



An
Bord
Pleanála

Inspector's Report ABP 310746.21.

Development	Fourteen apartments in two, four storey blocks and two houses on two parcels of land.
Location	Two portions of land at Aisling Estate, Shanvogh, Ennis, Co Clare.
Planning Authority	Clare County Council.
P.A. Reg. Ref.	21/338
Applicant	Pat Doyle
Type of Application	Permission
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	Pat Doyle
Observers	Pat Hegarty, Shanvogh Damian Finnerty and Residents of Ros na Ri
Date of Site Inspection	19 th October, 2021
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The application site as denoted by red line outlines on the site location map comprises two parcels of land within the Aisling residential estate in which there are one hundred dwelling units. It is located on elevated land in the townland of Shanvogh at the western edge of Ennis, south of Loughvella and the Ros Na Ri residential estate along the boundary of which there is a two metres high block wall. Vehicular access to the Aisling estate is off the north side of Shanaway Road which is linked to the Lahinch Road N 85 (Claureen Road) junction to the northwest.
- 1.2. One parcel of land is formed from land at the north-western end of the estate adjacent to a row of semi-detached houses. The other parcel is located at towards the centre of the Aisling Estate to the south side of three storey dwelling and adjacent to the southern boundary of the estate along which there is a two metres high block boundary wall along the outer side of which there are trees within lands at the adjoining property at Shanvogh House.

2.0 Proposed Development

- 2.1. The application site as denoted by red line outlines on the site location map comprises two parcels of land within the Aisling residential estate in which there are one hundred dwelling units. It is located on elevated land in the townland of Shanvogh at the western edge of Ennis, south of Loughvella and the Ros Na Ri residential estate along the boundary of which there is a two metres high block wall. Vehicular access to the Aisling estate is off the north side of Shanaway Road which is linked to the Lahinch Road N 85 (Claureen Road) junction to the northwest.
- 2.2. One parcel of land is formed from land at the north-western end of the estate adjacent to a row of semi-detached houses. The other parcel is located at towards the centre of the Aisling Estate to the south side of three storey dwelling and adjacent to the southern boundary of the estate along which there is a two metres high block boundary wall along the outer side of which there are trees within lands at the adjoining property at Shanvogh House.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated, 8th June, 2021 the planning authority decided to refuse permission based on three reasons as outlined in brief below:

- The development is out of scale and character having regard to layout, building form, and density with the existing development, and excessive height and proximity of the apartment blocks to the perimeters with overlooking and overbearing impact. As a result, the development would seriously injure the visual and residential amenities and contrary to the statutory guidelines "*Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities, (2009)*"
- Impact, in the absence of a light spill study, of the proposed apartment blocks on adjacent mature tree line used by bats for feeding and commuting and consequential impact on the Pouladatig Cave SAC and objective 14.11 of the CDP and 14.12 of the CDP on Habitat Protection and European sites.
- Lack of evidence of sufficient legal interest and entitlement to implement the development.

3.2. Planning Authority Reports

3.2.1. The report of the Roads and Transportation Department of 22nd May, 2021 indicates a recommendation for an additional information request in respect of lighting proposals.

3.2.2. In addition, it is stated that the proposed arrangements for storm water disposal, are unclear as to whether the existing soakaways are to be used and as to whether there is adequate capacity to accept the additional discharge. A request for additional information is recommended.

3.2.3. The report of the Roads Design Office issued by the Municipal District Office on 2nd June 2021 notes an overlap in the proposed parking for the development with existing parking provision for the residential development in the estate which would be reduced as a result of the proposed development. It is pointed out that parking

provision is shown outside the red line boundary. Some deficiencies in the details provided on the plans are also noted in relation to cycling provision, refuse collection points, and the internal road.

3.2.4. The report of Irish Water indicates no objection to the proposed development.

3.2.5. The planning officer in his report noted Drawing 17-1126-01 in relation to 'taking in charge' and states that the lands shown as "future development" should not be interpreted as agreement in principle to development of the land. The planning officer concluded that the proposed development is unacceptable, based on the three reasons which were attached to the decision to refuse permission.

3.3. **Third Party Observations**

3.3.1. The issues of concern raised in the observer submission lodged with the planning authority include: -

Material conflict with conditions attached to prior grant of permission.

Adverse visual impact.

Excessive height and height and inappropriate form, design and selection of materials, and proximity to boundaries and adjoining properties.

