



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310313-21

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<b>Development</b>	Construction of two number detached dwellings, ancillary services, and all associated site works. A Natura Impact Statement(NIS) has been submitted with the application.
<b>Location</b>	Millbrook, Beallanamullia Townland, Athlone, Co. Roscommon.
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	21123
<b>Applicant</b>	Eamonn Minagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Eamonn Minagh
<b>Observer</b>	DoHLGH
<b>Date of Site Inspection</b>	6 <sup>th</sup> April 2022

**Inspector**

Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located in Beallanamullia, a townland c. 4 km west of Athlone.
- 1.2. The appeal site has a stated area of 0.47 ha, is irregular in shape and accommodates a detached bungalow and an undeveloped area of land to the rear/east of the bungalow. An access lane connects the appeal site to Millcross Road (L7560). A right of way is indicated to the north-west of the appeal site. Detached dwellings are located to the west, south-west and south of the appeal site.
- 1.3. The Cross River runs along the northern and eastern boundary of the appeal site. The Cross River drains lands from the northwest of the appeal site into the River Shannon, approximately 5.2km southeast of the appeal site. The area to the rear/east of the bungalow, where it is proposed to construct 2 no. houses, is overgrown and there are a number of mature trees on the site and along the banks of the Cross River.
- 1.4. Topographical levels are indicated as c. 42 metres (OD Malin) on the western part of the appeal site and c. 39.6 meters (OD Malin) at the eastern part of the site. Topographical levels at Millcross Road, to the west of the appeal site, are c. 2 metres higher compared to the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises;
  - The construction of 2 no. identical detached bungalows (House A and House B). House A and House B are located c. 16 metres and c. 8 metres respectively from the Cross River. The proposed dwellings have ridge heights of 6 metres and floor areas of 127 sqm. Material finishes to the houses appear to comprise render for the external walls and tile for the roof.
  - A 5-metre-wide road is proposed connecting the appeal site to Millcross Road. This road is indicated as compromising pea shingle. The roadway does not incorporate a footpath.
  - Car parking and a turning area are indicated between the proposed dwellings. Private amenity space is located to the rear of each of the proposed dwellings.

- A petrol interceptor, surface water attenuation tank and pump are indicated in the area between dwellings. The site plan indicates surface water from the site discharging to the Cross River.
- The applicant is proposing to infill parts of the site. Based on the site plan, the applicant proposes to raise local ground level by up to c. 0.4 metres at specific locations.
- The landscaping proposal includes the planting of evergreen hedging along the bank of the river.

2.2. The planning application was accompanied by a Site-Specific Flood Risk Assessment (SSFRA). In summary, the SSFRA concludes that;

- The primary risk to the site is posed by fluvial flooding.
- Part of the site is located within Flood Zone A and Flood Zone B, with the remainder of the site located within Flood Zone C. When delineated, the proposed dwellings and access road are not located within Flood Zone A or B.
- The justification test is not required.
- In order to mitigate against residual flood risk the finished floor levels (FFL's) of the dwellings will be constructed a minimum of 0.5 metres above the predicted 1 in 1000 year flood level.
- The proposed development is not expected to have an adverse impact on the hydrological regime of the area or to increase flood risk elsewhere.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to **Refuse** Permission on the 28<sup>th</sup> April 2021 for one reason, specifically that the proposed development is located in an area at risk of flooding and that the Planning Authority is not satisfied that the proposed development would not increase the risk of flooding on the site or on other land.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- The proposed development complies with the zoning and settlement policies of the County Development Plan and is acceptable in terms of density, open space provision and design.
- The proposal would not detract from the visual amenity of the area.
- Further consideration is required in relation to the removal of the tree line along the river and its replacement with an evergreen hedge.
- Access and car parking is acceptable.
- The site is partially located within Flood Zone A and Flood Zone B.
- Sufficient consideration has not been given to the issue of flood displacement.
- The Planning Authority undertook an Appropriate Assessment of the proposed development which concluded that the proposed development, either alone or in combination with other plans or projects, would not result in likely significant impacts on European sites.

### 3.2.2. Other Technical Reports

Environment Section – recommends that conditions are attached requiring oil tanks to be bunded; drainage points located away from oil tanks; no works undertaken along the river without the agreement of Inland Fisheries Ireland; and, that waste is disposed using licenced facilities.

## 3.3. **Prescribed Bodies**

None received.

## 3.4. **Third Party Observations**

1 no. observation was received by the Planning Authority. The following is a summary of the main issues raised in the third-party observation;

- Mitigation measures in the NIS are vague and unworkable. The NIS does not address the residual impact of surface water or foul water infrastructure.
- No evidence submitted that neighbouring property will not be overshadowed.
- Flood Risk Report submitted, the following is noted;
  - Site is located within Flood Zone A.
  - Historical maps show that the site is at risk of flooding.
  - Requirements of the Flood Risk Management Guidelines have not been satisfied.
  - The site is at risk of flooding during the 1 in 100 year and 1 in 1000 year fluvial events.
  - CFRAM maps show the site at risk of flooding. When the georeferenced site is overlain onto the CFRAM map, House B is in Flood Zone B and House A is 9.7 metres from Flood Zone A.
  - The CFRAM flow rates and resultant flood zones do not take account of increases in flow due to climate change.
  - OPW maps show that when climate change is taken account of the area at risk of flooding expands greatly across the site.
  - The OPW require a 10-metre development free set-back from the river to facilitate arterial drainage works, this has not been provided.
  - No cross sections of the river have been submitted.
  - A hydraulic model using flood modelling software has not been undertaken.
  - Pre and post development simulations have not been provided.
  - Flood risk to adjoining property and the local road has not been quantified and remains unknown.
  - The extent of infilling across the site is unclear and the applicant does not acknowledge the likely increase in flood risk due to the raising of ground levels across the site. Infilling of Flood Zone A and Flood Zone B contravenes the Flood Risk Guidelines. The amount of fill proposed and the

volumetric loss of floodplain storage has not been quantified. Compensatory storage has not been provided.

- Once climate change has been taken account of, House A is likely within Flood Zone A and House B is likely within Flood Zone B and the Justification Test is therefore required to be passed. The proposed development fails each item under Part 2 of the Justification Test.
- The current proposal only deviates slightly compared to the development refused by An Bord Pleanála under ABP Ref. ABP-305220-19.

