Streets (DMURS)

It is an objective of the Development Plan: To implement the requirements and recommendations contained in DMURS in the assessment of development proposals, the preparation of design schemes and their implementation in the development of streets, roads and public realm improvement schemes in the County.

- CDP14.2: European Sites

It is an objective of the Development Plan:

a. To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters;

b. To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);....

- *CDP14.7: Development Plan Objective: Non-Designated Sites*

It is an objective of Clare County Council:

- a. *To ensure the protection and conservation of areas, sites, species and ecological networks/corridors of biodiversity value outside of designated sites throughout the County and to require an ecological assessment to accompany development proposals likely to impact on such areas or species;*
- b. *To ensure that available habitat mapping is taken into consideration in any ecological assessment undertaken;.....*

- *CDP15.8 Sites, Features and Objects of Archaeological Interest*

It is an objective of Clare County Council:

- a. *To safeguard sites, features and objects of archaeological interest generally;*
- b. *To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally (in securing such preservation, the Council will have regard to the advice and recommendations of the Department of the Arts, Heritage, Regional, Rural and Gaeltacht Affairs);*
- c. *To permit development only where the Planning Authority is satisfied that the proposals will not interfere with:*
 - *items of archaeological or historical importance;*
 - *the areas in the vicinity of archaeological sites;*
 - *the appreciation or the study of such items.*

.....

Appendix 1 sets out Development Management Guidelines including the following-

- A1.3.2 Urban Residential Development
- A1.9.3 Car Parking Residential Developments-
 - dwelling houses and apartments- 1 space for 1 & 2 bed units 2 spaces for ≥3 bed units
 - Visitor Parking- 1 space per 3 residential units
- A1.9.4 Traffic Impact Assessments (TIA), Road Safety Audits and Road Safety Impact Assessments-
 - *The TIA should be prepared in accordance with the Traffic Management Guidelines Manual 2003 issued by the Department of Transport and the Traffic and Transport Assessment Guidelines 2014 published by the NRA. These guidelines provide guidance including thresholds and sub-thresholds above which TIA is required.*
 - *Road Safety Impact Assessment is described in the EU Directive on Road Infrastructure Safety Management (EU RISM) 2008/96/EC as a strategic comparative analysis of the impact of a new road, or of substantial modifications to an existing road, on the safety performance of the road network.*
 - *A road safety audit must be submitted as part of any planning application where the proposed development incorporates a new access to a National Road or where it may give rise to an increase in traffic to a National Road. Road Safety Audits shall be carried out independently by assessors approved by the Transport Infrastructure Ireland.*
- Cycle Parking-
 - With garage: none
 - Without garage: 1 space per unit

6.6. Natural Heritage Designations

The site is located-

- c.130 m north of the Lower River Shannon SAC (002165),
- c. 1.6km south east of the Ballyallia Lake SAC (000014), and Proposed Natural Heritage Areas (000014).
- c. 2.5km south east of the Ballyallia Lough SPA (004041)
- c. 4 km north of the River Shannon and River Fergus Estuaries SPA (004077).
- c. 450m east of Newpark House (Ennis) Proposed Natural Heritage Areas (000061)

6.7. EIA Screening

- 6.7.1. An Environmental Impact Assessment Screening report has not been submitted with the application.
- 6.7.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 6.7.3. Following the submission of Further Information (FI) it is proposed to construct 21 residential units. The number of units proposed is well below the threshold of 500 dwelling units. The site is not located within a ‘business district’ but is within the ‘built up area’ as defined by the Regulations. In this regard the site has a stated area of 1.2089ha and I note the provision of open space and walkway on adjoining land in the applicants ownership as part of this application. I am satisfied the development is well below the applicable threshold of 10 ha
- 6.7.4. The development proposes connecting to the public water and drainage services of Irish Water and Clare County Council. In this context I am satisfied that the proposed development would not give rise to waste, pollution or nuisances that differ from that

arising from other housing in the general area. It would not give rise to a risk of major accidents or risks to human health.

6.7.5. The site is not directly connected to a European Site, however I note surface water will discharge to the Gaurus River which runs c. 20m south of the application site in a north east to west direction. This watercourse is a tributary of the River Fergus which flows into the Lower River Shannon SAC. I also note wastewater will be treated and discharged from the Public Sewer under the control of Irish Water and the EPA licensing regime. Further consideration of significant effects, if any on European Sites are set out in Section 8.8 of this report.

6.7.6. I consider that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that upon 'Preliminary Examination', an 'Environmental Impact Assessment Report' for the proposed development is not necessary in this instance.

7.0 The Appeal

7.1. Grounds of Appeal

Five third party appeal has been received from-

- Gort Leamhán Residents Committee
- Paul & Catherine Coffey
- Mark & Concepta O'Dea
- Brendan Manning & Aisling McMahon
- Dr Bruce & Anne Marie O'Donnell

The grounds of appeal include many of the matters raised in third party submissions to the Planning Authority and can be summarised as follows-

- The proposed development will have serious traffic and road safety implications on the existing Gort Leamhán cul de sac. This existing estate road is too narrow for additional traffic associated with the development. One appeal refers to a newspaper article and the need for traffic calming in a separate housing estate. Another appeal draws comparisons to road

dimensions of an existing housing in Ennis. Concerns are also raised for the wider area including the junction of the Millbank Road with the R532 Tulla Road to the north of the application site. Further reference is made to a submitted newspaper article relating to this junction. The development is not designed in accordance with DMURS and a full Traffic Impact Assessment is required including all the houses in Gort Leamhán.

- The councils reliance on the precedent to permit such access in 06/21161 fifteen years ago has not had due regard to existing residential amenity of houses on the cul de sac. Such a proposal is considered haphazard and piecemeal.
- Residential amenity concerns including the use of the cul de sac for children's play, noise from traffic on the cul de sac, impact on the open plan nature of front gardens, impact on visual amenity from loss of trees, loss of passive surveillance of play areas with proposed open space areas out of the line of sight and the impact upon community spirit.
- Use of the cul de sac road will lead to devaluation of property in the area.
- The design of the proposed estate does not comply with 12 design criteria of the Urban Design Manual that accompanies the Sustainable Residential Development in Urban Areas (SRDUA) Guidelines 2009. The design is out of character with Gort Leamhán.

7.2. Applicant Response

- None received

7.3. Planning Authority Response

A response to the appeal has been received from the Planning Authority on the 25/03/21 which can be summarised as follows-

- Having regard to the onsite residential zoning, the intended use of the proposed development, the relevant Section 28 Ministerial Guidelines, the policies of the Clare County Development Plan 2017-2023 (as varied) and the pattern of development in the area, it is considered that, subject to conditions,

the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable on the grounds of traffic and pedestrian safety and convenience and would therefore be in accordance with the proper planning and sustainable development of the area.

7.4. Observations

One observation was received from the Development Applications Unit raising Heritage related observations. These can be summarised as follows-

- An ecological report (from 0621161) and an updated ecological report by Ecofact submitted in response to FI are submitted for the subject application. The latter included a new bat and mammal survey of the site. A 'Natura Impact Statement', was not submitted.
- Both reports identify the potential for contaminated run-off to enter the nearby watercourse and subsequently impact the cSAC as well as the potential for disturbance to Annex II species Otter.
- Mitigation measures to offset these potential impacts are detailed in Section 6.2 of the 2007 report. These mitigation measure should be fully incorporated into the construction environmental management plan and put in place prior to construction, of particular importance is the installation of a silt curtain between the site and the nearby watercourse.
- The Department believes that a negative impact on the SAC habitats and its species is unlikely if the mitigation measures are incorporated fully into the development.