Overlooking.

Noise and Nuisance.

Impact on traffic flows at junction with N85 where the ratio of flow to capacity at the junction is already exceeded.

Validation issues and legal interest.

4.0 **Planning History**

P. A. Reg. Ref. 03/2103 /PL125013: - Further to appeals, the planning authority decision to grant permission for a development of eight one residential units was overturned on grounds of premature development in the absence of an adopted plan, the area being under high development pressure and accessed by a substandard, third-class road.

P. A. Reg. Ref. 03/1760 /PL 210534: - Further to appeals, the planning authority decision to refuse permission for a development of 155 residential units and a commercial unit was overturned and permission was granted. Under Condition No 2 there was a requirement for omission of apartment blocks around the perimeter to facilitate development of a linear park.

P. A. Reg. Ref. 08/1359 An application for Permission for alterations to the previously permitted development was withdrawn prior to determination of a decision.

P. A. Reg. Ref. 05/2070 Permission was granted for a creche facility and associated works.

5.0 Policy Context

5.1. The Regional Spatial and Economic Strategy for the southern Region was brought into effect in January, 2020.

5.1.1. County Clare is within the 'Mid-West' Strategic Planning Area. Ennis is a "Key Town" which is the second tier of the settlement hierarchy. Ennis is defined as having a large population scale urban centre function as a self-sustaining regional driver. The triangle of Limerick Shannon and Ennis is recognised as the economic engine of the Mid-West with the M18 creating greater synergy and connection between Ennis and Galway. The Ennis 2040 Economic and Spatial Strategy, a long-term economic strategy with an agreed focus on the economic and spatial future. to be prepared offers opportunities for long term strategy for sustainable development of the town.

5.2. The operative development plan is the **Clare County Development Plan, 2017-2023**.

5.2.1. According to Settlement Strategy, it is the policy objective to ensure that Ennis, designated as a Hub town in the National Spatial Strategy (now superseded) as the county town at the top of the settlement hierarchy (a) is a driver of economic and regional prosperity by harnessing its strategic location strong urban structure, retail service and accommodation base as well as its competitive advantages, (b) a vibrant culturally rich town with a revitalised town centre strong economic growth balanced

with enhanced social inclusion sustainable neighbourhoods and a high level of environmental quality ensuring an excellent quality of life is achieved and, (c) A local area plan for Ennis and its environs during the lifetime of the CDP.

5.2.2. Under section 4.11 (Habitat Protection) of the CDP the policy objectives of the planning authority include a requirement to ensure that there is no net loss of potential Lesser Horseshoe bat feeding habitats, treelines and hedgerows within 3 km of known roosts.

5.2.3. According to **Volume 3 A (Ennis Municipal District Area)**, Section 2.11, the Aisling estate in which the sites are located is subject to the zoning objective residential and the site lands: 'R24' – This residential zoning provides for facilitation of the completion of the estate. Any development on this site shall be of a high-quality design and layout incorporating a green area to serve future residents. This site is located less than 1km from a known bat roost. Vegetation on the perimeter of the site shall be retained and a buffer zone identified to ensure its protection. Development proposals must demonstrate, via a light spill modelling study, that lighting design will not increase ambient light levels beyond the perimeter of the development footprint

5.2.4. According to section 2.11.1 Future development that would significantly increase vehicle movements on the area should be accompanied by an assessment of the capacity of the Shanaway Road Lahinch Road Junction to accept additional traffic.

5.2.5. Development Management Guidelines are set out in Appendix 1 of the CDP

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was lodged by Michael Leahy on behalf of the applicant on 5th July, 2021. Attached is a copy of a bat survey report dated, 1st July, 2021 and a copy of the Conservation Objective for the Pouladatig Cave SAC (00037) published by NPWS and a statement by a consulting engineer on impact from a lighting scheme, correspondence relating to taking in charge by the County Council and documents on the relationship to the Ros Na Ri development. It includes an account of and commentary on pre planning consultations and on the prior planning history for the

site location and it is stated that the estate was not completed but has been taken in charge and, that although prior grants of permission have lapsed it has been intended to develop remaining lands which were indicated as being for future development.