## 4.0 Planning History

### 4.1 Appeal Site

PA Ref. 18/621 / ABP Ref. ABP-305220 -19 – Permission REFUSED for 2 houses. Reasons for refusal concerned flood risk and potential impact on European Sites. The location of the houses under this proposal differs compared to the current application.

PA Ref. 08/1353 – Permission GRANTED for 2 houses. Condition No. 4 required details of a way leave for the maintenance of the river bank to be agreed. This permission was subsequently extended until February 2019 but has not been implemented.

PA Ref. 08/177 – Permission REFUSED for 8 houses. Reasons for refusal included amenity considerations, the backland nature of the proposal, traffic considerations and foul sewer capacity constraints.

PA Ref. 05/1506 - Permission for 3 houses GRANTED. Condition No. 4 required a 6 metre wide way leave along the river bank to allow for maintenance of the river. This permission has not been implemented.

PA Ref. 05/440 – Outline permission for 3 houses REFUSED. Reason for refusal concerned the backland nature of the proposal, the low-lying nature of the site and the proximity to the river.

## 5.0 Policy Context

### 5.1. National Policy

Having regard to the nature of the proposed development and to the location of the appeal site, I consider the following Guidelines to be pertinent to the assessment of the proposal.

- The Planning System and Flood Risk Management 2009 (including the associated Technical Appendices).
- Planning for Watercourses in the Urban Environment 2020 (Inland Fisheries Ireland).
- Appropriate Assessment of Plans and Projects in Ireland, Guidelines for Planning Authorities, 2010.

### 5.2. Development Plan

5.2.1 A new County Development Plan was adopted in the period since the Planning Authority issued its decision. The Roscommon County Development Plan 2022-2028 was adopted on the 8th March 2022 and came into effect on the 19th April 2022.

The provisions of the Roscommon County Development Plan 2022-2028 relevant to this assessment are as follows:

- Policy Objective ITC 7.53 (Flood Risk).
- Policy Objective NH 10.4 (Natural Heritage).
- Policy Objective NH10.20 (Natural Heritage).

### 5.3. Local Area Plan

5.3.1 Monksland/Bellanamullia (Athlone West) Local Area Plan 2016-2022 (as varied)

5.3.2 Bellanamullia is identified as a tier two settlement within the County Settlement Strategy. The appeal site is zoned 'existing residential' within the Local Area Plan, where residential development is permitted in principle and where the stated aims include,



- protect and enhance the residential amenities of existing and new residential communities and provide a high level of services within walking distances of residential developments;
- provide for infill residential development at a density and design appropriate to the area and the needs of the community.

5.3.3 Map 8 of the Local Area Plan illustrates that part of the appeal site alongside the Cross River is at risk of flooding. Sections 7.4 and 8.2.2 of the Local Area Plan address flood risk, including the following relevant policies:

- Policy 21 – protect waterbodies, including buffers where appropriate;
- Policy 22 – protect flood zones A & B from inappropriate development;
- Policy 24 – require site specific flood risk assessments;
- Policy 25 - require flood risk impact assessment and management plans for significant development impacting on flood risk areas;
- Policy 27 – alleviating flood risk requires appropriate assessment.

5.3.4 Chapter 8 (section 8.2.11) of the Local Area Plan includes development management guidelines and standards for residential development.

#### 5.4. **Natural Heritage Designations**

The appeal site is not located within or close to any European Site.

#### 5.5. **EIA Screening**

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

consider that any issues arising from the proximity/connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a first-party appeal against the decision to refuse permission. The grounds for appeal can be summarised as follows;

- The lands are zoned in the current Development Plan and the proposed development is justifiable in the context of the demand for housing.
- The site and surrounding area have not been designated as a flood plain. The adjacent river swells intermittently during heavy rain but does not impact the site.
- An almost identical proposal was previously permitted on the site.
- The proposal does not alter the existing landscape.
- Impacts on the environment can be mitigated.
- The SSFRA has demonstrated that the proposed development does not impact on Flood Zone A or B, and as such no compensatory volumes are required. There will be no displacement of flood waters as a result of the proposed development.
- Photographs submitted by a third party indicate that the appeal site is elevated and free from flooding. One of the photographs was taken from the opposite side of the river bank and this may have misled the Planning Authority.
- Addendum to the flood report submitted and notes the following;
  - A SSFRA was prepared which was informed by the OPW's CFRAMS predictive flood extent and depth mapping.
  - Detailed hydraulic modelling of the Cross River undertaken by the OPW for the Shannon CFRAMS study indicated a limited area of the site within the predictive 1 in 100 year (1% AEP) and 1 in 1000 year (0.1% AEP) fluvial flood zone. This is based on a localised digital terrain model and not detailed

site-specific topographical information. A more detailed site-specific delineation of fluvial flood zones was prepared by the applicant using site-specific topographical information and the predictive OPW CFRAMS flood levels. In this scenario, fluvial flood zones are more extensive, however, based on this modelling the proposed dwellings, access road and associated infrastructure do not fall within Flood Zone A or Flood Zone B, and are therefore considered to be located within Flood Zone C. Additionally, no land raising, or infilling occurs within Flood Zone A or Flood Zone B. As such, the proposed development would not result in an increased risk of flooding on the appeal site or other lands.

- The third-party have not provided evidence to contradict the flood extents as presented on the CFRAMS map.

## 6.2. Planning Authority Response

None received.

## 6.3. Observations

An observation was received from the DoHLGH (Development Applications Unit). The submission raises concerns relating to the procedure and rationale used in the screening for AA and NIS, and consequently the AA carried out by Roscommon County Council. Concerns are also raised regarding the ecological impact assessment as it relates to bats and otter, and the proposed removal of riparian habitat and its replacement with non-native species.

Issues raised include;

- Insufficient detail submitted regarding the site visits which were carried out. Information required would include date of site visit, weather conditions and methodologies used.
- Insufficient information submitted with respect to habitats and species. The NIS does not state whether habitat and species surveys were carried out. The NIS does not state which habitat classification was used and does not provide sufficient detail with respect to the habitat on the site. As a result, and due to

the lacunae in habitat description and classification, the NIS states without scientific evidence that qualifying habitats are not present within the site.