8.0 Assessment

8.1. Introduction

- 8.1.1. I have examined the application details and all other documentation on file, including the appeals. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider the substantive issues

arising from the grounds of the third party appeals, and for the purpose of assessing the appeal, relate to the following matters-

- Zoning and the Principle of the Development
- Transport Related Issues
- Flooding
- Amenities of the Area
- Sunlight and Daylight
- Bat Survey
- Appropriate Assessment

8.2. Zoning and the Principle of the Development

- 8.2.1. The subject site is largely zoned LDR- Low Density Residential with a site specific LDR73 zoning objective. A portion of the site towards the turning head and cul de sac of Gort Leamhán is zoned Open Space, as is a section of the site towards the south of the application site. It is also noted the access route from the Millbank Road through the Gort Leamhán estate and the existing cul de sac are not zoned.
- 8.2.2. Section 2.3.1 of Volume 3a of the CDP deals with 'New Housing in the Roslevan Neighbourhood' and details these lands have been zoned to accommodate the expansion of the neighbourhood in the future and to accommodate residential growth in close proximity to existing facilities which will assist in the consolidation and appropriate expansion of the neighbourhood.
- 8.2.3. The site specific zoning objective- LDR73 Millbank, Roslevan sets out a number of requirements including-
- a low density residential housing scheme of a high quality design and layout,
 - proposals to provide a river walk from the site towards the river to the east, within the Open Space area,
 - no residential development shall take place on the 'Open Space' zoned areas

- a surface water management plan to ensure that the run-off flow rates from the development are managed, to reduce the impact of development on flooding and to protect and enhance water quality.
- the sensitive incorporation of mature trees and hedgerows located on the lands and provide a buffer to protect these features.
- connected to a wastewater treatment plant with adequate capacity to accommodate the proposed development.

8.2.3.1. **Density and Core Strategy**

- a) The application proposes 21 houses on a site area of 1.2089 ha and at a density of 17 units per ha. Table 2.4 of the CDP sets out the Core Strategy targets for County Clare and for Ennis. In this regard I am satisfied the proposed development is consistent with the core strategy targets and projections of population increase for Ennis from 25,360 to 33,497 by 2023.
- b) The core strategy outlines a number of assumptions including a density of 15 to the hectare for low density residentially zoned land for Ennis and a household size of 2.57 persons. The table also clearly details that individual planning applications on low density/residentially zoned land will be considered on their own merits.
- c) Section 5.11 of the Sustainable Residential Development in Urban Area Guidelines 2009 (SRDUA) details that for Outer Suburban/'Greenfield' sites within cities and larger towns, the density of development should be in the general range of 35-50 dwellings per hectare and development at densities less than 30 dwellings per hectare is generally discouraged in the interest of land efficiency. Section 5.12 details that that limited provision may be made for lower density schemes provided that, within a neighbourhood or district as a whole, average densities achieve any minimum standards recommended.
- d) Circular Letter: NRUP 02/2021 (section 6.4 above) details that given the range and variety of urban situations in Ireland, it is necessary for An Bord Pleanála and Planning Authorities to exercise discretion in the application and assessment of residential density at the periphery of large towns and

densities below 30 dwellings per ha may be considered subject to section 5.12 of the Guidelines.

- e) The site is zoned for low density residential development and the development would be an appropriate expansion of zoned land within the Ennis settlement boundary. I acknowledge 17 units per hectare is well below the recommended provision of the SRDUA Guidelines, however it is slightly above the assumption of 15 units per ha as identified in Table 2.4 the County Development Plan where such density were calculated into the development of the core strategy.
- f) I note the provision of a public walkway in lands zoned as Open Space within the applicants landholding, but outside of the red line planning application site boundary. If these lands were included within the red line the proposed density would be much less than 15 units per hectare.
- g) Having considered the application on its own merits, the sites low density zoning objective the assumptions that form the basis of the core strategy and section 5.12 of the SRDUA Guidelines, I am satisfied the proposed provision of 17 units to the hectare is appropriate and acceptable.

8.2.3.2. **Design and Layout**

- a) The LDR73 zoning requirements requires a high quality design and layout. The Planning Authority have raised no major concerns in this regard. The first planning report acknowledges that the proposed design and finishes of the development would be a departure from the adjacent residential area but would create a separate identity for the development and is considered acceptable.
- b) The appellants have raised some concerns that the proposed development does not comply with 12 design criteria of the Urban Design Manual that accompanies the Sustainable Residential Development in Urban Areas Guidelines 2009 (SRDUA). They content the design is out of character with Gort Leamhán.
- c) The Clare CDP details that LDR zoning requires residential development, primarily of detached family dwellings. It goes on to detail the underlying

priority shall be to ensure that the character of the settlement/area is maintained and further reinforced by a high standard of design and that proposals must be appropriate in scale and nature to the areas in which they are located.

- d) The development of the application site and its overall quality should not be considered by just the design of the houses. In this regard the development will provide two sizeable areas of open space of 0.2713ha or 22.4% of the application site which can be used by the residents of the proposed development and Gort Leamhán. Both areas will also benefit from passive surveillance from a reasonable number of existing and proposed houses.
- e) The proposed development will also provide for a large open space grassed area with a walkway on lands outside the application site and within the applicants ownership.
- f) The application provides 21 housing units of detached, semi-detached and terraced houses all on different size plots. These will provide a range of house styles including bungalow and two storey houses, 2, 3 and 4 bedrooms and floor areas ranging from 72 sq.m 128.66 sq.m. I am satisfied these will cater for a number of different housing needs of potential future residents including families. I understand the general 'LDR' zoning requires 'primarily' detached family homes, however I am satisfied the provision of 5 detached houses and 16 other houses as proposed reasonably addresses the requirement in this context.
- g) The Site Layout Drawing No. PL1.2 states a minimum of 11 metre rear garden depth to each house. The same drawing show rear garden depths ranging from 8.405m to 16.36m. The rear gardens that do not fully meet a depth of 11m all face south towards lands zoned open space and accordingly will not lead to overlooking. I am satisfied the proposed separation distances between houses is acceptable.
- h) The application proposes 39 car parking spaces for the houses and 7 visitor spaces. A Sheffield Bike stand will provide 12 cycle spaces. The application also makes provision for electric car charging points.

- i) Section 1.2 of the SRDUA 2009 Guidelines details that the guidelines are accompanied by a non-statutory residential design manual. In this regard, there is no strict requirement that proposed developments must comply with the 12 design criteria recommend in the accompanying Urban Design Manual. It is clear the layout of the proposed development is influenced by the nature of the land use zoning, the land ownership, existing access from Gort Leamhán and the proximity of the site to lands zoned for open space and adjoining the Gaurus River. Having considered the site's context, I am satisfied the proposed development does provide for a number of the design criteria measures outlined in the 2009 Design Manual including context, connections, inclusivity and variety.
- j) The proposed house designs are contemporary in style and would be clearly distinguishable to the existing houses in the Gort Leamhán estate. I consider the propose design of the houses would be capable of satisfactory assimilation into the suburban setting of the area. I share the Planning Authority's consideration that they would create a separate identity for the development and I am satisfied the houses would be appropriate to the scale and nature of the area.
- k) As part of the FI submission the applicants have omitted house no. 22 which originally formed part of a terrace of three houses type C. Revised elevational drawings have not been submitted. Should the Board decide to grant permission it is recommend that revised drawings for house 20 and 21 be submitted for written agreement of the Planning Authority in the interests of completeness and clarity.
- l) Having regard to all of the above I note the underlying priority of the LDR zoning is to ensure the character of the area is maintained and reinforced by a high standard of design appropriate to the scale and nature of the area. In my opinion the development would reasonably achieve this.