- 6.1.2. With regard to **Reason 1** for the decision to refuse permission: every effort was to ensure the layout and height for the proposed development reflected development for which there is a previous grant of permission and that it could fail to provide for orderly and planning development of the site. The density of the estate which would increase to twenty-seven units per hectare, within the range in the Residential Development Guidelines (2009), from a total number of one hundred units to 116 units for the 4.3 hectares of the overall Aishling estate. A reduced number of units (relative to the prior application) on the same footprint overcomes any issue as to overbearing impact and as to direct overlooking. Oblique overlooking is addressed by the 1.8 m high privacy screens. However, the applicant is willing to accept a condition for a height reduction by omission of one floor with solid timber privacy panels substituted for obscure glazing. (A drawing is provided.)
- 6.1.3. With regard to **Reason 2** for the decision to refuse permission, according to the AA assessment, the Pouladatig Cave SAC is within three kilometres. It is 2.1 kilometres from the site location and not one kilometre as stated in the planning officer report. The trees to the south of the site are not identified as bat foraging area for the SAC. The submitted bat survey indicated absence of activity at this location and, a statement by a lighting engineer (provided with the appeal indicates that lighting will not affect potential bat activity. Public lighting to the space would be of a type that would not affect bat movements.
- 6.1.4. The submitted statement by a consulting engineer states that there would be an undertaking to minimise impact of outdoor lighting on bat populations and that LED type lanterns of the Warm White type with a colour temperature of 3,000K is considered least disruptive to emergence of bats from roosts at dusk and subsequent movement from habitats to foraging locations.
- 6.1.5. With regard to **Reason 3** for the decision to refuse permission, over proposals for parking outside the redline boundary, the estates section of the County Council will facilitate the applicant with carparking as per an email copy of which is included as

an attachment. Any matters as to specific ownerships are civil matters and reference is made to the provisions of section 34 (13) of the Act in this regard. Any suggestion that a public authority cannot carry out works in an area not taken in charge or cannot enable a developer to carry out such works would be to undermine the process of taking common areas in charge. However, the existing car parking facilities in the estate are significantly underused and a reduction in the application of the carparking requirement would therefore be welcomed.

- 6.1.6. Several of the comments in the planning officer report regarding design, dwelling type and layout, the relevance of the planning history, legal interest, landownership, overlooking and screening at adjoining lands, density, cedar cladding, noise and nuisance are rejected; the design reflects the existing development and that for which permission was previously granted.
- 6.1.7. It is requested that permission be granted, with the option for the alternative proposal included in the appeal to be taken into consideration and submitted that the proposal represents much needed housing development.

6.2. **Planning Authority Response**

- 6.2.1. A submission was lodged by the planning authority on 23rd July, 2021 according to which the appeal grounds have been noted but that it is requested that the decision to refuse permission be upheld.

6.3. **Observations**

- 6.3.1. Observer submissions were lodged by two parties: Pat Hegarty of Shanaway Road, a property to the south of the application site and Damian Finnerty and other Residents of Ros na Ri which adjoins the northern side of the site. The two submissions are outlined separately below.

6.3.2. **Pat Hegarty, Shanvogh House, Shanaway Road.**

A submission was received from P Coleman and Associates on behalf of Mr Hegarty whose property is to the south side of the Aisling estate on 30th July, 2021 and it includes a detailed account of the zoning and associated local strategic policies and

objectives and planning history for the site location and its environs. According to the submission: -

- The application and statutory notices do not include details of alterations to the existing roads and carparking layout. The consent in writing from the County Council is not valid because the estate is not 'taken in charge' so the application is premature.
- The proposed development is contrary to Condition No 2 of the grant of permission under P. A. Ref. Ref.03/1760. Eleven blocks of apartments on the perimeter of the site including Blocks 13 and 14 were omitted under Condition No 2 (a) and 1(b) and the land was to be laid out as a linear park. This condition was clear and unambiguous, contrary to the assertions in the appeal. The proposed layout is not as claimed in the application and appeal, a layout is previously approved by the planning authority having regard to the grant of permission under P. A. Reg. Ref. 03/1760. The current proposal is for construction on part of the linear park required under P. A. Reg. Ref. 03/1760 and is contrary to Condition 2 (a). Although this grant of permission has expired nothing has changed.
- The proposed development would have a detrimental impact on the amenities of the appellant party's property which is in a semi-rural area and would affect development potential on his lands which are subject to the R24 zoning objective.
- The four storey apartment blocks would be 2.2-2.5 metres from the party boundary with Mr Doyle's property and at 14.3 metres in eight are too close and would give rise to overlooking and noise issues. Adversely affecting residential amenities. No levels of contiguous elevations were provided with the application. The proposed omission (within the appeal) of one floor reducing the height to 11.256 metres and incorporation of privacy screens for the balconies, while an improvement would not overcome overlooking and noise issues.