- Inconsistent reference to Article 17 reports on habitats.
- A hydrological link exists between the appeal site and the River Shannon Callows, for which otter is a QI and it cannot be excluded without evidence that otter will not be adversely affected by the proposed development, given that otter territories can be over 13km in length. Additionally, otter surveys using standard methods are recommended over a number of dates and times. The implications of a project for species, such as otter, outside a site must be examined.
- The potential deterioration of water quality from flooding must be assessed.
- Sufficient detail is required to ensure that mitigation measures can be effectively implemented. No detail is provided in relation to the attenuation measures and silt traps. Best practice is referenced but this is not considered to be mitigation in itself. Mitigation should be clear and specific for each identified impact, based on sound scientific understanding of habitats or species within the affected European site. The Stage 2 AA is deficient in this regard.
- The riparian habitat should be retained and the tree line should not be removed.
- Bat surveys should be carried out over a number of dates. Lighting can disturb bats and cause a decline in populations. Guidelines on light and bats referenced.

#### **6.4. Further submission of applicant**

On foot of the observation submitted from the DoH/LGH to the Board the applicant has submitted a further submission. Issues raised include;

- The assessment undertaken by Roscommon County Council included Lough Ree SAC/SPA. There is no connectivity between the appeal site and Lough Ree SAC/SPA, these sites are hydrologically upstream of the appeal site and significant effects on these sites have been screened out.

- The appeal site was visited and habitats have been classified in accordance with Fossit 2000. The dominant habitat within the site is an unmanaged grassland, akin to Dry Meadows and Grassy Verges GS2. On the opposite side of the bank the habitat is improved agricultural grassland habitat GA1.
- Based on a site visit, it can be determined conclusively that no QI associated with the River Shannon Callows SAC occur within the site.
- Reference to the publication dates of Article17 reports was an error.
- Regarding otter, following an assessment of the riverbank it is concluded that no slips or slides where otters can enter or exit the river are present, no tracks were noted in the grass and no spraints or footprints were observed. It is however probable that otters swim up and down the river and forage for food along the Cross River. Potential effects on otter arising from deteriorations in water quality are addressed in Table 3 of the NIS.
- The site is partially within Flood Zone A, however the footprint of the houses and access roads are not located within this zone. Waste water infrastructure is not required on the site as the proposal connects into the local sewer.
- The applicant is amenable to retaining the vegetation along riverbank in full, including all trees.
- The treeline along the riverbank is dominated by birch and does not correspond to the Alluvial forest, a QI habitat for which the River Shannon Callows SAC is designated.
- Regarding the protection of bats and otters, a 7-metre buffer zone will be left intact along the Cross River. This buffer zone will be fenced off prior to the commencement of works and no vegetation removal will occur within this zone. A root protection zone will be established to ensure that compaction does not occur. Subsequent landscaping will focus on native species. There are few bat roosting opportunities on the site. Bats are likely to forage along the river and the river corridor will be retained in full. The treeline will not be lit with artificial lighting and outdoor lighting will be kept to a minimum.
- A derogation licence for the destruction of habitat will not be required.

- In summation, the applicant contends that the mitigation measures contained in the NIS are robust and the assertion of the DoH LGH that it is not possible to exclude the likelihood of negative effects on the conservation objectives of European sites downstream is refuted. Should the Board be of the opinion that further study is warranted, Section 37 F(1) (a) of the Planning and Development Act, 2000, as amended allows for the Board to request the applicant to submit further information.

## 7.0 **Assessment**

7.1 Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Design/Siting & Impact on Residential and Visual Amenity
- Access
- Flooding
- Appropriate Assessment

### 7.2 **Design/Siting & Impact on Residential and Visual Amenity**

7.2.1 I consider that the design and scale of the proposed development would not be out of character with the surrounding area, or negatively impact on existing residential amenities in terms of overlooking, overshadowing or have an overbearing impact.

7.2.2 I do not consider that the design of the proposed dwellings would negatively affect the character of the landscape. Accordingly, I do not anticipate any negative impacts on the visual amenities of the area arising from the proposed development.

### 7.3 **Access**

7.3.1 Vehicular access to serve the proposed dwellings is via an existing laneway connecting the site to Millcross Road (L7560). Having regard to the available sightlines at the entrance, I consider that the proposal is acceptable in terms of traffic safety. A

letter has been submitted from the landowner of the property to the south consenting to the maintenance of hedgerow to facilitate sightlines.

## 7.4 **Flooding**

7.4.1 The proposed development was refused by the Planning Authority on the basis of flood risk. A Site-Specific Flood Risk Assessment (SSFRA) was submitted with the initial planning application and the applicant has submitted additional commentary as part of the appeal, addressing issues raised by the Planning Authority in the refusal and rebutting issues raised by the third-party.

7.4.2 While no flood incidents are reported by the Office of Public Works (OPW) for the Cross River, historical mapping identifies that the appeal site and immediate lands were previously liable to flooding. Geological surveys reveal that the site is underlain with alluvium, which are deposits of clay, silt, and sand left by flowing water. The appeal site is indicated as being affected by pluvial flooding on the OPW Preliminary Flood Risk Assessment (PFRA) mapping, with areas of the site indicated as being within Flood Zone A and Flood Zone B. I note that these maps are 'predictive' flood maps, showing areas predicted to be inundated during a theoretical or 'design' flood event, with an estimated probability of occurrence. Additionally, CFRAM mapping also indicates the site as being within Flood Zone A and Flood Zone B, albeit to a lesser extent than the PFRA maps. The applicant has submitted a more detailed site-specific delineation of fluvial flood zones using site-specific topographical information and the predictive OPW CFRAMS flood levels. In this scenario, fluvial flood zones are more extensive, however the applicant contends that based on this modelling the proposed dwellings, access road and associated infrastructure do not fall within Flood Zone A or Flood Zone B, and are therefore considered to be located within Flood Zone C. The applicant states that no infilling occurs within Flood Zone A or Flood Zone B.

7.4.3 The applicant has extrapolated fluvial flood zones for the appeal site using CFRAMS flood levels. I note that the CFRAMS flood map used has been developed for the current day scenario. Other CFRAM maps provide for two potential future scenarios, the Mid-Range Future Scenario (MRFS) and the High-End Future Scenario (HEFS) and take into account the potential impacts of climate change and other possible future changes. The OPW document titled 'The Planning System & Flood Risk Management - Guidelines for Planning Authorities' require that flood risk assessments take account of the effects of climate change. The applicant has based the SSFRA on

the CFRAMS current day scenario mapping (see Figure 1, page 2 of the appeal submission, prepared by IE Consulting) and as such climate change has not been taken account of, as required.