8.2.3.3. River Walk towards the River to the East

- a) Having considered the initial application the Planning Authority raised concerns that the development as proposed was not complying with the

zoning objective for a riverside walk. They sought Further Information (point 1 c) to address this concern.

- b) In their response the applicants indicate they intend to provide a loop walk to the east and north of the site as shown on the submitted drawings. The pathway will be stripped soil filled with permeable stone and gravel to a level not greater than existing with its alignment deliberate to avoid areas of the flood basin along the Gaurus River.
- c) The Planning Authority have raised no concerns in this regard and I note delivery of this amenity is provided for by way of condition 1 (c) of the Planning Authority's grant of permission. Having considered section 34 (4) of the Planning and Development Acts 2000-21 (as amended) (See section 6.1) and should the Board decide to grant permission, I recommend a similar condition be attached.
- d) I am satisfied the proposed development complies with this site specific zoning requirements.

8.2.3.4. No Residential Development on the 'Open Space' zoned land

- a) The Planning Authority raised concerns through Further Information that proposed house number 22 was located within lands zoned Open Space (Point 1 a) and requested it be relocated or removed.
- b) In their response the applicants omitted house number 22 and this was deemed acceptable by the Planning Authority.

8.2.3.5. Surface Water Management Plan

- a) This zoning requirement seeks to ensure that the run-off flow rates from the development are managed to reduce the impact of development on flooding and to protect and enhance water quality.
- b) The Planning Authority raised concerns through point 4 of the Further Information request that flood risk and surface water management issues may arise. A Flood Risk Assessment (FRA) and Surface Water Management Plan was sought.

- c) A Flood Risk Assessment was submitted in response to the request for Further Information. The assessment was carried out by Envirologic Hydrogeological and Hydrological Consulting.
- d) The FRA proposes a Surface Water Management scheme availing of attenuation and a hydrobrake to ensure stormwater generated on site is released and disposed of to the River Gaurus at controlled rates equivalent to predevelopment greenfield runoff. Drawing No. PL1.2 shows provision of a 236 sq.m attenuation area in the central open space area at the area of house 22 (now omitted).
- e) I am satisfied the proposed development complies with this site specific zoning requirements.

8.2.3.6. Incorporation of Mature Trees and Hedgerows

- a) The Planning Authority sought Further Information seeking the provision of a landscaping plan identifying the number of trees to be removed or retained as well as proposed planting.
- b) In response the applicants submitted a report and drawings by Ralph Wickham, Amenity and Environmental Landscape Contractor. A Landscape Treatment Proposal Drawing is submitted which identifies a significant number of existing and proposed trees through the site and within lands in the applicants ownership as . The report also provides a survey and drawing of trees along the Cuir Na Fhile residential development to the south west of the site and I note these lands appear not be within the applicants ownership.
- c) Having considered the drawings and report it is not entirely clear if the existing trees are to be retained. Should the Board decide to grant permission it is considered that this zoning requirement can be reasonably addressed by condition.

8.2.3.7. Connect to a wastewater treatment plant

- a) The applicants propose connecting to the public sewer. In point 7 of the request for further information the applicants were requested to submit a pre-

connection enquiry to Irish Water and to submit the confirmation of final feasibility from Irish Water.

- b) In response to the FI request the applicants have submitted evidence of a pre-connection enquiry. Drawing No. PL1.4 shows the proposed Foul and Storm Water Layout with foul proposed to connect to an existing foul sewer land to the east and south of the application site that drains to the Gaurus Bridge pumping station c.200m south west of the site.
- c) It is not clear from the information on file where waste from the proposed development will be treated and then discharged. Volume 3a of the CDP, Section 1.14.5 details that the northern Ennis area is served by a treatment plant at Clonroadmore and the southern part and Clarecastle is served by a treatment plant at Clareabbey. The existing wastewater treatment plant at Clonroadmore has recently been upgraded from 17,000PE to 31,500PE. I note the Planning Authority have granted permission for the development and agreement to connect to the public service will be required separately. I am satisfied this this zoning requirement can be reasonably addressed by condition.

8.2.3.8. **Conclusion**

Having considered all of the above I am satisfied the proposed development of 21 houses is acceptable in principle, complies with the LDR- Low Density Residential zoning and with the requirements of the LDR73 site specific zoning objective as set out in the County Development Plan.

8.3. **Transport Related Issues**

8.3.1.1. **Introduction**

- a) The Appellants raise a number of traffic safety related concerns. The application proposes access to the site from the Millbank Road using a local spine style road through Gort Leamhán and the existing cul de sac spur that serves house no's 4-13 Gort Leamhán. Concerns highlighted include-
- the Construction Access Route

- the need for a Transport Impact Assessment and the impact on wider area including the junctions to the north (R352 Tulla Road) and to the south of the Millbank Road which serves Gort Leamhán.
 - the width and capacity of the cul de sac road and its ability to serve the proposed development
- b) The Planning Authority have granted permission subject to 23 conditions. Condition 2(a) details the use of the access road that serves Gort Leamhán is not permitted for construction purposes. In this regard the applicants have clearly proposed to use an existing entrance and poorly surfaced laneway off the Millbank Road that is not within the applicants ownership.
- c) Condition 2(b) requires payment of a €45,000 bond to secure the reinstatement of public roads damaged during the construction phase. I note the Gort Leamhán estate has been taken in charge by the Council and the estate roads are public roads including the cul de sac serving the houses No. 4-13.

8.3.1.2. **Construction Access Route**

- a) The applicants indicate in the 'Coversheet Checklist' submitted with the original application that they have submitted a letter of consent dated 2006 to access the site along this access route. I have not been able to identify this letter on the file before me.
- b) The Site Layout Drawing No. PL1.2 details that the laneway to the south of Cuirt Fhile off the Millbank Road will be used as a construction entrance during the development. This laneway is not identified within the red line application site or within the blue line showing the applicants landownership in the area.
- c) There is a letter on file that appears to have been submitted as Unsolicited Information from a Mr Padraig Howard and dated 09/03/2020. This letter indicates consent to the applicant to construct the necessary access for the proposed development through lands to the north of the application site. This appears to be the operational access for the development and does not refer to the access laneway for construction traffic.

- d) In point 2 (b) of the request for further information the applicants were requested to submit details and drawings showing the upgrade works required to the access laneway. In point 2 (d) the applicants were requested to omit the proposed pedestrian and cycle link along the access road. In point 6 the applicants were requested to submit land registry and folio details for lands within their control and a letter of consent for any lands which are not within the applicants control. The FI requested all works including the access laneway to be shown within the site boundaries. The applicants were also requested to provide details of all way leaves and rights of way.
- e) In response to point 2 (b) of the FI request the applicants indicate that the laneway was originally a public roadway serving 5 houses. The response refers to submitted land registry maps for the applicants lands and details the 5 houses are evident. I have not been able to identify land registry maps for the applicants lands on the file before me.
- f) The response to the FI clearly details the laneway is not in the applicants ownership and it has not been included within the site boundary. The response does detail that egress from the site through the laneway will cease once construction on site has ceased. Drawing PL 1.10 shows the entrance road to be consolidated, levelled and filled with $\frac{3}{4}$ inch aggregate. But this is not within the site boundary.
- g) In response to point 2 (d) the applicants clearly detail a cycle/pedestrian link along the laneway as shown on the drawings is merely a suggestion as it is not in the applicants ownership.
- h) In response to point 6 of the FI request, the applicant details that in all the years that the application lands were previously used as farmland the only means of access was via this access road. It would appear the applicants are suggesting they have a historical legal interest to use this laneway. A letter of consent to use this access road has not been submitted.
- i) The Planning Authority's second planning report has considered the responses in relation to point 2 of the FI request and use of the access laneway to be acceptable and recommends conditions were appropriate.