6.3.3. Damian Finnerty and other Residents of Ros na Ri.

A submission was lodged on 3rd August, 2021 by Mr Finnerty on behalf of himself and other residents at Ros na Ri according to which Mr Finnerty's dwelling is directly

the proposed apartment blocks and adjacent to semi-detached houses. It is submitted that:

- The semi-detached house closest to Mr Finnerty's property would, from front windows and first and second floors overlook the house and garden from north facing and east facing windows. The existing houses do not have north facing windows and the bay window feature would not be necessary.
- Noise levels will increase, particularly from a children's playground close to the boundary with Ros Na Ri interferes with the enjoyment and amenity of the private garden at Mr Finnerty's property. The playground should be relocated or supplemented by a second playground elsewhere in the estate.
- The Aisling estate is close to multiple foraging sites and commuter routes for bats. Lighting from the proposed development might cause disruption by interfering with the commute paths. The collection of data on one night only (instead of two) as reported in the survey report maybe unreliable for the drawing of conclusions on number and behaviour of lesser horseshoe bats. The scale of the mature treeline on the southern boundary is not shown properly in the plates within the submitted bat survey report.
- Traffic impact which will increase significantly and there are risks of accidents. The capacity of the Shanaway Road/Lahinch Road (N85) junction was not accessed. The RFC of this junction has already been exceeded. There are long queues on Shanaway Road on a daily basis. A special development contribution towards the construction of a roundabout was required, by condition attached to a grant of permission under P.A. Reg. Ref. 09 1315. Provision of this roundabout should be a precondition to future developments.
- All apartment blocks were removed in an application in 2016 and there are no apartment blocks in residential estates in the vicinity. The location is not suitable for apartments as it is 2.5 km from the town centre and there are no amenities or facilities. The 2016 application is not taken into consideration in the appeal whereas there are repeated references to the 2005 application.
- The development should not be targeted for social housing as the entire upper end of the estate is used as social housing.

- There is no reference in the appeal to removal of cladding on completion of development in the upper section of the estate. The cladding which is at odds with surrounding buildings but is retained in the rest of the estate is unsightly.

7.0 **Assessment.**

7.1. There is a first party appeal against the decision of the planning authority to refuse permission and two observer submissions indicating objections to the proposed development. The issues central to the determination of the decision can be considered under the following subheadings: -

Legal Interest.

Planning History.

Development Plan Policy Objective R24 (Section 2.11, Vol 3)

Scale Height and Design – Visual Impact

Density.

Environmental Impact Assessment Screening.

Appropriate Assessment Screening.

7.2. **Legal Interest**

7.2.1. The planning officer advises in his report that the common areas have not been taken in charge and transferred to the control of the local authority and that the availability of letters of consent to the application from the relevant landowner(s) are necessary. It is noted that according to the planning officer report, the applicant was advised of this requirement during pre-planning consultations. The assertion on the appeal that this matter and matters relating to proposals for development outside the redline boundary of the site can be set aside as irrelevant is not accepted. These proposals include provision for carparking and sewers.

7.2.2. While these matters are not planning issues, they would render the development, if permitted unimplementable unless resolved and furthermore the development proposal would be incomplete with favourable consideration not being possible in the absence of entitlement to include the third-party lands within the application site subject of the planning application. To this end, the consent of third-party Title

holders is essential to enable the planning authority to consider the application. The correspondence of 17th December, 2020 included in the appeal (Appendix 7) does not include written confirmation as to finalisation of transfers of the subject lands to the local authority. Although a commitment to same is noted by the local authority it is considered that finalisation of the transfer would be required in order to allow for permission is granted. The situation is not a matter of a minor encroachment in which case it may have been feasible for the proposal to be considered with reliance on the provisions of section 34 (13) of the Act with regard to entitlement to implement a grant of planning permission.

- 7.2.3. With regard to parking provision for the proposed development, it is considered that there is scope for some flexibility in the application of parking standards for the proposed apartment blocks bearing in mind the under-use of the existing facilities in the communal car parks serving the development.