- 7.4.4 The OPW Flood Risk Guidelines emphasise that a precautionary approach should be applied to reflect uncertainties in flooding datasets and risk assessment techniques. Based on this and the information available, I am satisfied that a flood risk assessment of the proposed development should be undertaken based on the site being partially within Flood Zones A and Flood Zone B, with a moderate to high probability of flooding. For the purposes of flood risk assessment, housing developments, including their associated amenity and service areas, would be a 'highly vulnerable' category of development in Flood Zones A and B. Based on Tables 3.1 and 3.2 of the OPW Flood Risk Guidelines the proposed development must be justified in planning terms based on zoning and the associated flood risks. The applicant has not acceded to the location of the proposed development within Flood Zone A and Flood Zone B and has not submitted a justification test.
- 7.4.5 Noting that the applicant's SSFRA does not take account of climate change, the actual extent of Flood Zone A and Flood Zone B within the appeal site is unclear. The potential effect of infilling parts of the site has also not been adequately addressed in the SSFRA, and the consequent potential for displacing flooding is unclear. Therefore, I am not satisfied that the site-specific flood risk assessment adequately considers the potential impact of the proposed development in terms of flooding on the appeal site or on neighbouring lands.
- 7.4.6 Furthermore, noting the likely extent of the proposed development within Flood Zone A and Flood Zone B, once climate change is taken account of, the proposed development fails to compensate for the loss of floodplain storage and I am not satisfied that the proposed development would not increase the risk of flooding to properties in the vicinity as a result. Accordingly, the proposed development should be refused permission for reasons relating to flood risk.
- 7.4.7 Planning for Watercourses in the Urban Environment (Inland Fisheries Ireland, 2020) and Policy 21 of the Local Area Plan require provision of development-free, riparian strips for river maintenance. Whilst mitigation outlined in the NIS refers to the provision of a buffer along the river bank, the area concerned comprises a landscaped garden as distinct from a reservation along the river and as such I do not consider that the



proposed development complies with Policy 21 of the Monksland/Bellanamullia (Athlone West) Local Area Plan 2016-2022 or the guidance provided in Planning for Watercourses in the Urban Environment (Inland Fisheries Ireland, 2020).

## 7.5 **Appropriate Assessment**

### 7.5.1 Stage 1 Screening

7.5.2 Compliance. The requirements of Article 6(3) of the Habitats Directive as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act 2000, as amended, are considered fully in this section.

7.5.3 Background. The applicant submitted an Appropriate Assessment Screening report, prepared by Whitehill Environmental, for the proposed development. The applicant's Stage 1 Appropriate Assessment Screening report concluded that *'following consideration of the location of the River Shannon Callows SAC and the Middle Shannon Callows SPA in relation to the proposed development and the potential impacts that may occur, this project must proceed to the next stage of Appropriate Assessment, namely a Natura Impact Assessment'*. The applicant's Stage 1 Appropriate Assessment Screening report, as supplemented by information received by the Board on the 18<sup>th</sup> August 2021, was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. Having reviewed the documents, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.5.4 Likely Significant Effects. 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 a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated as SACs and SPAs to assess whether it may give rise to significant effects on any European Site.

7.5.5 The Proposed Development. The development is described on page 12 of the Stage 1 Appropriate Assessment Screening report. It comprises;

- The construction of 2 no. detached bungalows.
- Car parking.
- An access road.
- A petrol interceptor, surface water attenuation tank and pump (with surface water from the site discharging to the Cross River).
- The infilling parts of the site.
- Landscaping.

7.5.6 Potential Effects of the Proposed Development. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of the implications for likely significant effects on European Sites:

- The uncontrolled release of pollutants or sedimentation to ground or surface water (e.g. run-off, silt, fuel, oils) during the construction phase of the proposed development.
- The deterioration of water quality arising from contaminated surface water run-off during the operational phase of the proposed development (including wastewater effluent).
- Disturbance to otter in the Cross River from the loss of breeding or resting places (riparian habitat) at construction and operational phases of the proposed development. Polluted run-off could also result in fish-kills within the Cross River, affecting otters who prey these fish.

7.5.7 Submissions and Observations. An observation (summarised in para 6.3) was received by the Board from the DoHLGH. The submission raises concerns relating to the procedure and rationale used in the screening for AA and NIS. Concerns are also raised regarding the ecological impact assessment as it relates to bats and otter, and the proposed removal of riparian habitat and its replacement with non-native species.

7.5.8 European Sites and Connectivity. A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in Table 7.1 overleaf. Where a possible connection between the development and a

European site has been identified, these sites are examined in more detail. 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 or given the absence of any direct hydrological or other pathway to the appeal site.

**Table 7.1 - Summary Table of European Sites within a possible zone of influence of the proposed development.**

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)	Considered further in screening Y/N
Lough Ree SAC (000440)	<ul style="list-style-type: none"> <li>• Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]</li> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> <li>• Active raised bogs [7110]</li> <li>• Degraded raised bogs still capable of natural regeneration [7120]</li> <li>• Alkaline fens [7230]</li> <li>• Limestone pavements [8240]</li> <li>• Bog woodland [91D0]</li> <li>• Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</li> <li>• Lutra (Otter) [1355]</li> </ul>	3.2 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Lough Ree SPA (004064)	<ul style="list-style-type: none"> <li>• Little Grebe (<i>Tachybaptus ruficollis</i>) [A004]</li> <li>• Whooper Swan (<i>Cygnus cygnus</i>) [A038]</li> <li>• Wigeon (<i>Anas penelope</i>) [A050]</li> <li>• Teal (<i>Anas crecca</i>) [A052]</li> </ul>	3.2 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)

	<ul style="list-style-type: none"> <li>• Mallard (<i>Anas platyrhynchos</i>) [A053]</li> <li>• Shoveler (<i>Anas clypeata</i>) [A056]</li> <li>• Tufted Duck (<i>Aythya fuligula</i>) [A061]</li> <li>• Common Scoter (<i>Melanitta nigra</i>) [A065]</li> <li>• Goldeneye (<i>Bucephala clangula</i>) [A067]</li> <li>• Coot (<i>Fulica atra</i>) [A125]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Lapwing (<i>Vanellus vanellus</i>) [A142]</li> <li>• Common Tern (<i>Sterna hirundo</i>) [A193]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>			
River Shannon Callows SAC (000216)	<ul style="list-style-type: none"> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410]</li> <li>• Lowland hay meadows (<i>Alopecurus pratensis</i>, <i>Sanguisorba officinalis</i>) [6510]</li> <li>• Alkaline fens [7230]</li> <li>• Limestone pavements [8240]</li> <li>• Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</li> <li>• Lutra (Otter) [1355]</li> </ul>	3.5 km/6.1 km downstream	Direct hydrological connection via surface water/the Cross River which runs along the northern and eastern boundary of the site	Y
Middle Shannon Callows SPA (004096)	<ul style="list-style-type: none"> <li>• Whooper Swan (<i>Cygnus cygnus</i>) [A038]</li> <li>• Wigeon (<i>Anas penelope</i>) [A050]</li> </ul>	3.5 km/6.1 km downstream	Direct hydrological connection via surface water/the Cross River which runs along the northern and	Y