- j) The Planners report indicates the applicants have submitted land registry and folio maps for the applicants landholding. I have not been able to identify these on the file before me. The Planners Report indicates that the access laneway is unregistered in terms of land ownership and the laneway is not on the Councils schedule of roads. The report refers to historical evidence that shows an access laneway at this location. The report suggest the applicants have sufficient legal interest to access the subject lands via this laneway to be used for construction purposes and refers to precedent for similar arrangements by the Council and An Bord Pleanala under P17-238 (300131). I note this is an application for housing in Newmarket on Fergus.
- k) The Planners Report then refers to section 5.13 of the Development Management Guidelines 2007 'Issues relating to title to land'. I note this advises that only where it is clear from the FI response that the applicant does not have sufficient legal interest should permission be refused on the basis. If some doubt still remains, the planning authority may decide to grant permission and such a grant of permission is subject to the provisions of section 34(13) of the Act. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.
- l) The applicants propose construction access to the site through an existing laneway to the south of Cuir Fhile off the Millbank Road. Having visited and inspected this route from the Millbank Road I am satisfied that such a route does exist, albeit in a very poorly maintained and surfaced condition. It is not unreasonable to consider the route facilitated some level of agricultural access to the application site as suggested by the applicants in their FI response.
- m) The Board are advised that the use of, and works to, this access laneway for construction purposes has not been described in the public notices and a site notice does not appear to have been erected at the junction of the laneway to the Millbank Road (see drawing titled 'Land Registry Compliant Map'). In particular I note there are no third party submissions or appeals received from residents and occupiers of Cuir Fhile who may feel their amenities will be impacted upon by the use of and works to the laneway for construction

purposes. Their ability and entitlement to make a submission in this regard could be questioned.

- n) Notwithstanding, the above I note Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001-21 as amended does provide for certain development consisting of works, carried out pursuant to a grant of permission as exempted development subject to such works being removed at the expiration of the development and reinstated accordingly. In this regard it would appear to me the use and works to this access laneway and existing entrance could be considered to be exempted development. Furthermore it is recommended a Construction Management Plan be attached as a condition with all details to be agreed with the Planning Authority.
- o) Having regard to all of the above and noting the zoned nature of the application site, the existing (although underutilised) access laneway from the Millbank Road and the obvious preference to facilitate construction traffic through this route for the residents of Gort Leamhán I am satisfied that the provisions of section 34(13) of the Planning and Development Acts as suggested by the Planning Authority are appropriate in this regard i.e. the applicant/developer must be certain under civil law that they have the rights to access and use the laneway to execute the grant of permission. Should the Board decide to grant permission I recommend a condition is attached ensuring no construction related traffic through the Gort Leamhán estate.

8.3.1.3. Transport Impact Assessment and the impact on wider area

- a) Appendix 1 of the Clare County Development Plan section A1.9.4 details requirements for Traffic Impact Assessments (TIA), Road Safety Audits and Road Safety Impact Assessments. Transport Infrastructure Ireland's Traffic and Transport Assessment Guidelines 2014 details criteria where a TIA is mandatory or recommended if subthreshold.
- b) Having considered these, I am satisfied the proposed development of 21 houses is of a relatively small scale and will not involve substantial modifications to the existing cul de sac road and will not adversely impact on the safety performance of the road network in the wider area or at a strategic

level. Furthermore, the proposal does not incorporate a new access to a National Road and will not give rise to a significant increase in traffic to a National Road whereby a Road Safety Audit would be required. As such a Traffic Impact Assessment, Road Safety Audit and Road Safety Impact Assessment are not required for this development.

- c) Impacts on the road network relating to construction traffic accessing and egressing from the Millbank Road are considered temporary by nature and can be satisfactorily managed through the provision of a Construction Management Plan to be agreed with the Planning Authority. Should the Board decide to grant permission I recommend a condition be attached in this regard.

8.3.1.4. **Width and Capacity of the existing cul de sac road**

- a) The appellants raises specific road safety concerns relating to the existing width and capacity of the cul de sac through which the applicants propose to access the site for the operation of the development. They contend the cul de sac road was never designed to cater for additional traffic as proposed.
- b) I note the applicants were requested at FI stage (point 2 c) to demonstrate how the proposed 5.5m wide road for the new development with integrate with the existing 5m wide cul de sac road in Gort Leamhán. The applicants submitted revised proposals in response to the FI request reducing the width of the proposed road connecting to Gort Leamhán to 5m and showing proposed footpaths integrating with the existing footpaths. The remainder of the road for the proposed development will be 5.5m. This was deemed acceptable by the Council.
- c) Section 3.8 of the 2009 Sustainable Residential Development in Urban Areas Guidelines (SRDUA) discusses type of streets. Paragraph (b) details that most residential streets can successfully combine low to medium traffic movements with a pleasant residential setting. The design of such streets should limit traffic speeds within the range of 30-50 kph, without the need to resort to the use of remedial measures such as speed ramps.

- d) The 2013 Design Manual for Urban Roads and Streets (DMURS) provides guidance relating to the design of urban roads and streets and are considered applicable to the proposed development. I refer to section 3.2.1 and Table 3.1 which detail the movement function of streets providing categories of Arterial, Link and Local. Figure 3.3 describes '*local streets as streets that provide access within communities and to Arterial and Link streets*'. I am satisfied the internal roads of Gort Leamhán, the cul de sac serving No's 4-13 and the proposed road network can all be considered 'Local Streets' as per DMURS.
- e) Section 4.4.1 of DMURS details that research from the UK has found that narrow carriageways are one of the most effective design measures that calm traffic. This section also details the standard carriageway width on local streets should be between 5-5.5m. I note an appellant details that some roads in Gort Leamhán are in excess of 6m and do act as traffic calming measures. These existing roads appear to exceed the DMURS requirement.
- f) Speed limits of 50kph are generally standard in built up areas such as Gort Leamhán and would apply to the proposed development. It is the responsibility of the local authority to introduce bye-laws to set special speed limits in designated public areas e.g. 30kph.
- g) I am satisfied the proposed development does comply with the road width requirements of DMURS, would integrate successfully with the existing public roads serving Gort Leamhán and specific traffic calming measures are not required. The existing road widths throughout Gort Leamhán are sufficient to accommodate additional traffic accessing the operational stage of the proposed development.
- h) The applicants were requested to submit auto track analysis of the site showing how large vehicles will serve the site. The applicants have submitted Drawing No. 2.397/CE/001/PL which clearly shows the capacity and width of the proposed road layout can cater for large vehicles. I note the existing cul de sac has width of 5m and this is more than sufficient to serve as access for the site.
- i) I note there are some discrepancies between the road layout of Drawing No. 2.397/CE/001/PL and the Site Layout Drawing PL1.2 which could impact on

the layout of the road network and area of open space. Should the Board decide to grant permission I recommend a condition be attached requiring a revised site layout plan in this regard.