7.3. **Planning History.**

- 7.3.1. With regard to Condition No 2 of grant of permission under P. A. Reg. Ref. P. A. Reg. Ref. 03/1760 /PL210534, the omission of units and requirement for allocation of the space to use as a linear park is noted. The remarks as to the zoning of the lands and associated policies and objectives of the planning officer are noted. At the time of consideration of and determination of the prior application, the site location was supported by coming within the settlement boundary for Ennis and a residential zoning and provided for by Serviced Land Initiative confirming the future availability of services infrastructure.

- 7.3.2. As such, there is no certainty that the proposed development would materially contravene the condition although on inspection of the estate, it is clearly apparent that there is an opportunity for upgrade of the green space along the perimeter of the site as a linear park, but there are no specific objectives for development of a linear park. On the other hand, under Policy Objective R24 vegetation on the perimeter of the site is to be retained and a buffer zone to be identified.

7.4. **Development Plan Policy Objective R24 (Section 2.11, Vol 3)**

- 7.4.1. The proposed development is considered to be incompatible with and would not meet the requirements of Section 2.11 and Policy Objective R 24 for the Aisling Estate within the CDP (Vol 3) according to which a known bat roost is within one

kilometre, future development on this site is to be of a high quality design and layout incorporating a green area to serve future residents and vegetation on the perimeter of the site is to be retained and a buffer zone identified to ensure its protection.

- 7.4.2. The Aisling estate is on highly elevated land at the western edge of Ennis and it and the buildings within it are visible from the lower lying National Route (N85) Lahinch Road. Shanvogh House and lands lie at a considerably lower level to the south and the mature trees along the boundary with the application site provide some screening effect for the views from the southwest on approach Road. Views of built form and character are acceptable for a zoned and partially developed location at an outer edge but within the settlement boundary. It is considered that additional development should not be dominant but rather it should be demonstrated that a satisfactory integration into the built character can be achieved as would be an expectation for any development of an infill nature.

7.5. Scale, Height and Design, Visual Impact

- 7.5.1. With regard to the current proposal, it is fully agreed with the planning officer that two four storey blocks would be visually obtrusive and overbearing in impact on adjoining properties within the Aisling estate and properties adjacent to it. The applicant's agent has taken these concerns into account in submitting an alternative proposal for the two apartment blocks in the appeal which provide for mitigation by omission of one floor in each block supplemented design modifications to address potential for overlooking. It is agreed with the planning officer that the site at the north-western edge of the development, does not have capacity to accept the two proposed houses due to potential adverse impacts on the residential amenities of the adjoin properties in the Ros Na Ri development attributable to overbearing impact, overlooking and perceptions of overlooking whereas development of one lower profile, reduced height dwelling in high quality design might be feasible.
- 7.5.2. With regard to the timber cladding, the site location is highly exposed to extreme weather and as such materials and finishes need to be robust. The objections of the third parties at Ros Na Ri in this regard are considered reasonable and, it is recommended that a requirement for an alternative be considered if permission is to be granted.

7.6. Density.

7.6.1. In the appeal it is advocated that an increase in density at the Aisling estate overall as would be provided for in the current proposal is a positive consideration. Current policy provides for consideration of increased density at edge of settlements having regard to Circular NRUP 02/2021 and is acknowledged as being appropriate for consideration of development proposals on the outer suburbs of Ennis, particularly having regard to the County and Mid-West Region's settlement strategy. However, favourable consideration is contingent on all qualitative planning and technical standards being to a high standard.

7.7. Traffic

7.7.1. The views of third parties and their concerns about assessment of impact on traffic flows generated by traffic associated with the proposed development and as to the capacity at the Lahinch Road (N85) and Shanaway Road junction to accept additional traffic are understandable. The development is to be accessed via the existing entrance to Aisling estate off the Shanaway Road.

7.7.2. It is noted that it is a requirement of the CDP according to section 2.11.1. of Vol 3 that a study of ratio of flow to capacity at the junction is required for significant residential development in order to establish any capacity to accept additional flow. As the proposal is confined to sixteen units, it is not accepted that it constitutes a "significant" residential development. The additional traffic generation onto the Shanaway Road and at the junction directly attributable to the proposed development would therefore be insignificant and it is therefore considered that such a study is unwarranted in the case of the subject proposal.