	<ul style="list-style-type: none"> <li>• Corncrake (<i>Crex crex</i>) [A122]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Lapwing (<i>Vanellus vanellus</i>) [A142]</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</li> <li>• Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>		eastern boundary of the site	
Castlesampson Esker SAC (001625)	<ul style="list-style-type: none"> <li>• Turloughs [3180]</li> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites) [6210]</li> </ul>	4.5 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Ballynamona Bog and Corkip Lough SAC (002339)	<ul style="list-style-type: none"> <li>• Turloughs [3180]</li> <li>• Active raised bogs [7110]</li> <li>• Degraded raised bogs still capable of natural regeneration [7120]</li> <li>• Depressions on peat substrates of the <i>Rhynchosporion</i> [7150]</li> <li>• Bog woodland [91D0]</li> </ul>	4.7 km	River Cross connects Ballynamona Bog and Corkip Lough SAC to appeal site but SAC is upstream from appeal site	N (due to separation distance and lack of connectivity)
Crosswood Bog SAC (002337)	<ul style="list-style-type: none"> <li>• Active raised bogs [7110]</li> <li>• Degraded raised bogs still capable of natural regeneration [7120]</li> </ul>	8.3 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Lough Funshinagh SAC (000611)	<ul style="list-style-type: none"> <li>• Turloughs [3180]</li> <li>• Rivers with muddy banks with <i>Chenopodium rubri</i> p.p.</li> </ul>	9.2 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)

	and Bidention p.p. vegetation [3270]			
Pilgrim's Road Esker SAC (001776)	<ul style="list-style-type: none"> <li>Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> </ul>	10.7 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Carn Park Bog SAC (002336)	<ul style="list-style-type: none"> <li>Active raised bogs [7110]</li> <li>Degraded raised bogs still capable of natural regeneration [7120]</li> </ul>	10.9 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Mongan Bog SAC (000580)	<ul style="list-style-type: none"> <li>Active raised bogs [7110]</li> <li>Degraded raised bogs still capable of natural regeneration [7120]</li> <li>Depressions on peat substrates of the Rhynchosporion [7150]</li> </ul>	11km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Mongan Bog SPA (004017)	<ul style="list-style-type: none"> <li>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]</li> </ul>	11.3km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Lough Croan Turlough SAC (000610)	<ul style="list-style-type: none"> <li>Turloughs [3180]</li> </ul>	12 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Lough Croan Turlough SPA (004139)	<ul style="list-style-type: none"> <li>Shoveler (<i>Anas clypeata</i>) [A056]</li> <li>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]</li> <li>Wetland and Waterbirds [A999]</li> </ul>	12.1 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
Killeglan Grassland SAC (002214)	<ul style="list-style-type: none"> <li>Semi-natural dry grasslands and scrubland facies on calcareous substrates</li> </ul>	12.3 km	No direct/indirect connectivity	N (due to separation distance and

	(Festuco-Brometalia) (* important orchid sites) [6210]			lack of connectivity)
Fin Lough (Offaly) SAC (000576)	<ul style="list-style-type: none"> <li>Alkaline fens [7230]</li> <li>Vertigo geyeri (Geyer's Whorl Snail) [1013]</li> </ul>	12.6km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)
River Suck Callows SPA (004097)	<ul style="list-style-type: none"> <li>Whooper Swan (Cygnus cygnus) [A038]</li> <li>Wigeon (Anas penelope) [A050]</li> <li>Golden Plover (Pluvialis apricaria) [A140]</li> <li>Lapwing (Vanellus vanellus) [A142]</li> <li>Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</li> <li>Wetland and Waterbirds [A999]</li> </ul>	14.2 km	No direct/indirect connectivity	N (due to separation distance and lack of connectivity)

7.5.9 Following an examination of sites within the zone of influence, and upon an examination of the connectivity between the appeal site and these sites (see Table 7.1 above), the **River Shannon Callows SAC** and the **Middle Shannon Callows SPA** (which overlap) have been 'screened in' as the appeal site is hydrologically connected to both European sites. The Cross River, which runs along the northern and eastern boundary of the appeal site connects to the River Shannon Callows SAC and the Middle Shannon Callows SPA, c. 3.5 km south-east of the appeal site. All other Natura 2000 sites surrounding the proposed development have been screened out due to a lack of connectivity.

#### 7.5.10 Conservation Objectives of European Sites 'Screened-In'.

There is no Site-Specific Conservation Objective (SSCO) for the River Shannon Callows SAC. The generic conservation objective for the River Shannon Callows SAC is;

*‘to maintain or restore the favourable conservation conditions of the Annex I habitats and Annex II species for which the SAC has been selected’.*

The Site-Specific Conservation Objective(s) (SSCO) for the Middle Shannon Callows SPA is;

*‘to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA’ and,*

*‘to maintain or restore the favourable conservation condition of the wetland habitat at Middle Shannon Callows SPA as a resource for the regularly-occurring migratory waterbirds that utilise it’.*

7.5.11 Identification of Likely Effects. In light of the above Conservation Objectives the main elements of the proposal which may give rise to impacts on the European sites listed above are as follows:

Construction Phase Impacts on River Shannon Callows SAC - During the construction phase there is potential for surface water runoff from site works to temporarily discharge via groundwater and surface water to the Cross River, which connects to the River Shannon Callows SAC, c. 6.1 km downstream (3.5 km as the crow flies). Given the nature and scale of the proposed construction works and the proximity of the site to the Cross River, which connects to the River Shannon Callows SAC, there is the potential for the water quality pertinent to this European Site to be negatively affected by any contaminants, such as silt from site clearance and other construction activities, including the infilling of the site and also from the release of hydrocarbons.

Construction activities on the site could also potentially result in disturbance to otters (a qualifying interest of the Shannon Callows SAC) who are present within the Cross River and who rely on riparian habitat for breeding and resting. Additionally, polluted run-off could result in fish-kills within the Cross River, affecting otters who prey on fish. The submission from the DoHLGH refer to otter territories being over 13 km and as such ex-situ effects could potentially occur during the construction phase of the proposed development.