- j) Having considered the above I am satisfied that the existing cul de sac road has the width and the capacity to serve the existing needs of 3-14 Gort Leamhán as well as the operational needs of the proposed development.

8.3.1.5. **Conclusion**

- a) Having inspected the site, the surrounding area and having noting the existing cul de sac is being used as an area for children's play, I acknowledge and understand the concerns of the appellants. However, the application site is zoned for residential development and in this regard, it is appropriate the lands should be developed accordingly. In the interest of the residential amenity of the residents along the cul de sac it is considered appropriate that construction traffic should access the site from the existing Millbank Road as proposed rather than through the cul de sac.
- b) I accept that when the proposed development is operational the development may create conflicting traffic movements at times with cars on the cul de sac e.g. if cars are parked on the road or if service vehicles are using the road. However, such conflicts are not considered dissimilar to existing conflicts and would generally be transitional. I do not consider such movements would have a significant impact from a road safety perspective with vehicles likely to be moving very slowly on such occasions.
- c) Overall, it is considered that the existing road network in Gort Leamhán has the width and capacity to serve the proposed development and the small scale nature of the development would not have a significant impact on the existing road network in the wider area.

8.4. **Flooding**

- 8.4.1. The Gaurus River flows c. 20-80 metres from the sites southern and eastern boundaries in a south to south west direction. Page 127 of Volume 3a of the County Development Plan details a map showing 'Flood Risk Zones and Flooding' map. This

identifies much of the lands along the Gaurus River close to the application site as within Flood Zone A and B. I have also reviewed OPW mapping at floodinfo.ie. I am satisfied the site is located close to Flood zones A and B.

- 8.4.2. In point 4 of the request for further information the applicants were asked to submit a Flood Risk Assessment (FRA) having regard to the requirements of the 2009 Flood Risk Management Guidelines.
- 8.4.3. A FRA was carried out by Envirollogic and submitted in response to the FI request, It details there is no indication that the application site is prone to flooding. It also details that there are no OPW or Local Authority schemes to address flooding on the Gaurus which suggests it is not considered a significant source of flooding in the area.
- 8.4.4. The FRA assesses the application against digitised CFRAM flood extents and identifies that all houses are within flood zone C with some rear gardens, a turning circle and amenity open space located mainly within flood zone B with 14 sq.m of the garden of house number 17 in flood zone A.
- 8.4.5. The applicants have carried out Part 1 of a Justification Test in which they identify the site is located within the Ennis settlement boundary, on underutilised lands with a previous grant of permission for residential development and is in accordance with the specific requirements of the low density zoning objective of the site. A Strategic Flood Risk Assessment was carried out and published as part of the County Development Plan. The applicants deem the proposal passes the first part of the Justification Test.
- 8.4.6. In order to address the second part of the justification test the applicants detail the footprint of houses are within flood zone A, minor areas of rear gardens and the estate are located within Flood zones A and B which are considered acceptable having regard to the sequential test. Modelling has determined a maximum flood level of 4.0 OD is not exceed and includes for 0.1% Annual Exceedance Probability. Mitigation measures are proposed including minor and negligible infilling (8.5m³), raising finished floor levels to a recommended 4.5m OD allowing for a 500mm freeboard and proposed routing and finishes to the walkway through open space area to be maintained as grass. The application also proposes attenuation and will not vary the discharge rate in response to the return period greenfield runoff rate.

The FRA details these measures shall ensure no increased risk of flood risk elsewhere.

8.4.7. The contents of the site specific FRA are considered robust and comprehensive. The works proposed in the application that encroach upon Flood Zone A and B are some rear gardens, a turning circle and part of the amenity open space. I am satisfied these works can be considered minor development as per section 5.28 of the 2009 Guidelines.

8.4.8. As the footprint of all houses are to be located outside of flood zone A and B and having considered the proposed mitigation measures including a floor levels at a minimum 4.5m O.D. I am satisfied that the development as proposed adequately justifies the proposed development at this site in accordance with the requirements of Box 5.1 of the flooding guidelines. The proposal would be compatible with the achievement of wider planning objectives and fulfils the zoning objective requirements. I am satisfied the mitigation measures proposed are reasonable. Should the Board decide to grant permission I recommended a condition similar to that of the Planning Authority's condition 7 should be applied.

8.5. Amenities of the Area

8.5.1. The appellants have raised a number of residential and visual amenity concerns. These include-

- The councils reliance on the precedent to permit the operational access through the cul de sac under planning reference number 06/21161 over fifteen years ago. This has not had due regard to existing residential amenity of houses on the cul de sac. Such a proposal is considered haphazard and piecemeal.
- noise form traffic on the cul de sac,
- the loss of the cul de sac for children's play and loss of passive surveillance to new play areas within proposed open space areas and the impact upon community spirit.
- impact on the open plan nature of front gardens,
- impact on visual amenity from loss of trees,

- use of the cul de sac road will lead to devaluation of property.

- 8.5.2. I have examined the planning history for the area and I understand the use of the cul de sac serving houses No's 4-13 was permitted to serve 42 houses on the application site previously (06/21161). I note the Planning Authority have referred to this precedent in their planning reports.
- 8.5.3. Notwithstanding the planning history or its precedent, and noting the proposals to access the site for construction purposes only from the Millbank Road and the matters discussed in section 8.3 of this report, I see no reason why access through the existing cul de sac should not be permitted. The lands are zoned for residential development and I do not consider the proposal to be haphazard or piecemeal.
- 8.5.4. The increased use of the existing cul de sac public road for the operational purposes of the 21 proposed houses will not lead to a significant increase in noise on the cul de sac.
- 8.5.5. I understand the appellants concern relating to the loss of the cul de sac as a play area for children. However, regardless of this use for play, the cul de sac is in fact a road. The proposed development will provide a much larger dedicated area of open space adjoining the area of the former cul de sac and this area will benefit from passive surveillance from houses on the cul de sac as well as the proposed development. In this regard I do not share the appellants concerns. I also do not see any reason why the proposed development would impact negatively on existing community spirit.
- 8.5.6. The existing houses on the cul de sac benefit from an open plan front garden design. I do not consider the proposed development would impact negatively upon this design nor do I consider the open nature design would create or contribute to a traffic hazard.
- 8.5.7. A Landscaping Treatment Proposal drawing has been submitted in response to the Further Information request. It identifies existing and proposed trees. I note there are some discrepancies between the road layout of this drawing and the Site Layout Drawing PL1.2 which could impact on the existing tree closest to the cul de sac. While the retention of trees is always preferable I do not consider the loss of this tree would have a significant negative visual impact on the area. Any such loss would be mitigated by the provision of the large open space area and five new trees. Should

the Board decide to grant permission I recommend a condition be attached requiring a revised landscaping plan clearly showing trees to be retained and proposed.

8.5.8. I note the concerns raised by appellants in respect of the devaluation of property on the existing cul de sac which will serve the proposed development. Having regard to the matters addressed in this assessment, I consider the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

8.5.9. Having considered the above the proposed development will not have a negative impact upon or will significantly detract from existing residential and visual amenities of the area.