7.8. Impact on Bats and Bat Habitat – Annex II and Annex IV species.

7.8.1. The inclusion of the second reason for refusal of permission by the planning authority to its decision to refuse permission is reasonable. However, the inclusion within the appeal of a comprehensive bat survey report (by Ecofact) is acknowledged and in both desk research and fieldwork methodology it is considered that it addresses any possible shortcomings in the prior application submission in this regard.

7.8.2. As might have been anticipated with regard to the mature trees on the outer side of the southern boundary wall is evidence is recorded of use as a commuter route

(between foraging habitats) by four species including the Lesser Horseshoe bat, an Annex II species (the other three being Annex IV species) which is also the subject of the conservation objectives of two European sites The Pouladatig Cave SAC (00037) at circa 2.2 kilometres to the south. The likelihood of use of the mature trees as a roosting habitat for two of annex IV species according to the report is also of note with regard to consideration of habitat protection and avoidance of artificial light spillage that is disruptive to the emergence of bats from roosts at dusk and subsequent movement from habitats to foraging locations and it cannot be confirmed that the proposed development would not be in conflict with section 14.11 (Habitat Protection) of the CDP.

- 7.8.3. While there is a statement of intent to provide a suitable lighting scheme, a comprehensive light spill modelling plan inclusive of all technical design specifications and a plan drawing that would demonstrate extent of spillage has not been provided. The submissions in connection with both the application and the appeal therefore do not satisfy the requirement under that development proposals *“must demonstrate, via a light spill modelling study, that lighting design will not increase ambient light levels beyond the perimeter of the development footprint”* as provided for under Policy objective R 24 of Section 2.11 of Vol 3 of the CDP.
- 7.8.4. However, it is considered greater clarity in the CDP as to the location of the bat roost referred to in the R24 objective in section 2.11 would have been beneficial in that in the appeal the distance between bat roosts and the site location is contested, with reference being made to the distances from the areas of the Pouladatig Cave and Newhall and Edenvale Cave SACs.
- 7.8.5. Furthermore, if the footprint of the apartment blocks it to be considered acceptable in all other respects having regard to the proximity to the southern boundary, consideration of a light spillage study is essential for assessment potential impact of light spillage from the higher-level windows of the blocks and assessment of possible external lighting, and lighting from vehicles.

7.9. Environmental Impact Assessment Screening.

- 7.9.1. Having regard to the minor nature and scale of the development proposed for retention and its location in an area removed from any sensitive locations or

features, there is no real likelihood of significant effects on the environment the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.10. Appropriate Assessment Screening.

7.10.1. The original application lodged with the planning authority was accompanied by a Bat Survey report. A supplementary Bat Survey report incorporating a Daytime and Activity Survey prepared by Ecofact, was lodged with the appeal. This document in which adequate information has been provided in respect of baseline conditions, with reliance on scientific research both primary and secondary, includes clearly identified potential impacts and, measures for protection of qualifying interests in view of their conservation objectives and it has been consulted for the purposes of the appropriate assessment.

7.11. European Sites within the Likely Zone of Impact.

7.11.1. The following twenty-two European sites are identified as coming within the “Likely Zone of Impact” that is, within fifteen kilometres of the site location.

Special Areas of Protection (SAC):

The Lower River Shannon SAC (002165)

The Pouldatig Cave SAC (00037)

The Newhall and Edenvale Complex SAC (002091)

Ballyalia Lake SAC (000014)

Ballycullinan Lake SAC (000016)

Dromore Woods and Lough SAC (000032)

Lough Gash Turlough SAC (000051)

Poulanagordan Cave (Quin) SAC (000064)

East Burren Complex SAC (001926)

Old Domestic Building (Keevagh) SAC (002010)

Old Farm Building, Ballymacrogan SAC (002245)

Ballycullinan, Old Domestic Building SAC (002246)

Toonagh Estate SAC (002247)

Knockinira House SAC (002318)

Ballyogan Lough SAC (000019)

Moyree River System SAC (000057)

Newgrove House SAC (002157)

Old Domestic Buildings, Rylane SAC (002314)

Special Protection Areas (SPA):

River Shannon and Fergus Estuaries SPA (004077)

Ballyallia Lough SPA (004077)

Slieve Aughty Mountains SPA (004168)

Corofiin Wetlands SPA (004220)

7.11.2. These sites within the fifteen km Likely Zone of Impact, with the exception of the Pouldatig Cave SAC are screened out from further assessment because of the scale of the proposed development, the nature of the Conservation Objectives, Qualifying and Special Conservation Interests, the separation distances between the European sites and the development site and, the absence of substantive linkage, functional relationship or habitat connectivity.