Construction Phase Impacts on the Middle Shannon Callows SPA - Wetland habitat, a qualifying interest of the Middle Shannon Callows SPA, has the potential to be impacted from potentially polluted surface water during the construction phase of the



proposed development. Species of bird that may graze on aquatic plants and algae could also be impacted from potentially polluted surface water during the construction phase of the proposed development. Given nature and scale of the proposed construction works and the connectivity between the site and the Middle Shannon Callows SPA, via the Cross River, there is the potential the water quality pertinent to this European Site to be negatively affected by any contaminants, such as silt from site clearance and other construction activities, including the infilling of the site and also from the release of hydrocarbons.

Operational Phase Impacts on River Shannon Callows SAC - During the operational phase of the proposed development foul sewer from the proposed development will be treated in Monksland Waste Water Treatment Plant. The most recent Annual Environmental Report for Monksland Waste Water Treatment Plant was published by Irish Water in 2020. Monksland Waste Water Treatment Plant has a Plant Capacity PE of 14,381. I note that no capacity issues were raised in the planning application. In 2020 the Monksland WWTP was non-compliant with the Emission Limit Values (ELVs) set in the Plant's Wastewater Discharge Licence. Based on ambient monitoring results a deterioration in Ammonia, BOD and Ortho-P, concentrations downstream of the effluent discharge is noted. Importantly, the discharge from the wastewater treatment plant does not have an observable negative impact on the Water Framework Directive status of the River Shannon, where it discharges.

At operational phase, the use of the site for residential purposes could potentially result in disturbance to otters who are present within the Cross River.

Operational Phase Impacts on the Middle Shannon Callows SPA – Wetland habitat could be impacted from potentially polluted surface water during the operational phase of the proposed development. Species of bird that may graze on aquatic plants and algae could also be impacted from potentially polluted surface water during the operational phase of the proposed development.

In-combination Impacts. There are no recent planning applications for the surrounding area that share a direct link with the subject site.

A summary of the outcomes of the screening process is provided in the screening matrix Table 7.2 overleaf.

Table 7.2 - Summary Screening Matrix
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European Site	Distance to proposed development/ Source, pathway receptor	Possible effect alone	In combination effects	Screening conclusions:
River Shannon Callows SAC (000216)	3.5 km/6.1 km downstream  Direct hydrological connection via surface water/the Cross River which runs along the northern and eastern boundary of the site	During the construction and operational phase there is potential for surface water runoff from site works to temporarily discharge via groundwater and surface water to the Cross River, which could in turn enter the River Shannon Callows SAC.  Otters in the Cross River could also be potentially affected through disturbance and as a result of fish kills, from polluted waters.  The proposal discharges to the public foul sewer network and will be treated in Monksland WWTP.	No effect	Screened in for AA
Middle Shannon Callows SPA (004096)	3.5 km/6.1 km downstream  Direct hydrological connection via surface water/the Cross River which runs along the northern and eastern boundary of the site	During the construction and operational phase there is potential for surface water runoff from site works to temporarily discharge via groundwater and surface water to the Cross River, which could in turn enter the Middle Shannon Callows SPA.  Noting the distance between the site and Middle Shannon Callows SPA, significant effects on birds from disturbance is unlikely.	No effect	Screened in for AA

7.5.12 Mitigation Measures. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.5.13 Screening Determination. 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 **could have a significant effect** on the River Shannon Callows SAC/European Site No. 000216 and the Middle Shannon Callows SPA/European Site No. 004096, in view of the site's Conservation Objectives, and Appropriate Assessment is therefore required.

#### 7.5.14 **Stage 2 – Appropriate Assessment**

7.5.15 Article 6(3). The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177U and 177V of the Planning and Development Act 2000 as amended are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive.
- Screening the need for appropriate assessment.
- The Natura Impact Statement and associated documents.
- Appropriate assessment of implications of the proposed development on the integrity each European site.

7.5.16 Compliance with Article 6(3) of the EU Habitats Directive. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

7.5.17 Screening The Need for Appropriate Assessment. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in-combination with other plans or projects will have a significant effect on the following European sites:

- River Shannon Callows SAC (Site Code: 000216)
- Middle Shannon Callows SPA (Site Code: 004096)

The possibility of significant effects on other European sites has been excluded on the basis of objective information. The following European sites have been 'screened out' for the need for appropriate assessment.

- Lough Ree SAC (000440)
- Lough Ree SPA (004064)
- Castlesampson Esker SAC (001625)
- Ballynamona Bog and Corkip Lough SAC (002339)
- Crosswood Bog SAC (002337)
- Lough Funshinagh SAC (000611)
- Pilgrim's Road Esker SAC (001776)
- Carn Park Bog SAC (002336)
- Mongan Bog SAC (000580)
- Mongan Bog SPA (004017)
- Lough Croan Turlough SAC (000610)
- Lough Croan Turlough SPA (004139)
- Killeglan Grassland SAC (002214)
- Fin Lough (Offaly) SAC (000576)
- River Suck Callows SPA (004097)

Measures intended to reduce or avoid significant effects have not been considered in the screening process.

7.5.18 The Natura Impact Statement. The application includes a NIS (dated September 2020) prepared by Whitehill Environmental which examines and assess potential adverse effects of the proposed development on the River Shannon Callows SAC and the Middle Shannon Callows SPA. The NIS was supplemented by information received by the Board on the 18<sup>th</sup> August 2021.

Regarding the habitat of the site, the initial NIS did not contain detailed information in relation to the existing habitat of the site however the information submitted to the Board on the 18<sup>th</sup> August 2021 confirmed that the dominant habitat within the site is an unmanaged grassland, akin to Dry Meadows and Grassy Verges GS2. The NIS

confirms that no QI associated with the River Shannon Callows SAC occur within the site and that the treeline along the riverbank is dominated by birch and does not correspond to the Alluvial forest, a QI habitat for which the River Shannon Callows SAC is designated.

7.5.19 Regarding flood risk, the NIS states that areas of the site fall into Flood Zone A but that neither the houses nor access roads will be located within this zone. The NIS states that a small area of the access road falls within Flood Zone B. I note however that the applicant's appeal submission states that 'the proposed access road and associated infrastructure to serve the development falls within Flood Zone C' and in this regard the NIS and the particulars submitted with the application are not commensurate.