8.6. Sunlight and Daylight

8.6.1. The impact of new developments on residential amenity for existing residents as well as the quality of the residential amenity for future residents is considered a relevant and important planning consideration. The appellants have not specifically highlighted the impacts of daylight and sunlight from the proposed development in their appeal and the Planning Authority have not raised concerns in this regard in their decision. However it is considered appropriate to assess these impacts further. The relevant impacts include-

- Existing Development-
 - Diffuse Daylight to existing properties (VSC)
 - Sunlight to existing properties (APSH)
 - Sunlight to existing amenity spaces
- Proposed Development
 - Daylight to houses and apartments (ADF)
 - Sunlight to proposed amenity spaces

8.6.2. I note Appendix 1 of the Clare County Development Plan deals with Development Management Standards. Paragraph A1.2 details that developments in excess of three house will require a design statement to be submitted and should address a

number of matters including overshadowing. I have not been able to identify any other daylight or sunlight requirements in the Development Plan.

- 8.6.3. The applicants have not submitted a Design Statement with the application nor was one sought at Further Information stage. The application appears silent as regards to Daylight and Sunlight impacts.
- 8.6.4. Section 7.2 of the SRDUA Guidelines 2009 details that overshadowing will generally only cause problems where buildings of significant height are involved or where new buildings are located very close to adjoining buildings and daylight and shadow projection diagrams should be submitted in all such proposals. It is advised that the recommendations of “Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice” (B.R.E. 1991) or B.S. 8206 “Lighting for Buildings, Part 2 1992: Code of Practice for Daylighting” should be followed. I note BS 8206-2 has now been superseded by BS EN 17037: 2018 ‘Daylight in buildings’. I am satisfied this replacement document does not have a material bearing on the outcome of this assessment.
- 8.6.5. BRE209 and BS EN 17037 provides a number of measures that contribute to assessing Daylight and Sunlight impacts including those identified in section 8.6.1. I consider these measures appropriate for the consideration of related Daylight and Sunlight concerns in respect of properties in the immediate environs of the application site as well as the quality of the development itself.
- 8.6.6. In terms of impacts to existing property ‘Site Layout Plan’ Drawing No. PL1.2 submitted in response to FI shows the proposed development in the context of nearby properties. I note the nearest proposed houses to existing homes in the Gort Leamhán estate are set back from c.13m. The house closest to Gort Leamhán is No. 1 house type A which is proposed as a single storey house with a ridge height of 5.4m. The front elevation is gable fronted meaning the pitch height would be c. 15m from the nearest existing house.
- 8.6.7. The nearest proposed two storey house (No. 13) to existing homes in the Gort Leamhán estate is set back c.21m from a gable of the side annex to No. 18 Gort Leamhán. Proposed house No. 13 has a ridge height of c.8.6m with a standard pitch. The apex would be c. 27m away.

8.6.8. Having considered the separation distances between the existing and proposed houses, the orientation of the existing houses and their primary elevations, the siting of existing private amenity spaces, the likely level differences between the sites and the number of existing windows (and likely room function) within 90 degrees of due south, I am satisfied that

- existing diffuse daylight will not be significantly affected by the proposed development as per the tests of Figure 20 of BRE 209.
- existing sunlight to private amenity spaces will not be significantly affected as per the provision of section 3.3.3 of BRE209.
- existing sunlight to the interiors of the existing houses will not be adversely impacted by the proposed development as per Summary box 3.2.11 of BRE209

8.6.9. The Average Daylight Factor (ADF) relates to the quality of light proposed developments receive and is considered an important measure of residential amenity for future occupants of the proposed development. Appendix C of the BRE209 Guidelines sets out Interior Daylighting Recommendations and details minimum standards of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms in proposed developments. BS 8206-2 (now superseded by BS EN 17037: 2018 'Daylight in buildings'), and therefore BRE209, provides that where rooms are used for combined purposes e.g. kitchen and living rooms, the appropriate standard is the ADF that is highest for any of the uses. Thus, insofar as kitchens are combined with living rooms the appropriate ADF standard would be 2%.

8.6.10. The applicants have not submitted any information in relation to daylight level proposed to the houses. I note all the proposed houses are dual aspect with the vast majority of shared kitchen/living, shared kitchen/dining, or shared kitchen/dining/living rooms benefitting from two or more large planes of glazing. All houses benefit from at least one elevation with glazing within 90 degrees of due south. I am satisfied that adequate levels of daylight will be achieved in the proposed new development.

8.6.11. Section 3.3.7 of BRE 209 recommends that at least half of gardens and open spaces should receive at least two hours of sunlight on March 21st (the Equinox). The applicants have not submitted an assessment in this regard.

- 8.6.12. The proposed houses are two storey with the exception of house type A. House ridge levels range from c. 5.43m to c. 8.6m. I note houses no's 10-16 have north facing rear gardens. The separation distances between these proposed house will range from c. 4m to 8m allowing further sunlight penetration to rear gardens over the course of the day. House no 12 is mid-terrace and is likely to receive least sunlight of all the proposed houses. Given the minimum/standard garden depth requirement of 11m is met, it is not considered likely this garden will be significantly affected in this regard. Having considered the height and orientation of houses I am satisfied that at least half of all private rear gardens will receive at least two hours of sunlight on March 21st.
- 8.6.13. Having considered all of the above I am satisfied the proposed development will not have a negative impact on the residential amenity of existing property in the area and for future occupants of the development in terms of impacts from daylight and sunlight.

8.7. **Bat Survey**

- 8.7.1. Following a request for Further Information the applicants have submitted a Bat Survey. The application concluded that the site is not currently of significance importance to bats with low levels of activity observed at the time of surveying and the majority of this was outside the application site boundary and along the tree lines and adjacent river. No Lesser Horseshoe Bats designated species under the Habitats Directive were observed. There are no impacts expected on bat populations but some mitigation is proposed. Tree felling shall only take place when necessary and if so from late August to late October/ early November. Machinery will not operate during dark hours and Lightening will be targeted and minimised.
- 8.7.2. The proposed development is for 21 houses on residentially zoned lands. Notwithstanding the findings of the bat survey a grant of planning permission does not constitute consent for a developer to disturb bats or to interfere with their breeding or resting places. Therefore, the developer must still comply with the provisions of the NPWS's licensing regime and a derogation licence would be required for the site if bats were encountered on the site. Should the Board decide to

grant permission I recommended a condition similar to that of the Planning Authority's condition 8 should be applied.

8.8. Appropriate Assessment

8.8.1. Introduction

- a) Two Ecological Assessments dated March and August 2007 prepared by Keville & O'Sullivan Environmental Consultants and a Hydrology Study dated April 2007 prepared by Hydroenvironmental Ltd were submitted with the application.
- b) The March 2007 assessment considered the impacts of the development on the Gaurus River which is upstream of the Lower River Shannon SAC in section 5.4. It identifies risk of discharge or runoff to the river during construction and operation. It also considers the cumulative impacts of development in the area. The 2007 assessment uses the wording 'Mitigation Measures' and sets these out in section 6.2. These include agreeing a Construction Management Plan. The assessment summarises some of the measures to be proposed e.g. hoarding, fencing, silt fencing/curtain, hydrocarbon interceptors and surface water attenuation.
- c) Following a request for Further Information a "Bat Survey (and Review of the Previous Ecological Assessment) dated September 2020 was submitted. This was prepared by Ecofact.
- d) Section 3.1.2.1 deals with Bats and SAC's. It identifies the SAC's within 15km of the site that are designated for the presence of Lesser Horseshoe Bats. The closest European Sites to the application site is c. 4.5k and 5.3km away. I note both Conservation Objectives for these sites indicate the extent of potential foraging habitat as 2.5km.
- e) Section 4.2 deals with the Review of 2007 Ecological Assessments. It identifies the potential for impacts such as loss of habitat, disturbance and water quality having regard to the proximity of the River Gaurus draining to the Lower River Shannon SAC which has the potential to be used by Otter,

Kingfisher and Bats⁶. These could be subject to disturbance during construction. Increased human activity in close proximity could potentially impact during operational phase. The subject application site boundary differs from the one of the 2007 reports and a strip of land is now retained between the site boundary and the river. The report identifies contaminated run off to enter the nearby water course and subsequently impact the SAC as well as disturbance to the Otter an Annex II species.