7.11.3. However, the nearest European site, the Lower River Shannon SAC (002165) is circa one and a half kilometres from the site but has no direct pathways to the site an indirect pathway being linked with discharge of contaminated waters at construction and operational stages that could affect qualifying interest and conservation objectives. However, the site is within a serviced area within a residential estate and, at construction stage with compliance with good construction practice and at operational stage, connection to public infrastructure facilities which have capacity, the additional loading on the public network serving the site would be insignificant, the site can be screened out.

7.11.4. It is, therefore, reasonable to conclude that on the basis of the information available, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on these European Sites in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is not required for these sites.

7.11.5. The Pouldatig Cave SAC (00037) is circa 2.2 km from the site location. The qualifying interests are:

Caves [8310]

Rhinolophus hipposideros (Lesser horseshoe bat.) [1303]

- 7.11.6. The cave is suitable as a hibernating habitat for the Lesser Horseshoe Bat. Since 1986 it has been recorded as being used as a hibernating site in that the species hangs from the roof and the walls of the main passageways and it has not been subjected to visitor disturbance. The surrounding scrub vegetation, and hedgerows are included in the site because they are foraging habitat areas and shelter beds for the Lesser Horseshoe Bat.
- 7.11.7. The conservation objective for the Lesser horseshoe Bat is to maintain the favourable conservation condition in the SAC.
- 7.11.8. The Pouladatig Cave SAC is screened in because there is a potential source of connectivity having regard to the foraging range of the Lesser horseshoe bat, the SAC's qualifying interest. There is potential adverse impact for light spill over the southern boundary of the site to the adjoining mature trees, a known commuter route between foraging habitats for the Lesser Horseshoe bat having regard to the cave's suitability as a hibernating habitat. This potential adverse impact could be caused by artificial lighting at the project's higher level apartment buildings at operational stage and lighting within the outdoor space with the estate at construction and operational stages. In the project proposal it is not demonstrated, *via a light spill modelling study, that lighting design will not increase ambient light levels beyond the perimeter of the development footprint" and thus affecting the commuter route* (as provided for under Policy objective R 24 of Section 2.11 of Vol 3 of the CDP)
- 7.11.9. Based on the appropriate assessment screening it therefore cannot be concluded with certainty that the proposed development would not be likely to have significant effects on the Pouladatig Cave SAC (00037) having regard to the conservation objectives. A Stage II Appropriate Assessment would be required in the event of possible favourable consideration of the proposed development in which case it would be advisable for the applicant to be requested to prepare and submit a Natura Impact Statement.

8.0 Recommendation

In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld based on the following reasons and considerations.

9.0 Reasons and Considerations.

- 1 Having regard to the elevated location in the outer suburbs of the city, for the proposed development the zoning and specific objectives under R24 according to the Clare County Development Plan, 2017-2023 to the existing development it is considered that having regard to the footprint and proximity to the southern and northern perimeters of the Aisling development would fail to provide for additional integrated and orderly development and by reason of the form, height and design of the proposed buildings, would give rise to overbearing impact, overlooking and perceptions of overlooking. The proposed development would therefore seriously injure the residential and natural amenities of the area and would be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied that the proposed development would not be contrary to Section 14.11 of the Clare County Development Plan, 2017-2023 according to which it is the policy objective of the planning authority to ensure that there is no net loss of potential Lesser Horseshoe bat (an Annex 2 species) for which the mature trees adjoining the southern boundary the trees which are within 3 km of known roosts are a known commuter route between foraging sites and, other Annex IV bat species for which the treeline may be used for feeding for feeding and commuting, in the absence of a light spill modelling study to demonstrate that the proposed development. The proposed development would be contrary to the proper planning and sustainable development of the area.

3. The Board is not satisfied based, based on the information available in connection with the application and the appeal, that the proposed

development individually or in combination with other plans or projects would not adversely affect the integrity of the Pouladatig Cave SAC in view of its conservation objectives. In such circumstances the Board is precluded from granting permission.

Jane Dennehy

Senior Planning Inspector

8th December, 2021.