7.5.20 The NIS submitted by the applicant screens out a number of qualifying interests of the Shannon Callows SAC on the basis that the habitats concerned are not sensitive to deteriorations in water quality. Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Lowland hay meadows, Limestone pavements and Alluvial forests have been screened out on this basis. Otter has been screened in for consideration of effects however I note that the NIS has not considered Alkaline fens. I note that there are 6 no. QI's associated with the Shannon Callows SAC however the NIS submitted omits reference to Alkaline fens.

7.5.21 Regarding Otter, a QI of the River Shannon Callows SAC, the applicant states in the information submitted to the Board on the 18<sup>th</sup> August 2021 that an assessment of the site was undertaken in August 2021 and no slips or slides where otters can enter or exit the river are present, no tracks were noted in the grass and no spraints or footprints were observed. It is however probable that otters swim up and down the river and forage for food along the Cross River.

7.5.22 The NIS identifies the main potential impacts from the proposed development on the River Shannon Callows SAC and the Middle Shannon Callows SPA as;

- The deterioration of water quality arising from the pollution of surface water run-off during site preparation and construction, including the importation of

infill which is required to raise levels on the site. Pollution sources are identified as being from silt, oil, cement, hydraulic fluid etc. These pollutants could have a toxic effect on water ecology, affecting certain species and their food supplies. Siltation in the water could smother fish eggs, reducing the amount of food available for fish and impeded the movement of fish. Works along the bank could result in the release of silt into the river and the clearance of vegetation along the river could lead also result in siltation of the river. The removal of the tree line along the river is not considered appropriate.

- The deterioration of water quality arising from contaminated surface water run-off during the operational phase of the proposed development (pollution sources have not been identified in the NIS).
- Risks to Annex I or Annex II species associated with the site. Eutrophication could affect the ecology of the Cross River and its downstream receptors, which could impact on the food chain that these species are dependent upon. Vegetation clearance and the use of inappropriate landscaping could result in habitat fragmentation for otter within the Cross River.
- Cumulative impacts with existing/proposed developments. The NIS notes that the planning history in the vicinity of the site concerns small scale developments and that larger development in the area will be subject to the requirements of Appropriate Assessment and on this basis, it is unlikely that the proposed development would result in any cumulative impacts on the River Shannon Callows SAC and the Middle Shannon Callows SPA.

7.5.23 Section 5 of the NIS sets out mitigation measures which will be adhered to during both construction and operational phases of the proposed development. The NIS states that the primary parties responsible for the implementation of the mitigation measures will be the applicant and the construction team (site manager and site workers). Proposed mitigation measures include;

#### Pre -Construction/Construction Phase

- Works must be confined to the application site.
- The relevant parties should be made aware of the ecological sensitivity of the site and the mitigation measures contained in the NIS.
- Efficient construction practices and sequencing should be employed, minimizing soil erosion and potential pollution of local watercourses. Unnecessary clearance of vegetation should be avoided and only in areas necessary for building works.
- Works on the site should be avoided during periods of heavy rain.
- Strict control of erosion, sediment generation, including the provision of attenuation measures, silt traps, geotextile curtains to reduce and intercept sediment release into any local watercourse.
- All site development works should adhere to best practice, including a number of specific documents (published by the EPA, Inland Fisheries Ireland, CIRIA etc.)
- A minimum 7-metre-wide buffer will be maintained along the Cross River where vegetation will be untouched, including the tree line (if possible).
- A double silt fence should be installed prior to commencement of works along the outer edge of the buffer zone. An interceptor trench will be required in front of the interceptor fence. Silt fences will be monitored regularly.
- Trees on site should only be pruned/removed outside of nesting season.
- There must be no deposition of soil or the storage of machinery in any area outside the application site.
- Best practice concrete/aggregate management measures should be employed, including - in respect of bulk liquid concrete; concrete pouring curing; stockpiling areas will be kept to a minimum and away from drains and watercourses (50 metres minimum); measures to prevent against shutter failure; concrete mix wagons should be washed off-site; activities which could result in the creation of concrete dust should be controlled by damping, raw and uncured concrete should be disposed of off-site, or by burial on-site in a manner that will not impact the local water course.
- Hydrocarbon/fluid management measures should include – the storage of fuels, oils, hydraulic fluid in bunded compounds, away from watercourses;

refueling and lubrication shall take place on sealed and bunded surfaces; containers should have a bund capacity of 110% minimum; storage areas, machinery depots and site offices should be located remotely from the watercourse; effective spillage procedures/spill kits should be in place; plant and machinery shall be regularly maintained/serviced, waste oils should be collected in leak-proof containers and removed from the site; stockpiles of sands and gravels should be kept to a minimum and away from any watercourse.

- Waste associated with the development should be disposed on in an environmentally friendly manner, using registered contractors, included excavated soil.
- Topsoil generated from site works should be stored within the site until it is required for landscaping. Topsoil must be stored at appropriate locations within the site, away from the river. Excess topsoil must be removed from the site.

#### Post Construction/Operational Phase

- Only clean surface water should be allowed into any drain or soakaway.
- During the movement of topsoil for landscaping, measures e.g. barriers, bunds, geotextile curtains, should be used to prevent sedimentation entering the river.
- If mature trees are being felled, they should be examined for the presence of bats.
- Low intensity lighting should be used within the development so as to reduce the impact on bats.
- Bare soil should be seeded as soon as possible, and non-native wildflower mixes should be avoided.
- Natural herbaceous verges should be created/maintained.

The applicant's NIS concludes that '*with the implementation of mitigation measures, there will be no deterioration on water quality, or impacts upon any designated habitat or any species dependent on these designated habitats*', and '*with the implementation of mitigation measures the proposed works do not have potential to significantly affect the conservation objectives of the River Shannon Callows SAC and the Middle*



*Shannon Callows SPA and 'the integrity of the of the site will not be adversely affected'.*

7.5.24 Having reviewed the documents, submissions and consultations, I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of the following European sites alone, or in combination with other plans and projects:

- River Shannon Callows SAC (Site Code: 000216).
- Middle Shannon Callows SPA (Site Code: 004096).

The applicant's NIS (incorporating the information received by the Board on the 18<sup>th</sup> August 2021) was prepared in line with current best practice guidance and provides an assessment of the potential impacts on River Shannon Callows SAC and Middle Shannon Callows SPA.

7.5.25 Appropriate Assessment of implications of the proposed development. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

7.5.26 The following sites are subject to Appropriate Assessment:

- River Shannon Callows SAC (Site Code: 000216).
- Middle Shannon Callows SPA (Site Code: 004096).