- f) The review uses the wording 'Mitigation Measures' and details these in section 5.2 of the report. It refers to the 2007 measures and details they are still relevant to the site.
- g) Following a request for Further Information a Preliminary Construction Environmental Management Plan dated 14/12/20 was submitted. It is noted the Planners Report details this lacks details and a Detailed CEMP should be conditioned.
- h) The Planning Authority carried out a Screening for Appropriate Assessment & Determination which is attached to the rear of the first Planners Report. The initial assessment identifies a number of areas where further information is requested and the determination dated 12/06/20 detailed there is no potential for significant effects to European Sites.
- i) A report from the Environmental Awareness Officer on the submitted FI dated 01/02/21 details that should permission be granted the avoidance measures outlined in section 5 of the Ecofact report and referenced mitigation measures outlined in section 5.2.2 of the 2007 Ecological Assessment should be conditioned.

8.8.2. Stage 1 Screening

- a. A screening report for Appropriate Assessment has not been submitted by the applicants with this application or appeal. Nor has a Natura Impact Assessment (NIS) been submitted. This screening assessment will be carried out on a de-novo basis.

⁶ Bats and the Kingfisher are not listed as qualifying interest species of the Lower River Shannon SAC 002165 or the River Shannon and River Fergus Estuaries SPA 004077.

- b. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on European sites. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on such European Sites.

8.8.3. **Observation of the Development Applications Unit Heritage Section 21/04/21**

- a. This observation recommends mitigation measures identified in the 2007 Ecological Report should be fully incorporated into the Construction Environmental Management Plan and put in place prior to construction. Of particular importance is the installation of a silt curtain between the site and the watercourse.
- b. Subject to these measures a negative impact to the SAC is unlikely.

8.8.4. **The Proposed Development and Receiving Environment**

- a. The proposed development is for 21 house, breach of a cul de sac road to provide for operational access for the houses and the use of an underutilised and poorly maintained access laneway for all construction related traffic. The site is not located within a designated European site however it is c. 130m north from the nearest designated site.
- b. The application site is a greenfield, poorly maintained site with no current active use. It may at some point have been in agricultural use. There is an existing watercourse the Gaurus River c. 20m south of part of the site.

8.8.5. **European Sites**

- a. Given the location and existing suburban context of the site, the nature and scale of the proposed development and the distance of other European Sites from the application site, I consider the following designated sites as set out in Table 1 to be within the subject zone of influence -

Table 1-

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
Lower River Shannon SAC 002165	1029 Freshwater Pearl Mussel <i>Margaritifera</i> 1095 Sea Lamprey <i>Petromyzon marinus</i> 1096 Brook Lamprey <i>Lampetra planeri</i> 1099 River Lamprey <i>Lampetra fluviatilis</i> 1106 Atlantic Salmon <i>Salmo salar</i> (only in fresh water) 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 *Coastal lagoons 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 Salicornia and other annuals colonizing mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) 1349 Bottlenose Dolphin <i>Tursiops truncatus</i> 1355 Otter <i>Lutra</i> 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) 91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)	c. 130 m to the south of the site.
River Shannon and River Fergus Estuaries SPA 004077	A017 Cormorant <i>Phalacrocorax carbo</i> breeding + wintering A038 Whooper Swan <i>Cygnus</i> wintering A046 Light-bellied Brent Goose <i>Branta bernicla hrota</i> wintering A048 Shelduck <i>Tadorna</i> wintering A050 Wigeon <i>Anas penelope</i> wintering A052 Teal <i>Anas crecca</i> wintering A054 Pintail <i>Anas acuta</i> wintering A056 Shoveler <i>Anas clypeata</i> wintering A062 Scaup <i>Aythya marila</i> wintering A137 Ringed Plover <i>Charadrius hiaticula</i> wintering A140 Golden Plover <i>Pluvialis apricaria</i> wintering A141 Grey Plover <i>Pluvialis squatarola</i> wintering A142 Lapwing <i>Vanellus</i> wintering A143 Knot <i>Calidris canutus</i> wintering A149 Dunlin <i>Calidris alpina</i> wintering A156 Black-tailed Godwit <i>Limosa</i> wintering A157 Bar-tailed Godwit <i>Limosa lapponica</i> wintering A160 Curlew <i>Numenius arquata</i> wintering A162 Redshank <i>Tringa totanus</i> wintering A164 Greenshank <i>Tringa nebularia</i> wintering A179 Black-headed Gull <i>Chroicocephalus ridibundus</i> wintering A999 Wetlands	c. 4km to the south of the site.

b. I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on such European sites

could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site.

8.8.6. Test of Likely Significant Effects

- a. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- b. Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having regard to the NIS carried out for the County Development Plan and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-
 - Potential for impacts on water quality as a result of inadequate wastewater treatment and discharge
 - Potential for construction and operation related impacts from surface water and proposed SUD's on water quality in nearby River Gaurus and downstream impacts to the River Shannon.
 - Potential disturbance to habitats on the Lower River Shannon SAC i.e. otter, during construction and operation from noise, lighting and increased use of the area for recreation.

8.8.7. Potential Effects

Wastewater

- a. It is proposed that foul water from the proposed development would be discharged via the public sewer. Volume 3a of the CDP, Section 1.14.5 details that the northern Ennis area is served by a treatment plant at Clonroadmore and the southern part and Clarecastle is served by a treatment plant at Clareabbey. The existing wastewater treatment plant at Clonroadmore has

recently been upgraded from 17,000PE to 31,500PE. I note the Planning Authority have granted permission for the development and agreement to connect to the public service will be required separately.

- b. Given the nature of the site, and its location within the development boundary of the village, on residentially zoned land and the scale of the proposal, the proposed development would give rise to an insignificant increase in the loading at Wastewater Treatment Plant, which has sufficient capacity to facilitate the development.
- c. In any event connection to the public system would be subject to Irish Water consent and would only be given where compliance with EPA licensing in respect of the operation of the plant would not be breached. I also consider that the distances are such that any pollutants in discharge post treatment from the WWTP would be minimal and would be sufficiently diluted and dispersed. I am satisfied that wastewater from the proposed development will not have a significant effect and would not adversely affect the integrity of the identified European sites.

Surface Water and Water Quality

- d. During the operation stage of the development the proposed attenuation measures incorporated into the design of the surface water drainage system will ensure there will not be a significant impact upon the quality or quantity of surface water run-off.
- e. During the construction stage of the development there is potential for pollution of surface waters impacting upon the Gaurus River and ultimately the River Shannon. The applicant has proposed a number of measures in this regard –
 - The Flood Risk Assessment details a 236 sq.m surface water attenuation area located in the proposed open space area towards the southern boundary of the site (See Drawing No. PL1.2).
 - A hydrobrake fitted with a non return valve is to be installed to control stormwater discharge from the attenuation area at greenfield run off rates.
 - Rainwater will be harvested from roofs to provide an extra stormwater buffer and to reduce the reliance on mains water.