A description of the sites and their Conservation and Qualifying Interests/Special Conservation Interests are set out in Table 7.1 of this report. I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents for these sites available through the NPWS website ([www.npws.ie](http://www.npws.ie)).

7.5.27 The main aspects of the proposed development that could adversely affect the conservation objectives of European sites include;

- The uncontrolled release of pollutants or sedimentation to ground or surface water (e.g. run-off, silt, fuel, oils) during the construction phase of the proposed development.

- The deterioration of water quality arising from contaminated surface water run-off during the operational phase of the proposed development (including wastewater effluent).
- Disturbance to otter in the Cross River from the loss of breeding or resting places (riparian habitat) at construction and operational phases of the proposed development. Polluted run-off could also result in fish-kills within the Cross River, affecting otters who prey these fish.

7.5.28 There is the potential the water quality pertinent to the **Shannon Callows SAC** to be negatively affected by any contaminants, such as silt from site clearance and other construction activities, including the infilling of the site and also from the release of hydrocarbons during both the construction and operational phases of the proposed development. Disturbance to otters using the Cross River could also occur during the construction and operational phase of the proposal. Foul sewer from the proposed development is being treated in Monksland Waste Water Treatment Plant and therefore effects from this source can be discounted.

7.5.29 Wetland habitat, and species of bird that may graze on aquatic plants and algae within the **Middle Shannon Callows SPA** could also be impacted upon by any contaminants, such as silt from site clearance and other construction activities and also from the release of hydrocarbons during both the construction and operational phases of the proposed development.

7.5.30 I am satisfied that there are no recent planning applications for the surrounding area that share a direct link with the subject site.

7.5.31 **Assessment of proposed Mitigation Measures** - The NIS outlines a number of mitigation measures at pre-construction/construction and post construction/operational phase. For the most part the mitigation measures are intended to avoid the release of contaminated run-off to the Cross River during each phase of the proposal. A number of issues arise in respect of the proposed mitigation measures and I consider that the NIS is deficit as a result.

- Firstly, the mitigation measures are not specific to each identified impact, this issue has also been raised by the DoHLGH. The NIS does not provide sufficient information regarding the monitoring of each mitigation measure or identify

actions which will be taken in the event of the failure of a particular mitigation measure.

- Additionally, it is proposed that the applicant, site manager and site workers will be responsible for the implementation of the mitigation measures as distinct from the measures being overseen by an ecologist.
- It is also noted that the majority of the mitigation measures are prefaced with 'should, as distinct from measures that 'will' be undertaken, and by contrast other mitigation measures are described as actions which 'must' be undertaken. It is therefore unclear if all the measures outlined in the NIS are to be implemented.
- In terms of the practicality of the mitigation measures, the provision of a 7-metre-wide riparian buffer from the Cross River is queried. Noting the separation distance of 8 metres between House B and the riverbank, this effectively leaves a 1 metre area for works to be carried out within.
- As referred to in the submission of the DoHLGH, no detail has been provided regarding the attenuation measures or silt traps.
- Regarding flooding, noting that the applicant's SSFRA does not take account of climate change, the actual extent of Flood Zone A and Flood Zone B within the appeal site is unclear and as such the potential deterioration of water quality from flooding has therefore not been assessed.
- The NIS does not provide any detailed assessment of the impact from construction activity on the site on otters within the river or from artificial lighting during the operational phase of the proposed development, except to state that low intensity lighting will be used during the operational phase of the proposed development, however I note that this is in the context of bats. Operational impacts on otters in the Cross River from the use of the site have not been adequately addressed in the NIS.

7.5.32 In summation, I do not consider that the proposed mitigation measures are suitably detailed or clear regarding addressing potential adverse effects. Additionally, I do not consider that sufficient monitoring of the mitigation measures, or safeguards to address their potential failure have been provided for. I am therefore not satisfied that the measures are sufficient to address potential impacts from pollution during construction and operation, disturbance to QI associated with European sites, and

that the potential for deterioration of habitats and species identified within the European Sites is not likely.

7.5.33 Integrity test. Following the appropriate assessment and the consideration of mitigation measures, I am unable to ascertain with confidence that the project would not adversely affect the integrity of the Shannon Callows SAC and the Middle Shannon Callows SPA in view of the Conservation Objectives of these sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

7.5.34 Appropriate Assessment Conclusion. The proposed development has been considered in light of the assessment requirements of Sections [177U and 177V] of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Shannon Callows SAC and the Middle Shannon Callows SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, **could** individually, adversely affect the integrity of the Shannon Callows SAC and the Middle Shannon Callows SPA, in view of the site's Conservation Objectives. This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the Conservation Objectives of the Shannon Callows SAC and the Middle Shannon Callows SPA.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.

Particular concerns are expressed in relation to;

- The absence of information in the NIS regarding the methodology used for the otter survey, including the number of surveys undertaken, noting the submission of the DoHLGH where it is stated that surveys using standard methodology are recommended over a number of dates and times.
- The omission of reference in the NIS to Alkaline fens, one of the 6 no. QI's associated with the Shannon Callows SAC, and consequently the omission of any assessment of the proposed development on this QI.

- The non-specific relationship between the proposed mitigation measures and the impact which they are intended to address, and ambiguity in relation to terminology used in respect of mitigation measures.
- The absence of information regarding the monitoring of each mitigation measure or the identification of action(s) which will be taken in the event of the failure of a particular mitigation measure.
- The likelihood of flooding on the appeal site, and its implication for the efficacy of mitigation measures and consequently the potential deterioration of water quality, which has not been adequately assessed.
- Practical considerations regarding the implementation of specific mitigation measures, in particular the riparian buffer and the absence of details regarding mitigation measures, specifically the attenuation measures and silt traps.

As such, I consider that there remains a reasonable scientific doubt as to the absence of adverse effects on the integrity of on the Shannon Callows SAC and the Middle Shannon Callows SPA and as such the Board is precluded from granting permission for the proposed development.

## 8.0 Recommendation

8.1 I recommend that planning permission for the proposed development should be refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The proposed development is in an area that is at risk of flooding. The Board is not satisfied, on the basis of the information lodged with the planning application and in response to the appeal, that the proposed development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.
2. On the basis of the information submitted with the planning application and the Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would

not be likely to have a significant effect on the River Shannon Callows SAC (Site Code: 000216) and the Middle Shannon Callows SPA (Site Code: 004096), or any other European site, in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

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Ian Campbell  
Planning Inspector

15<sup>th</sup> June 2022