- f. During the construction stage there is potential for pollution of surface waters from the removal of top soil and excavations etc. leading to loss of silt and sediment to surface waters. Such pollution could effect invertebrate life in intertidal habitats which could have knock on effects to habitats and species of the SAC and SPA.
- The Ecological Assessments and Review of same refer to a number of measures such as hoarding, silt curtains, silt fences, silt traps, storage and maintenance of machinery, engagement of a Site Ecologist and a submission of a detailed Construction and Environmental Management Plan (CEMP) and Method Statement prior to works etc.
 - The Flood Risk Assessment details the provision of a silt interceptor.
 - The 'Preliminary Construction Management Plan' submitted in response to the FI Request also details a number of pollution control measures.
- g. I note the reference and use of the phrase 'Mitigation Measures' as titled in the applicants Ecological Assessments and the Review of same (as well as the Observations of the DAU Heritage Section). In my opinion these measures are Standard Construction Methods for most sites rather than specific mitigation measures for this site aimed at avoiding or reducing adverse effects of the development on the identified European sites.
- h. Having considered these methods I am satisfied there will be no significant or adverse change to the quantity or quality of surface water leaving the site and draining to the River Gaurus during the construction and operational stages of the development that would have a significant effect and adversely affect the integrity of the identified European sites.

Disturbance to Otter

- i. The review of the 2007 Ecological Assessments submitted in response to the FI request identifies the potential for impacts such as loss of habitat and disturbance during construction to the Otter and increased human activity in close proximity could potentially impact during operational phase. The review details-

- the subject application site boundary differs from the one for the 2007 reports and a strip of land is now retained between the site boundary and the river.
 - Lighting shall be confined and directed to the proposed development with light spill avoided
 - Protective fencing to trees
- j. The application site boundary is sufficiently set back from the Gaurus River and its riparian strip. The route and materials of the proposed walkway are also significantly set back from the Gaurus River and appropriate fencing (details of which can be agreed by condition) will restrict human encroachment on the river bank avoiding significant disturbance during the operational stage of the development.
- k. The Gaurus River is culverted river south west of the site and is a relatively narrow and meandering especially closer to the River Fergus. It is unlikely the river proximate to the application site would provide a suitable habitats for otters and I note the review of the Ecological Assessments does not detail any evidence to suggest Otters frequented the area. Habitats further downstream from the site which could support otter activity are distant from the site so no disturbance effects are considered to arise. In this I am satisfied the proposed development will not be likely to have significant effects on European Sites.

8.8.8. In-combination Impacts

- a. The subject application should be considered as part of the wider development of Ennis as part of the County Development Plan. The Plan was also subject to AA by the Local Authority.
- b. I do not consider there to be any other specific recent planning applications in the immediate area that could have in combination effects with the proposed development on the identified European Sites.

8.8.9. Conclusion

- a. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has

been concluded that the project individually (or in combination with other plans or projects) would not be likely to have a significant effect on the following European Sites-

- Lower River Shannon SAC 002165
- River Shannon and River Fergus Estuaries SPA 004077
- or any other European sites, in light of the sites' Conservation Objectives', and a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

In reaching this conclusion, I took no account of any specific 'mitigation measures' intended for this site to avoid or reduce the potentially harmful effects of the project on any European Sites.

9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions-

10.0 Reasons and Considerations

10.1. Having regard to the provisions of-

- the National Planning Framework and the Regional Spatial & Economic Strategy for the Southern Region (RSES),
- Circular Letter: NRUP 02/2021,
- the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) Sustainable Residential Development in Urban Areas Guidelines (DEHLG, 2009) and the accompanying Urban Design Manual,
- the Planning System and Flood Risk Management Guidelines 2009 (DEHLG, 2009)
- the Design Manual for Urban Roads and Streets (DECLG, 2013)
- and the provisions of the Clare County Development Plan 2017 - 2023 including the sites LDR Low Density Residential zoning and the site specific zoning objective LDR73

it is considered that, having regard to the general pattern and development in the area and the nature and scale of the proposed development, and subject to compliance with the conditions set out below, the proposed development, would constitute an acceptable quantum of development, housing mix, design, layout and appropriate density for the area, would be acceptable in terms of the residential and visual amenities of the area and would be acceptable in terms of traffic and road safety. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 05th day of March 2020 and as amended, by the further plans and particulars submitted on the 15th day of December 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

3. Revised drawings shall be submitted clarifying-
 - (a) discrepancies between the road layout of Drawing No. 2.397/CE/001/PL and the Site Layout Drawing PL1.2 and
 - (b) Elevations and floor plans for house numbers 20-21

The revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of clarity, visual amenity and orderly development.

4. All mitigation measures identified in the

- Ecological Assessments dated March 2007 and August 2007
- the Bat Survey (and Review of the Previous Ecological Assessment) dated 24/09/20,
- Flood Risk Assessment dated 10/12/20

submitted with the application on the 05th day of March 2020 and submitted with the Further Information on the 15th day of December 2020 shall be implemented in full and shall be supervised by a suitably qualified ecologist and bonded engineer.

Reason: In the interest of environmental protection, public health and orderly development.

5.

- a. The areas of open space shown on the lodged plans including the open space to the east of the application site as outlined in blue on drawing number PL1.2 and submitted on the 15th day of December 2020 shall be reserved for such use and finished and landscaped in accordance with the requirements of the planning authority.
- b. A comprehensive scheme of landscaping, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The scheme shall show –
 - i. Existing trees, hedgerows and features, specifying which are proposed for retention as features of the site landscaping
 - ii. The measures to be put in place for the protection of these landscape features during the construction period

- iii. The species, variety, number, size and locations of all proposed trees and shrubs
 - iv. Details of screen planting
 - v. Details of roadside/street planting
 - vi. Hard landscaping works, specifying surfacing materials and finished levels.
- c. Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
 - d. A timescale for implementation. The work shall be completed before any of the dwellings are made available for occupation

All planting shall be adequately protected from damage until established.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

- 6. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

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

Reason: In the interest of pedestrian and traffic safety.

8. All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interest of sustainable transportation.

9. Proposals for naming and numbering of the proposed scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility.

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water and the provision of appropriate Sustainable Urban Drainage Systems (SuDS) to each house, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

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

Reason: In the interest of public health.

12. No construction related traffic is permitted through Gort Leamhán. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- b) Location of areas for construction site offices and staff facilities;
- c) Details of site security fencing and hoardings;
- d) Details of on-site car parking facilities for site workers during the course of construction;
- e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- f) Measures to obviate queuing of construction traffic on the adjoining road network;
- g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority. The developer shall provide contact details for the public to make complaints during construction and provide a record of any such

complaints and its response to them, which may also be inspected by the planning authority.

Reason: In the interest of amenities, public health and safety.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management

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

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

15. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400

hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

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

Reason: In the interests of visual and residential amenity.

17. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed lighting system shall be fully implemented and operational before any of the residential or commercial units are made available for occupation.

Reason: In the interests of amenity and public safety.

18.

(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

19. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

20. Prior to the commencement of any house in the development as permitted, the applicant or any person with an in interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act, 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads,

footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development

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

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

Adrian Ormsby
Planning Inspector

20th December 2021